



## Business Terms and Conditions

This is an agreement (“Agreement”) for THR!VE® at Work and related services and/or features (“Service”) between you and PNG Telecommunications, Inc. d/b/a THR!VE (“THR!VE”). The words “we”, “us”, “our” or “THR!VE” refers to THR!VE. The words “you” “your” or “Customer” refers to the Business listed below for whom the person is completing this Agreement and Service Order. This Agreement and Service Order explains the terms and conditions upon which we agree to provide you Service or products and you agree to accept these terms and conditions with the Service or products provided by us.

### 1. Emergency Services.

EMERGENCY 911 OR E911 MAY NOT FUNCTION AT YOUR LOCATION AT ALL TIMES. FOR EXAMPLE, EMERGENCY 911 OR E911 SERVICE WILL NOT FUNCTION WITH THE LOSS OF ELECTRICAL POWER OR INTERNET CONNECTIVITY. DUE TO THE LIMITATIONS OF 911 OR E911 DIALING, YOU SHOULD HAVE AN ALTERNATE MEANS OF ACCESSING 911 OR E911 SERVICES SUCH AS MAINTAINING A TELEPHONE CONNECTION THROUGH YOUR LOCAL EXCHANGE CARRIER. IN ADDITION, THR!VE WILL SEND ONLY THE CUSTOMER’S BILLING TELEPHONE NUMBER (“BTN”) OR THE TELEPHONE NUMBER ASSIGNED TO A PHYSICAL PORT ON THE PREMISE EQUIPMENT TO THE 911 OR E911 NETWORK FOR TRANSFER TO THE APPROPRIATE PUBLIC SAFETY ANSWERING POINT (“PSAP”). THEREFORE, ONLY THE PHYSICAL ADDRESS LISTED FOR THE BTN OR PHYSICAL PORT TELEPHONE NUMBER WILL BE DISPLAYED AT THE PSAP. THR!VE WILL NOT SEND THE STATION AUTOMATIC NUMBER IDENTIFICATION (“ANI”) OF THE TELEPHONE SET MAKING THE 911 OR E911 CALL UNLESS SPECIAL ARRANGEMENTS ARE MADE. IF THE CUSTOMER WISHES TO IDENTIFY THE INDIVIDUAL STATION FROM WHICH A 911 OR E911 CALL ORIGINATES, THE CUSTOMER MUST MAKE SPECIAL ARRANGEMENTS AND WILL INCUR ADDITIONAL CHARGES. IN THE CIRCUMSTANCE WHERE THE CUSTOMER OPTS NOT TO PROVIDE END USER LOCATION INFORMATION FOR INDIVIDUAL STATIONS, NEITHER THR!VE NOR ITS AFFILIATES HAS ANY LIABILITY WHATSOEVER FOR THE PROVISION OF END USER INFORMATION TO THE 911 OR E911 SYSTEM. ANY RELOCATION OF YOUR EQUIPMENT TO A PHYSICAL ADDRESS OTHER THAN THAT PROVIDED UPON SIGNUP, OR THE USE OF A NUMBER OUTSIDE OF YOUR NORMAL AREA CODE OR EXCHANGE MAY CAUSE INCORRECT E911 OR 911 INFORMATION TO BE PROVIDED TO YOUR LOCAL PSAP. UPON RECEIVING YOUR ADAPTER PLEASE LOG INTO YOUR CONTROL PANEL AND SET YOUR E911 ADDRESS. THR!VE IS NOT LIABLE FOR ANY CLAIM FOR DAMAGES WHATSOEVER, INCLUDING ANY CLAIM FOR INJURIES, DEATH OR LOSS TO PERSONS OR PROPERTY INCURRED BY ANY PERSON AS A RESULT OF ANY ACT OR OMISSION OF THR!VE EITHER IN CONNECTION WITH DEVELOPING, ADOPTING, IMPLEMENTING, MAINTAINING OR OPERATING ANY EMERGENCY 911 OR E911 SYSTEM OR IN THE IDENTIFICATION OF OR THE PROVISION TO ANY EMERGENCY 911 OR E911 SYSTEM OF THE TELEPHONE NUMBER, ADDRESS, NAME, LOCATION OR OTHER INFORMATION OF ANY PERSON ACCESSING OR ATTEMPTING TO ACCESS AN EMERGENCY 911 OR E911 OR SIMILAR SYSTEM. YOUR SIGNATURE BELOW TO THESE TERMS AND CONDITIONS WILL BE YOUR ACKNOWLEDGMENT THAT THR!VE HAS ADVISED YOU OF THESE LIMITATIONS AND THAT YOU ACCEPT THE SERVICES WITH THESE LIMITATIONS. YOU SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THR!VE ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES AND AGENTS AND ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION WITH THE SERVICE, FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS FEES) BY, OR ON BEHALF OF, YOU OR ANY THIRD PARTY RELATING TO THE ABSENCE, FAILURE OR OUTAGE OF THE SERVICE, INCLUDING 911 OR E911 DIALING OR ACCESS EMERGENCY SERVICE PERSONNEL.

### 2. Term.

The initial term is dependant on the package selected. The initial term for the Services shall commence on the date that THR!VE makes the Services available (“Effective Date”). If an Additional Voice Line service is added after the Effective Date of the package, then the Additional Voice Line service will terminate at the same time as the package selected. The term for all other Services is one month. Customer’s obligation to pay for all Services shall commence on the Effective Date. Upon the expiration of any initial or subsequent term, the term will automatically renew for succeeding terms of one month at the then current month-to-month rate unless a party provides thirty (30) days written notice of termination. For the Term Services you are purchasing the Service for the full term, meaning that if you attempt to disconnect Service prior to the end of the applicable term or THR!VE terminates your Service due to your breach of these Terms and Conditions, you will be responsible for all charges relating to the then-current term, including unbilled charges, all installation costs, a disconnection fee, if applicable, and the monthly charges for all of the remaining months in the term, all of which will immediately become due and payable. If you cancel your service prior to the Effective Date, you will be responsible to pay a cancellation recovery fee, all installation costs and any disconnection fee, if applicable.

### 3. Charges and Rates.

- a. Charges for Service. All charges for Services shall be those set forth herein and those reasonably incurred by PNG in providing Service for you.. The rates do not include taxes, access or access related charges or rates for International calling. All International rates are subject to change immediately and without notice to Customer. Service availability is subject to the availability of facilities to and in the particular countries.
- b. Charge and Rate Conditions. THR!VE reserves the right, at any time upon thirty (30) days notice, to: (i) pass through to Customer, all or a portion of, any charges or surcharges, directly or indirectly, related to the action of any federal, state or governmental agency, or (ii) modify the rates, including any rate guarantees, and/or other terms and conditions to reflect the impact of such surcharges. THR!VE may adjust its rates or charges, or impose additional rates and charges, in order to recover amounts it may be required by governmental or quasigovernmental authorities to collect from, or pay to others, to support statutory or regulatory programs during the course of the Term.
- c. Taxes. All charges for Service are net of Applicable Taxes (as defined below). Except for taxes based on THR!VE's net income, Customer will be responsible for all applicable taxes that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, franchise or other taxes, fees, duties, charges or surcharges, however designated, imposed on, incident to, or based upon the provision, sale or use of the Services (collectively “Applicable Taxes”). If Customer is entitled to an exemption from any Applicable Taxes, Customer is responsible for presenting THR!VE with a valid exemption certificate (in a form reasonably acceptable to THR!VE) and THR!VE will give effect to any such exemption prospectively. Customer agrees to indemnify, defend and hold harmless THR!VE and its respective officers, directors, employees, contractors and agents from any liability or expense associated with Applicable Taxes.
- d. Unauthorized Use. Customer expressly acknowledges and agrees that it shall make payment in full to THR!VE for all Services provided by THR!VE pursuant to these Terms and Conditions and properly billed to Customer, whether authorized or not. THR!VE reserves the right, but is not required, to take any and all action it deems appropriate to prevent or terminate any fraud or abuse in connection with the Services.
- e. Billing Period. THR!VE will bill Customer for Monthly Recurring Charges in advance and for usage based Services in arrears on a monthly basis except for charges for installation and other non-recurring charges that Customer shall pay in advance of any Service being provisioned by THR!VE. On the first billing for Monthly Recurring Charges, THR!VE will prorate the billing from the Effective Date in addition to one month in advance.

- f. **Billing.** For each billing period, THR!VE will send to Customer via email a notice that THR!VE has prepared Customer's invoice and that Customer may log on to THR!VE's web based Customer Portal at <http://thrive.pngcom.com/> to view the invoice.
- g. **Payment.** All undisputed amounts stated on each invoice are due and payable in U.S. dollars within twenty-two (22) days of the date on which THR!VE sends the email notifying Customer that Customer's invoice is available (the "Due Date"). Customer's payment must be received on or before the Due Date in order for it not to be considered late. Restrictive endorsements or statements on checks accepted by THR!VE will not be binding upon THR!VE. Customer shall pay a "Returned Check Fee" of thirty dollars (\$30.00) for any check returned for insufficient funds. If payment in full of undisputed amounts is not received on or before the Due Date, Customer will be considered to have breached these Terms and Conditions and THR!VE shall have the right, after three (3) business days notice, to suspend or terminate Service and/or in THR!VE's sole discretion, draw upon any security held by THR!VE.
- h. **Billing Disputes.** Customer shall submit all disputes to THR!VE within thirty (30) days of the date of the invoice in question. If Customer does not submit its dispute before the end of the thirty (30) day period, then Customer shall be deemed to have waived the right to dispute the invoice. Customer will submit all disputes via a written statement containing reasonably sufficient detail together with supporting documentation. Both parties will use good faith efforts to resolve the dispute within thirty (30) days from the Due Date of the invoice in question. If, at the end of the thirty (30) day period, the dispute is not resolved, the parties agree to immediately commence arbitration in accordance with Section 10e of these Terms and Conditions. Whether the dispute is resolved by mutual agreement or arbitration, the disputed amount shall be due or credited on the next invoice after final resolution of said dispute.
- i. **Late Payment.** If Customer fails to remit payment of all undisputed amounts by the Due Date, THR!VE, in addition to other remedies available to it under these Terms and Conditions or at law, may charge Customer a late fee of the lesser of 1.5% per month or the maximum fee allowed by law of the unpaid balance which shall accrue from the Due Date of the invoice.
- j. **Adjustments.** THR!VE may make billing adjustments for Services for one hundred and eighty (180) days after the date of the invoice for Services provided by THR!VE or for the greater of one hundred and eighty (180) days or any period allowed by law, government rule or regulation, or contract.
- k. **Missed Appointment.** If you miss an installation or service appointment for any reason, you must pay a missed appointment fee of one hundred fifty dollars (\$150.00).
- l. **Local Number Porting.** You may elect to port an existing Telephone Number ("TN") to PNG for use with the Service. PNG will support all valid requests and will cooperate with you to port any TNs in accordance with PNG's standard operating procedures. You are responsible for presenting to PNG all necessary and accurate Calling Service Records ("CSRs") in a form acceptable to PNG in its sole discretion. You hereby represent and warrant to PNG that you have all necessary rights and authority necessary to port any TNs and you hereby agree to indemnify, defend, and hold harmless PNG, its Affiliates, and their officers, directors, employees and agents from and against any third party claim related to or arising out of any porting. You are liable for all charges for the Term, regardless of PNG's ability to port Customer's existing TNs. If the porting of your TN has to be rescheduled you will be charged seventy-five dollars (\$75.00).
- m. **Service Appointment Charges.** You shall be liable for payment of charges reasonably incurred by PNG for a service appointment if the reason for the service appointment is not due to PNG Service or Equipment. You shall also be liable for payment of charges reasonably incurred by PNG including but not limited to: (i) charges due to your request to expedite Service availability to a date earlier than the date in the Service Order; (ii) charges due to your request to change an installation date to a date other in the Service Order; (iii) changes to the Service Order after PNG acceptance; (iv) expense incurred for Service redesign or modification; (v) reinstallation charges following any suspension of Service by PNG; and (vi) disconnection charges.
- n. **Short Call Duration Charge.** THR!VE reserves the right to charge all short duration calls (i.e. calls equal to or under six (6) seconds in length) a minimum of one-cent (\$0.01) per answered call if THR!VE determines that Customer has excessive quantities (i.e. more than 10% of Customer's total calls) of such short duration.

#### 4. Credit and Assurance of Payment.

Maintenance of acceptable credit and adequate assurance of payment, both as determined by THR!VE in its discretion, are conditions for the commencement and continuation of provision of the Services by THR!VE. By signing these Terms and Conditions, you permit THR!VE to complete a credit check on you before the commencement of Services and during the term of these Terms and Conditions. If at any time THR!VE, in its sole discretion, believes that Customer presents an undue risk of nonpayment, then THR!VE may require a form of security for payment. Failure of Customer to provide a form of security requested by THR!VE within two (2) business days of THR!VE's request shall be a material breach of Customer's obligations under these Terms and Conditions and shall entitle THR!VE to all remedies THR!VE would have for nonpayment of an undisputed amount due.

#### 5. Customer Warranties.

- a. **No Resale of Services.** Customer warrants that Customer will not resale any Services purchased hereunder. Customer acknowledges that all Services purchased pursuant to these Terms and Conditions are for retail purposes only and as such will be subject to taxes, fees, and assessments based on Customer's use as a retail end user.
- b. **No Mass Call Events.** Customer represents and warrants that Customer shall not use the Services pursuant to these Terms and Conditions:
- i. To provide any mass call events or voice content related services including, without limitation, chat lines or party lines.
  - ii. In conjunction with the use of mass communications equipment of any kind including but not limited to computers.
  - iii. In conjunction with a call center, or use of the Service for call back, call sell, fax blasting, predictive dialing, telemarketing, debit card services or any other high volume applications.
- c. **Acceptable Use Policy.** Customer shall use the Services for lawful purposes and to conduct business. Customer is responsible for adhering to THR!VE's Acceptable Use Policy ("AUP") while using the Service. The terms of which are made available for viewing over the Internet at [www.thriveonit.com](http://www.thriveonit.com).
- d. **Equipment.**
- i. **Customer Provided Equipment and Broadband Service.** Customer will provide THR!VE with adequate facilities to house and operate any equipment necessary for the Services and provide THR!VE with access to any existing equipment or communication demarcation points. Customer may be responsible for coordinating the connectivity of its voice and data Customer Premises Equipment to the Service. Customer is responsible to provide an uninterrupted power supply including backup power or alternative service. Any power interruption will result in a loss of voice and data service including 911, E911 and similar emergency services. THR!VE is not responsible for the installation, operation, maintenance, compatibility or performance of any third party service, software or hardware. If such third party hardware or software impairs operation of the Service, Customer remains liable for payment of all charges for the Service. THR!VE shall not be held responsible or liable for any defects or failure in Customer's Service, computer, software, files, data, and peripherals or any other equipment or connectivity arising from or caused by any equipment or service which is not a part of THR!VE's network. If Customer purchases Equipment from THR!VE, you will own the Equipment and bear all risk of loss of, theft of,

casualty to or damage to the Device, from the time it is shipped. The Service is not compatible with all broadband services. Some broadband providers provide modems that prevent the transmission of communication using this Service. THR!VE disclaims any express or implied warranties regarding the compatibility of the Service with any particular broadband service.

- ii. THR!VE Provided Equipment. If THR!VE provides Customer with equipment for provision of the Service to be located at the Customer's premises ("Equipment"), such Equipment will remain the property of THR!VE and Customer shall keep it free and clear of any encumbrances, liens, or anything else that would impair THR!VE's ownership of the equipment (a "Lien"). Customer agrees to waive and release any Lien on the Equipment, and further agrees to indemnify, defend, and hold harmless THR!VE and its respective officers, directors, employees, contractors and agents against and from any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement including without limitation, attorneys' fees and all reasonable costs and expenses of litigation arising out of, or resulting from, labor, materials, services or supplies furnished by subcontractors or suppliers and from all Liens. Customer shall take such action as is necessary to protect the Equipment and will fully compensate THR!VE for the replacement cost of any Equipment that is lost or damaged. Such actions may include, without limitation, the provision of a secure, air-conditioned space to house, and sufficient electricity to run the Equipment, reasonable steps to protect the Equipment against theft, abuse or misuse, and reasonable steps to protect the Equipment against physical damage. Customer will comply with all instructions and requirements of THR!VE regarding the care and use of the Equipment.
- iii. Return of Equipment. Upon termination of the Service, Customer will immediately return to THR!VE all Equipment and any other property or information (including without limitation Confidential Information) obtained by Customer in connection with Customer's dealings with THR!VE that Customer does not own. If Customer does not immediately return all such items, Customer shall pay to THR!VE promptly upon receipt of any invoice the replacement value of the Equipment plus all costs incurred by THR!VE in protecting its Confidential Information, in retrieving or attempting to retrieve the Equipment, and in collection of such costs or other amounts due THR!VE by Customer.
- e. Security Measures. Customer shall be solely responsible for establishing and maintaining adequate security measures including but not limited to maintaining codes, passwords, encryption or other features necessary to restrict access to Customer's computers, network, servers, or other equipment used by the Services.
- f. Unpermitted Use of Service. Customer shall not alter the firmware, software, or any electronic data stored on the Equipment without the express written consent of THR!VE. Customer shall not change the electronic serial number or equipment identifier or perform a factory reset of the Equipment without our prior written consent. Customer shall not attempt to hack or otherwise disrupt the Services or make use of the Services in any way that is inconsistent with its intended purpose. Customer shall contact THR!VE immediately if the Equipment is stolen or if Customer becomes aware at any time that Customer's Service is being stolen, fraudulently used or otherwise being used in an unauthorized manner. Until such time as THR!VE receives notice of the theft, fraudulent use or unauthorized use, Customer will be liable for all use of the Service using the Equipment stolen from Customer and all stolen, fraudulent or unauthorized use of the Service.
- g. Travel and Use of Service and Equipment Outside of the United States. THR!VE offers and supports services only in the United States and certain other countries. The Service is designed to work generally with unencumbered high-speed internet connections. If the high-speed internet connection Customer is using is not within a THR!VE service area, and/or Customer's ISP or broadband provider places restrictions on the usage of the Service, THR!VE does not represent or warrant that use of the Service by Customer is permitted by such other jurisdiction or by any ISP or broadband provider. Customer is solely responsible for any violations of local laws and regulations or violations of ISP and broadband provider terms of service resulting from such use.
- h. Letter of Authorization ("LOA"). Customer shall complete and maintain an accurate LOA that is true, and does not contain any misleading statements and is not missing any information the absence of which would make the information provided by or statements made by Customer in the LOA misleading.
- i. Breach of Customer Warranties. Any breach of any of Customer's warranties pursuant to this section 5 of these Terms and Conditions will constitute a material breach of these Terms and Conditions and THR!VE may suspend or terminate the Service immediately and without notice. If Customer breaches any of its warranties, Customer will be solely liable for and will indemnify, defend and hold THR!VE and its respective officers, directors, employees, contractors and agent harmless from all claims, demands, costs, damages, losses, liabilities and expenses of any nature arising from such breach, including indirect, special, incidental, consequential, punitive or reliance damages and any costs including attorneys' fees associated with enforcing any of these provisions.
- j. No Third Party Calls. You shall not send any calls that would incur any third party charges including but not limited to 800 collect, third party, 900/976 or credit card calls. PNG will reject any such calls.

#### 6. Number Transfer on Termination.

Upon termination of the Services, THR!VE agrees to release Customer's new service provider the telephone number(s) that Customer used in connection with the Service if Customer's: (1) New service provider is able to accept such number(s); (2) Account has been properly terminated; (3) Account is completely current, including payment for any Early Termination Fees; (4) Equipment has been returned in good order; and (5) Requested the transfer upon terminating its account.

7. Relocation of Service. If Customer requests to relocate the Service to a new location, then Customer will request such move in writing at least six (6) weeks in advance of the change over date. If such new location is within THR!VE's service area, then Customer and THR!VE agree to enter into a new contract for the new location of length no less than the original Service Period. Such new contract may include additional or different installation, recurring and other charges and fees, and in addition to the foregoing, THR!VE may assess, and Customer will promptly pay, a relocation fee for each time Customer changes Service location. If such new location is not within THR!VE's service area or Service ceases at the prior location and a new agreement for the new location is not executed by the parties, then the Agreement will be deemed terminated by Customer and Early Termination Charges will apply.

#### 8. Limitation of Liability; Disclaimer of Warranties.

IN THE EVENT OF ANY BREACH OF THESE TERMS AND CONDITIONS OR ANY FAILURE OF THE SERVICES WHATSOEVER, NEITHER THR!VE NOR ANY OF THR!VE'S SUPPLIERS SHALL BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, ACTUAL, INCIDENTAL, PUNITIVE OR ANY OTHER DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER, EVEN IF THR!VE OR THE SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THR!VE MAKES NO WARRANTY WITH RESPECT TO THE SERVICE OR ITS PERFORMANCE UNDER THESE TERMS AND CONDITIONS. THR!VE DISCLAIMS ALL WARRANTIES WHETHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO WARRANTY IS MADE OR PASSED ON WITH RESPECT TO ANY THIRD PARTY SERVICE.

**PUBLISHED DIRECTORY LIABILITY.** THR!VE IS NOT LIABLE FOR DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, ACTUAL, INCIDENTAL, PUNITIVE OR ANY OTHER DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER, AS A RESULT OF ANY ACT, OMISSION OR FAILURE TO LIST CUSTOMER IN CONNECTION WITH LISTING CUSTOMER'S INFORMATION IN ANY PUBLISHED DIRECTORY. THR!VE IS NOT LIABLE FOR ERRORS OR OMISSIONS IN CUSTOMER'S INFORMATION LISTED IN ANY PUBLISHED DIRECTORY, AND CUSTOMER IS SOLELY RESPONSIBLE FOR ENSURING THE ACCURACY OF SUCH INFORMATION.

**THR!VE DISCLAIMER FOR CONTENT.** USE OF THR!VE'S VOICE AND DATA SERVICE IS SOLELY AT CUSTOMER'S OWN RISK. THR!VE EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT PARTICULAR PURPOSE AND NON-INFRINGEMENT. THR!VE MAKES NO WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICE(S) WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DO WE MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE(S) OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICE OR THAT DEFECTS IN THE SERVICE WILL BE CORRECTED. ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK AND THAT IT WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO COMPUTER SYSTEMS OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA. THR!VE MAKES NO WARRANTY REGARDING ANY GOODS OR SERVICES PURCHASED OR OBTAINED THROUGH THE SERVICE OR ANY TRANSACTIONS ENTERED INTO THROUGH THE SERVICE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM THR!VE OR THROUGH THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

**SECURITY AND OTHER ALARM SYSTEMS.** THE SERVICE MAY NOT BE COMPATIBLE WITH CUSTOMER'S SECURITY AND FIRE ALARM SYSTEMS. THR!VE STRONGLY RECOMMENDS THAT CUSTOMER MAINTAINS A TELEPHONE CONNECTION THROUGH CUSTOMER'S LOCAL EXCHANGE CARRIER IN ORDER TO USE ANY ALARM MONITORING FUNCTIONS. YOU ARE RESPONSIBLE FOR CONTACTING THE ALARM MONITORING COMPANY REGARDING YOUR ALARM SERVICE. YOU SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THR!VE, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES AND AGENTS AND ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION WITH THE SERVICE, FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS FEES) BY, OR ON BEHALF OF, YOU OR ANY THIRD PARTY RELATING TO THE ABSENCE, FAILURE OR OUTAGE OF THE SERVICE, INCLUDING FAILURE OR PROBLEMS WITH CUSTOMER'S SECURITY AND FIRE ALARM SYSTEMS.

9. **Indemnification.**

Customer will defend, indemnify and hold harmless THR!VE and its respective officers, directors, employees, contractors and agents against and from any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement including without limitation, attorneys' fees and all reasonable costs and expenses of litigation arising out of, resulting from, or based upon, any complaint, claim, action, proceeding or suit to the extent that such claim is from or in any way connected with any claims from Customer's use of the Services including any unauthorized or illegal provision or use, any infringement by Customer or someone else using the Service with Customer's computer of any intellectual property or other proprietary right of any person or entity or from the violation of THR!VE's AUP.

10. **Miscellaneous.**

- a. **Force Majeure.** Neither party shall be liable, nor shall any credit allowance or other remedy be extended, for any failure of performance or equipment due to causes beyond such party's reasonable control. In the event THR!VE is unable to deliver Service as a result of force majeure, Customer shall not be obligated to pay THR!VE for the affected Service for so long as THR!VE is unable to deliver otherwise Force Majeure does not apply to Customer nonpayment.
- b. **Proprietary Information.** Each party agrees to maintain in strict confidence the terms and conditions, including pricing, contained in these Terms and Conditions or in any Service Order, Attachment or Schedule and all plans, designs, drawings, trade secrets, business and other proprietary information of the other party which is disclosed pursuant to these Terms and Conditions. Neither party shall disclose to any third party such confidential information without the express written consent of the other party. No obligation of confidentiality shall apply to disclosed information which the recipient (i) already possessed without obligation of confidentiality, or (ii) develops independently, or (iii) rightfully receives without obligation of confidentiality from a third party, or (iv) must disclose due to reasons prescribed by law or due to court or official orders. The recipient shall immediately notify the other party of any disclosures made pursuant to this Section.
- c. **Trademarks.** Neither Party shall take any actions, which will in any manner compromise the other Party's registered trademarks and /or service marks. Nothing in these Terms and Conditions grants a Party the right or license to use the other Party's trademarks.
- d. **Notices.** All notices to be sent to a party pursuant to these Terms and Conditions shall be in writing and sent by (i) email effective when received, (ii) private courier, (iii) express mail priority next day delivery, or (iv) confirmed facsimile if sent during business hours. The address for notice for THR!VE is:

For service and account management issues:

THR!VE  
100 Commercial Drive  
Fairfield, Ohio 45014  
Attn: Lee Ann Schmitz  
Fax: (877) 813-7389  
Email: [voip@pngmail.com](mailto:voip@pngmail.com)

For legal issues:

THR!VE  
100 Commercial Drive  
Fairfield, Ohio 45014  
Attn: Legal Department  
Fax: (513) 645-4960  
Email: [kkovach@pngmail.com](mailto:kkovach@pngmail.com)

- e. **Arbitration.** The Parties desire to resolve disputes arising out of or relating to these Terms and Conditions without litigation. Therefore, except for action seeking a temporary restraining order or an injunction relating to the purposes of these Terms and Conditions, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedures as the sole remedy with respect to any controversy or claim arising out of or relating to these Terms and Conditions or its breach.

At the written request of either Party, each Party will appoint a knowledgeable representative to meet and negotiate in good faith to resolve any dispute arising out of or relating to these Terms and Conditions. The representatives shall have the discretion to determine the location, format, frequency and duration of their negotiations, and to utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. All discussions and correspondence among the representatives shall be treated as confidential information developed for the purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the agreement of the Parties.

If the negotiations do not resolve the dispute within forty-five (45) days of the initial written request, the dispute shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association ("AAA"). The parties acknowledge that these Terms and Conditions are made pursuant to a transaction in interstate commerce, and that any arbitration will be governed by the Federal Arbitration Act, 9 U.S.C. sec. 1, et seq. Any court with jurisdiction may enter judgment upon the award rendered by the arbitrator. The arbitration will be held in Hamilton County, Ohio.

The Parties agree that the arbitration shall proceed *ex-parte* in the event that a Party, after being duly notified refuses to participate in the arbitration. The prevailing party shall be entitled to reasonable costs and attorney's fees.

- f. Waiver and Amendment. The failure of either party to enforce any provision hereof on one or more occasions shall not constitute the permanent waiver of such provision. Any addition, deletion or modification to these Terms and Conditions shall not be binding on either party except by written amendment executed by both parties.
- g. Interpretation. No rule of construction requiring interpretation against the draftsman hereof shall apply in the interpretation of these Terms and Conditions.
- h. Choice of Law. These Terms and Conditions shall, in all respects, be governed by and construed and enforced in accordance with the laws of the State of Ohio, without respect to the state's conflict of laws provisions. For valuable consideration, both parties acknowledge and agree that any action to enforce or interpret the terms of these Terms and Conditions or relating to the Services to be provided by THR!VE shall be instituted and maintained only in Hamilton County, Ohio. Customer hereby consents to the jurisdiction and venue of such court and waives any objection to such jurisdiction and venue.
- i. Integration. These Terms and Conditions, Service Orders, Attachments and Schedules supersede and merge all prior agreements, promises, understandings, statements, representations, warranties, indemnities and covenants and all inducements to the making of this Agreement whether written or oral or whether made before execution of this Agreement.
- j. Counterparts. This Service Order and Terms and Conditions may be executed in several counterparts, each of which shall constitute an original, but all of which shall constitute one and the same instrument.
- k. Survival. No termination of these Terms and Conditions shall affect the rights or obligations of either party with respect to payment or with respect to other provisions of these Terms and Conditions that, by their sense and context, are intended to survive termination of this Service Order and Terms and Conditions, including without limitation, indemnification, limitation of liability, confidentiality, governing law and forum selection.
- l. Severability. If any term or provision of this Service Order or Terms and Conditions shall, to any extent, be determined to be invalid or unenforceable by a court or body of competent jurisdiction, then the provision shall be deemed modified to the minimum extent necessary to be valid.
- m. Assignment. Neither party shall assign or otherwise transfer its rights or obligations under this Service Order and these Terms and Conditions without the prior written consent of the other, which shall not be unreasonably withheld. Customer must be current on all payments required by this Service Order and these Terms and Conditions before any assignment is approved by THR!VE. Any such assignment or transfer of Customer's rights or obligations without such consent shall constitute a default of a material obligation.
- n. Costs and Attorneys' Fees. If a proceeding is brought for the enforcement of this Service Order and/or these Terms and Conditions or because of any claim of any kind arising out of or in connection with any of the provisions of this Service Order and/or these Terms and Conditions, the prevailing party shall be entitled to recover reasonable attorney's fees and other reasonable costs and expenses incurred in such action or proceeding in addition to any other relief to which such party may be entitled.