

**FIRST COMMUNICATIONS, LLC
TERMS AND CONDITIONS OF PROFESSIONAL SERVICE**

These Terms & Conditions (“T&Cs”) set forth the legal contractual obligations governing Professional Services provided to you by First Communications, LLC (“First Communications”). **PLEASE READ THESE T&Cs CAREFULLY.** In conjunction with the Statement of Work and certain other documents (as set forth below), these T&Cs form the business relationship between you and First Communications and explain the respective legal rights concerning all aspects of the Professional Services business relationship. All other telecommunications, Ethernet and MPLS services provided by First Communications are subject to First Communications’ website Terms and Conditions applicable to such services.

By subscribing to or making use of our Professional Services, you are agreeing to abide by the terms of the Agreement, including the T&Cs.

DEFINITIONS

- a. **“Agreement”** means the legal contract for Professional Services between you and First Communications, and consists of these T&Cs and the Statement of Work, in each case as may be amended from time to time and at any time in accordance with these T&Cs; the Agreement shall not include the Proposal.
- b. **“Charges”** shall mean rates, fees, charges, expenses, costs, time, travel, labor and materials costs, reimbursements, taxes, surcharges, assessments and/or other pass through costs determined by us to be imposed on you or us in connection with provision of Professional Services to you; and Early Termination Fees or other amounts payable under the Agreement.
- c. **“Customer”** or **“you”** means the person entering into a Statement of Work to receive First Communications’ Professional Services. This includes a person we reasonably believe is acting with the authority or knowledge of the person whose name is on the account.
- d. **“Effective Date”** shall mean the date on which First Communications accepts and executes the Statement of Work after receiving Customer’s signed version.
- e. **“First Communications”** means First Communications, LLC and its successors and assigns. “First Communications” is also referred to in these T&Cs as “us”, “our” and “we”.
- f. **“Materials”** and/or **“Equipment”** shall mean hardware, software, connections, components, or any other product or item supplied or procured by or on behalf of First Communications in connection with the Professional Services.
- g. **“Parties”** means First Communications and you.
- h. **“Professional Services”** shall mean the First Communications professional services to be provided as set forth in an executed Statement of Work. For purposes of clarity, Professional Services shall not include the provision of telecommunications, Ethernet and MPLS, or managed services that are subject to First Communications’ website Terms and Conditions applicable to such services.
- i. **“Proposal”** shall mean a written, non-binding business proposal produced by First Communications describing certain professional services work and pricing for Customer’s consideration.
- j. **“Service Providers”** shall mean First Communications’ employees, agents, contractors, subcontractors, representatives or anyone providing Professional Services to you hereunder.
- k. **“Statement of Work”** or **“SOW”** shall mean a written statement of work on the form prescribed by First Communications describing the applicable professional services we provide to you, whether now or in the future.

PROFESSIONAL SERVICES

Proposal

First Communications may submit a Proposal to Customer for the provision of professional services separate from provision of telecommunications, Ethernet and/or MPLS services. All Proposals are non-binding indications of interest and shall not be deemed to be part of the Agreement. A Proposal may be withdrawn, abandoned or voided by First Communications at any time prior to execution of a binding Statement of Work between the Parties setting forth mutually agreed terms and conditions for Professional Services as the Parties deem necessary, including incorporation by reference in full of these T&Cs.

Statement of Work

The Statement of Work shall include First Communications’ planned Professional Services, and estimated Charges. The actual Charges for Professional Services may vary substantially from the estimates set forth in the Statement of Work. Customer acknowledges that Professional Services, including without limitation, technical and engineering work, is highly dependent on Customer-specific configuration and other Customer issues, constraints, limitations, requirements and needs that have not yet been identified by the Parties. Charges set forth in any Statement of Work do not include applicable taxes which shall be paid by Customer. The Professional Services shall be performed at First Communications or Service Provider facilities or locations, Customer facilities or locations, or other location(s) as deemed necessary by First Communications in its reasonable discretion for provision of the Professional Services. Travel and out-of-pocket costs related to Professional Services will be billed to Customer.

Delivery and Use of Professional Services

All Professional Services work is deemed delivered as performed. All Professional Services timelines are estimates and conditional upon Customer's timely response, performance and cooperation throughout such process. Changes to Professional Services may result in the use of additional resources, time, materials, costs and other Charges.

The duration of performing one or more of the Professional Services may be subject to the availability of Service Providers. Upon your reasonable written request, First Communications will provide you at reasonable intervals with a status update on pending Professional Services. First Communications does not warrant that time is of the essence with respect to any Professional Services.

You agree not to use any Professional Service in any way for an unlawful, fraudulent, abusive, malicious or offensive purpose or in any way that damages our property or interferes with or disrupts our system or services or other users' property or systems or services. You are responsible and liable for all content you transmit while using the Professional Services and First Communications undertakes no obligation, responsibility or liability with respect to such content. Resale of Professional Services is prohibited.

You agree and acknowledge that you aware that the Professional Services and any Equipment and Materials are not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Professional Services or Equipment or Materials could lead to severe injury to business, persons or environment. These high risk activities may include, without limitation, vital business or personal communications, or activities in which absolutely accurate data, performance or information is required.

Materials and/or Equipment

Unless otherwise specifically set forth in a Statement of Work as Materials and Equipment being paid for by First Communications, Customer shall be responsible, at its own cost, for purchasing, installing, and maintaining any and all equipment, materials and supplies that First Communications identifies as being necessary for First Communications to perform the Professional Services, including, without limitation, the purchase, installation and maintenance of hardware or software upgrades at Customer cost. In no event shall First Communications be responsible or liable for equipment, materials or supplies, or the use thereof by Customer, which are not provided or supplied by First Communications. Customer may not install any equipment, materials or supplies that disrupt or interfere with the Professional Services or any other services provided by First Communications.

With respect to any Materials or Equipment delivered by or through First Communications, Customer shall remit payments therefor to First Communications as invoiced, which may be prior to First Communications procuring the same. Any Equipment or Materials delivered or provided by First Communications remains the sole property of First Communications. All Equipment and Materials provided by First Communications shall be returned in the same condition that it was in when provided (less usual and customary wear and tear) no later than five (5) days after completion of the Professional Services or other termination or expiration of the Agreement, or otherwise during the term upon demand by First Communications.

Customer will assume responsibility and risk of loss for the Equipment and Materials upon procurement, and will subsequently be rendered an invoice for the cost of any Equipment and Materials not satisfactorily returned in good condition to First Communications upon demand. Customer shall execute and deliver any reasonable documentation as required by First Communications or any vendor in connection with any procurement, delivery or installation of Materials and Equipment. FIRST COMMUNICATIONS IS NOT THE MANUFACTURER OR SUPPLIER OF THE EQUIPMENT OR MATERIALS, AND FIRST COMMUNICATIONS DID NOT DESIGN THE MATERIALS AND EQUIPMENT. AS TO CUSTOMER, FIRST COMMUNICATIONS PROVIDES MATERIALS AND EQUIPMENT "AS IS" AND FIRST COMMUNICATIONS MAKES NO WARRANTY PERTAINING TO ANY MATERIALS AND EQUIPMENT WHATSOEVER, WHETHER EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WITH RESPECT TO ANY TRADEMARK, COPYRIGHT OR PATENT RIGHTS OR INFRINGEMENT.

Additional Customer Obligations

Customer shall (at its own expense and according to First Communications' specifications, if any, and good telecommunications industry and engineering practices) provide without delay all preparations necessary for First Communications to complete the Professional Services. Customer shall, at no cost to First Communications or Service Providers, timely provide First Communications and the Service Providers with all necessary or appropriate access, including but not limited to physical access to Customer buildings, premises or other space or facilities required to provide, modify, maintain, repair and/or cease providing the Professional Services. Customer shall be responsible for the prompt provision of all relevant and accurate system and other information to First Communications necessary for provision of the Professional Services and for the use and compatibility of all facilities, equipment, material, software or services not provided by First Communications. Customer shall provide responses to questions, issues and information requests by Service Providers without delay. All Professional Services shall be performed subject to Customer cooperating with First Communications as indicated by First Communications for its performance of such Professional Services. If access is required for any Professional Services and the Service Provider is unable to gain access during the appointment window or otherwise designated timeframe, your account will be assessed a trip charge.

INVOICES AND PAYMENTS

Billing; Payment Terms

Except as otherwise set forth herein or in the applicable Statement of Work, billing will begin on the earlier of the Effective Date of the Statement of Work, or the date Professional Services are first undertaken. All Professional Services are billed to you on a calendar month cycle (pro-rated for any partial month), or may be billed earlier upon completion if Professional Services are completed within a billing cycle. Billing cycle and dates may change at any time and from time to time. Customer agrees to pay the actual Charges for any Professional Services (regardless of any Statement of Work estimates), including any applicable Materials and/or Equipment Charges, no later than thirty (30) days from the invoice date. If you believe you have overpaid First Communications, you must submit your dispute in writing within sixty (60) days after the claimed overpayment; otherwise, the invoice is deemed correct. We may require that you make an initial deposit or we may set a Professional Services limit before we establish or maintain Professional Services for you. Any such deposit will be held as a partial guarantee of payment and cannot be used by you to pay your bill or delay payment. Unless otherwise required by law, deposits may be mixed with other funds and will not earn interest. If you default on the Agreement or applicable Statement of Work is terminated, we may, without notice to you, apply any deposit toward payment of Charges due. If applicable, any deposit will be returned in accordance with applicable law.

Credit Card

If available as an option and if you choose to pay by credit card, you agree to the rules governing that payment option, including applicable limits on the amount of Professional Services that may be received before making a payment. No additional notice or consent is required before we invoice your credit card or debit the account for all amounts due to us. We will notify you of any limits that we impose. If such limits are placed on your account, you may be required to pay for Professional Services with a valid major credit card. You agree to provide a credit card and not a debit card for this feature. You also agree to indemnify us for any claims or expenses resulting from you providing a debit card instead of a credit card. IF YOU CHOOSE THIS OPTION, YOU AGREE THAT WE MAY CHARGE YOUR CREDIT CARD FOR SERVICE WHEN YOUR LIMIT HAS BEEN REACHED. THIS PRACTICE MAY RESULT IN YOUR CREDIT CARD BEING CHARGED MORE THAN ONE TIME IN A MONTH. If your credit card is invalid or payment is not made by the issuer of your credit card at the time that a charge is attempted, you will not be able to receive the Professional Services until your account is paid in full.

Late Payments and Payment Disputes

All Charges must be paid by the due date. For amounts unpaid sixteen (16) days after the date of the invoice (or as otherwise due), you agree to pay us a late payment fee of one and one half percent (1.5%) per month or the highest amount allowed by law for the period(s) after the due date until such time as the Charges are paid. Even if we accept late or partial payments (even if marked "Paid in Full"), we do not waive any of our rights to collect the full amount of Charges due under the Agreement. You have sixty (60) days from the date of the invoice to give written notice of a dispute, otherwise the invoice is deemed correct. If you dispute any portion of an invoice, you must pay the undisputed portion of the invoice and submit a written claim, including all documentation substantiating your claim, see Notices section below. The Parties shall negotiate in good faith to resolve the dispute. We will attempt to respond to any dispute within thirty (30) days of receipt of valid written notice and will inform Customer if an adjustment to the disputed invoice will be made. If the Parties fail to mutually resolve the dispute within sixty (60) days after the dispute was submitted to First Communications, all disputed Charges shall become immediately due and payable to us. If we determine that a billing error resulted in an over billing or over charge, First Communications will refund the over billed or over charged amount by issuing your account a credit in accordance with applicable law. Notwithstanding anything set forth herein, First Communications shall be entitled to pursue a collections suit for any past due Charges in a court of law in accordance with the governing law and jurisdiction provisions set forth herein.

Suspension, Termination for Non-Payment and Default

In addition to our other rights to suspend or terminate a Statement of Work, Professional Services and/or this Agreement described elsewhere in the Agreement, if you miss a payment, we may suspend the Professional Services and/or terminate the Agreement or Statement of Work subsequent to the missed due date. If you breach any representation to us, violate the Agreement or any Statement of Work, or become subject to any proceeding under the bankruptcy act or similar applicable laws, you will be in default and we may, without notice to you, suspend Professional Services and/or terminate the Agreement or Statement of Work, in addition to all other remedies available to us. We may require reactivation Charges to renew any Professional Services after termination or suspension.

TERM AND TERMINATION

Term

This Agreement shall remain in full force and effect until the date of completion of the Professional Services described in the SOW unless earlier terminated as follows. At the end of any term, if you continue to receive Professional Services on a month-to-month basis, such Professional Services will be subject to the terms of the Agreement and may be provided at the then-prevailing First Communications month-to-month rates.

Termination for Convenience

Each party shall have the right to terminate the Agreement, in its discretion, upon sixty (60) days advance written notice to the other party provided, however, First Communications shall be entitled to payment with respect to Charges earned, incurred or contracted by it (including, without limitation, any costs relating to Equipment, Materials, travel or third party commitments) up to the effective date of the termination, in addition to applicable ETFs as set forth below. In the event of termination by Customer for Convenience, Customer must cooperate in returning all Equipment and Materials to First Communications within such notice timeframe in order to effect the termination.

Termination for Cause

In addition to the right to terminate for cause for non-payment as set forth above, First Communications may, at its option, terminate the Agreement or any portion of the Professional Services hereunder and have free access to retake possession of any related Materials or Equipment (before, during, or after any action to recover sums owed hereunder) if Customer is in violation of applicable laws, if termination is necessary for First Communications to comply with an order of a governmental body, if Customer commits a material breach of any of its obligations hereunder, or if Customer fails within five (5) days after written notice to remedy any other breach of the terms and conditions herein. First Communications may terminate the Agreement or terminate or suspend any portion of the Professional Services and have free access to retake possession of any Materials or Equipment (before, during, or after any action to recover sums owed hereunder) if Customer becomes subject to voluntary or involuntary bankruptcy, insolvency, reorganization, or liquidation proceedings; makes an assignment for the benefit of creditors; admits in writing its inability to pay its debts as they become due; or causes First Communications to believe that Customer obligations hereunder will not be met. First Communications may retain all payments made hereunder, and may recover all Charges and ETFs owed by Customer, and any other damages which First Communications may have sustained and indemnities to which First Communications is entitled because of Customer's circumstances as described in this paragraph. Any such termination shall not relieve Customer of liability incurred prior to such termination including Charges earned, incurred or contracted by First Communications in connection with the Professional Services. In addition, Customer will be liable for the Charges for ETFs as set forth below. Customer may terminate the Agreement upon thirty (30) days advance written notice to First Communications in the event First Communications has committed a material breach of the Agreement and such breach is not cured within 30-days of notice, provided, that Customer cooperates in returning all Equipment and Materials to First Communications within such notice timeframe.

Charges for Early Termination

In the event of termination by Customer for Convenience prior to completion of the Agreement or Professional Services, or termination by First Communications for Cause as set forth above, Customer shall pay First Communications Early Termination Fees ("ETFs") equal to the sum of: (i) fifty percent (50%) of the (a) remaining monthly recurring charges ("MRCs"), or (b) if MRCs are not applicable to such Professional Services, of amounts to be paid to First Communications under any Statement of Work not completed at the time of termination based on the greater of estimated pricing for such Professional Services set forth in the Statement of Work (as amended, if applicable), or the actual Charges if such Charges are known or better estimable at the time of termination; plus (ii) one hundred percent (100%) of any waived fees or service credits issued as incentives to Customer; plus (iii) one hundred percent (100%) of any third party commitments or costs to First Communications in connection with the Professional Services. Customer understands and agrees that in its performance of the Professional Services, First Communications has incurred various internal costs and made other commitments such that the actual damages associated with such costs and commitments in the event of an early termination are not readily ascertainable, and that the termination Charges set forth herein are therefore a form of liquidated damages, not a penalty, because of the difficulty of accurately determining, for each individual Customer, First Communications' actual costs, losses, and liabilities associated with early termination.

CONFIDENTIALITY AND PROPRIETARY RIGHTS

Confidential First Communications Information

Customer will not disclose the terms or pricing associated with this Agreement to anyone without prior written approval from First Communications. During the term of the Agreement and for a period of one year thereafter, Customer will not disclose any confidential or proprietary information of First Communications to another party or use the same for any other purpose. While we use industry-accepted technologies to safeguard your information, you are responsible for the security of your confidential or proprietary information, as we cannot guarantee its security. No method of electronic storage or transmission over the internet is fail-safe or fully secure.

Ownership and Proprietary Rights

All data, information, materials and know-how associated with any Professional Services and all rights relating thereto are First Communications property, and no such materials shall be deemed "works made for hire." You acknowledge that such First Communications property and all work and product hereunder is the property of First Communications, and that First Communications has all right, title and interest in and to such property and work and product. Any Customer specific business information furnished by Customer in connection with any such services shall remain the property of Customer; provided, however, that no work or product created, developed or first reduced to practice by First Communications, alone or with others including yourself, in connection with providing Professional Services shall be deemed to be Customer property. Upon any termination or expiration of the Agreement, each

Party shall promptly return all information and data of the other Party (and all copies thereof) and shall have no further right or license to use any such materials.

All content included on First Communications' website or other material presented or made available to you as part of the Professional Services, such as text, graphics, logos, button icons, and images, digital downloads, data compilations and software are the property of First Communications or its content supplier and are protected under applicable law.

First Communications grants you a limited non-exclusive license to access and make personal use of the website and not to download (other than page caching) or modify it or any portion of it except with the express written consent of First Communications. With respect to other material presented to you as part of the Professional Services, you are only permitted to use the content as expressly authorized by First Communications in connection with the Professional Services. You may not copy, reproduce, distribute or create derivative works from the content included on First Communications' website or other materials presented or made available to you as part of the Professional Services.

Customer Proprietary Network Information (CPNI)

First Communications knows how important personal privacy is to our customers. The personal information we collect, such as your name, address, etc., is only used to conduct business with you, provide the Professional Services and keep in communication with you. We may also use this information to inform you of other products and services offered by First Communications or its affiliates. NO INFORMATION IS EVER SOLD, RENTED OR GIVEN TO ANY OTHER PARTY unless required by law or regulation or unless they are conducting business on your behalf or for your benefit (e.g., we have used a company to conduct satisfaction surveys on our behalf and have used companies as underlying service providers), provided, however, if we go through a business transaction involving transfer of First Communications' assets, your personal information will likely be among the assets transferred. In some cases, we may provide Professional Services jointly with selected third parties who will use your personal information, if at all, to provide the underlying contracted services.

Account Information

We will use commercially reasonable means to protect the confidentiality of your account information. We will authenticate callers requesting CPNI or changes to your account, including adding additional Professional Services we offer, if any. We will establish a password and reminder question for your account as directed by the FCC. You are solely responsible for any password or other administrator changes that you make through any website or customer portal established by First Communications for your own administrative access and control with respect to Professional Services. We may assume that any person able to provide your password is authorized by you to receive call detail or other information related to your business. If you are receiving any First Communications service on a business service plan through your employer, you authorize us to share your account information with your employer. Whenever you provide us account information, you agree to provide true, current, accurate and complete information, and you also agree to keep this information current. If you provide information that is, or we have reasonable grounds to suspect is, untrue, not current, inaccurate or incomplete, First Communications may suspend or terminate your Professional Services.

If you use First Communications' website or any other First Communications provided customer access or portal, you are responsible for maintaining the confidentiality of your account and password and restricting access to your computer, and you agree to accept responsibility for all activities that occur under your account and password. You will ensure that you exit your account at the end of each session. You agree to notify First Communications immediately of any unauthorized use or other breach of security. First Communications will not be liable for any loss or damage to you and/or any third party arising from your failure to comply with this section.

Non-Solicitation of Service Providers

During the term of the Agreement and for a period of one year thereafter, Customer agrees that it shall not solicit for itself or another or otherwise interfere with the employment or engagement by First Communications of any Service Providers involved in the completion of the Professional Services, the Statement of Work or any activities in connection with or preliminary to a Proposal.

LEGAL AND REGULATORY

Limitation of Liability

We intend for the following limitations and exclusions of our liability to apply to the fullest extent permitted by law.

First Communications shall not be liable for (i) claims or damages caused by Customer's fault, negligence, or failure to perform Customer's responsibilities, including without limitation, Customer's use of improper or faulty equipment, materials, supplies or services; (ii) claims against Customer by any other person; (iii) claims arising out of any act or omission of any other person furnishing products, materials, equipment, supplies or services to Customer; nor (iv) claims arising out of the installation, maintenance or removal of equipment, materials or supplies when not due to the gross negligence or willful misconduct of First Communications. In no event shall First Communications, nor any person or entity assisting or having assisted First Communications in its performance pursuant to the

Agreement including Service Providers, be liable to Customer or any other person for any indirect, consequential, special, punitive or any other indirect damages or for any lost profit of any kind, whatsoever.

IF OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT CAUSES DAMAGE TO A PERSON OR PROPERTY, WE WILL BE LIABLE FOR NO MORE THAN THE LESSER OF THE AMOUNT OF ALL CHARGES PAID BY CUSTOMER UNDER THE AGREEMENT, OR THE AMOUNT OF DIRECT DAMAGES TO THE PERSON OR PROPERTY. FOR ANY OTHER CLAIM, WE WILL NOT BE LIABLE FOR MORE THAN THE AMOUNT FOR ALL CHARGES FOR THE PROFESSIONAL SERVICES UNDER THE APPLICABLE STATEMENT OF WORK DURING THE AFFECTED PERIOD. IN ADDITION, FOR ANY CLAIM WHATSOEVER, WE WILL NOT BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS OR REVENUE OR INCREASED COSTS OF OPERATION OR ANY HEALTH-RELATED CLAIMS ALLEGEDLY ARISING FROM THE USE OF PROFESSIONAL SERVICES, DEVICES, EQUIPMENT, MATERIALS OR ACCESSORIES USED IN CONNECTION WITH PROFESSIONAL SERVICES, COMPUTER FAILURE OR MALFUNCTION, COMPUTER SECURITY BREACH, COMPUTER VIRUS INFECTION, LOSS OF INFORMATION OR DATA CONTAINED IN, STORED ON, OR INTEGRATED WITH ANY SERVICE THAT WE PROVIDE. FURTHER, AT NO TIME WILL WE BE LIABLE FOR PUNITIVE, EXEMPLARY, RELIANCE OR SPECIAL DAMAGES OF ANY TYPE. THESE LIMITATIONS APPLY EVEN IF THE DAMAGES WERE FORESEEABLE OR IF WE WERE TOLD THEY WERE POSSIBLE, AND THE LIMITATIONS APPLY WHETHER THE CLAIM IS BASED ON CONTRACT, TORT, STATUTE, FRAUD, MISREPRESENTATION, OR ANY OTHER LEGAL OR EQUITABLE THEORY. FIRST COMMUNICATIONS WILL NOT BE LIABLE FOR ANY DAMAGES IF PROFESSIONAL SERVICES ARE INTERRUPTED, OR THERE IS A PROBLEM WITH THE PROFESSIONAL OR OTHER SERVICES OR EQUIPMENT OR MATERIALS OF SOME OTHER PARTY. WE ARE NOT LIABLE IN ANY WAY FOR ANY CALL TO ANY EMERGENCY PROVIDER OR THE FAILURE TO CONNECT TO SUCH PROVIDER OR ANY ACTION THAT OCCURS OR FAILS TO OCCUR AS A RESULT. YOU ACKNOWLEDGE AND AGREE THAT FIRST COMMUNICATIONS USES CERTAIN UNDERLYING SERVICE PROVIDERS IN CONNECTION WITH THE SERVICES AND THAT WE SHALL NOT BE LIABLE FOR ANY FAILURE AND/OR DELAY IN PROFESSIONAL SERVICES TO THE EXTENT CAUSED OR CONTRIBUTED TO, WHETHER DIRECTLY OR INDIRECTLY, ANY FAILURE OF EQUIPMENT, MATERIALS, PROFESSIONAL OR OTHER SERVICES, AND/OR SOFTWARE PROVIDED BY ANY THIRD PARTY INCLUDING ANY SUCH EQUIPMENT, MATERIALS, PROFESSIONAL OR OTHER SERVICES OR SOFTWARE PROVIDED, LEASED OR LICENSED TO FIRST COMMUNICATIONS. FIRST COMMUNICATIONS SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR PROBLEMS WITH THE WORK PRODUCT OR PROFESSIONAL SERVICES CAUSED BY ALTERATION OR MODIFICATION BY CUSTOMER OR OTHER PARTIES, PROBLEMS ARISING OUT OF THE MALFUNCTION OF CUSTOMER'S EQUIPMENT OR THE MALFUNCTION OF SOFTWARE OTHER THAN THE FIRST COMMUNICATIONS PROPERTY OR WORK PRODUCT. THIS PARAGRAPH WILL SURVIVE TERMINATION OR EXPIRATION OF THE AGREEMENT.

Indemnification

YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD US, OUR AFFILIATES AND SERVICE PROVIDERS, HARMLESS FROM CLAIMS OR DAMAGES RELATING TO THE AGREEMENT OR PERFORMANCE UNDER THE AGREEMENT AND USE OF THE EQUIPMENT, MATERIALS OR PROFESSIONAL SERVICE, UNLESS DUE TO OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THIS PARAGRAPH WILL SURVIVE TERMINATION OR EXPIRATION OF THE AGREEMENT.

No Warranties

WE MAKE NO EXPRESS WARRANTY REGARDING THE PROFESSIONAL OR OTHER SERVICES, MATERIALS OR EQUIPMENT AND DISCLAIM ANY IMPLIED WARRANTY, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. NOTWITHSTANDING ANYTHING SET FORTH IN THE AGREEMENT, WE MAKE NO REPRESENTATION OR WARRANTY REGARDING THE DESIGN, CONDITION, QUALITY, CAPACITY OR OTHER ASPECT OF ANY MATERIALS, EQUIPMENT, SERVICES, PROFESSIONAL SERVICES, OR ANY COMPONENT THEREOF, INCLUDING BUT NOT LIMITED TO, SYSTEMS, SOFTWARE, PERSONNEL, SERVICE PROVIDERS, PROGRAMMING ASSISTANCE OR CONSULTATION PROVIDED AS PART OF THE PROFESSIONAL SERVICES, THAT THE PROFESSIONAL SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING CUSTOMER CONTENT, WILL BE SECURE OR NOT LOST OR DAMAGED. THE PROFESSIONAL SERVICES AND ANY EQUIPMENT AND MATERIALS ARE NOT FAIL-SAFE AND ARE NOT DESIGNED OR INTENDED FOR USE IN SITUATIONS REQUIRING FAIL-SAFE PERFORMANCE OR IN WHICH AN ERROR OR INTERRUPTION IN THE PROFESSIONAL SERVICES OR EQUIPMENT OR MATERIALS COULD LEAD TO SEVERE INJURY TO BUSINESS, PERSONS OR ENVIRONMENT. THESE HIGH RISK ACTIVITIES MAY INCLUDE, WITHOUT LIMITATION, VITAL BUSINESS OR PERSONAL COMMUNICATIONS, OR ACTIVITIES IN WHICH ABSOLUTELY ACCURATE OR SECURE DATA, PERFORMANCE OR INFORMATION IS REQUIRED. WE DO NOT AUTHORIZE ANYONE TO MAKE ANY WARRANTY ON OUR BEHALF AND YOU SHOULD NOT RELY ON ANY SUCH STATEMENT. WE ARE NOT THE MANUFACTURER OF EQUIPMENT OR DESIGNER OF ANY SOFTWARE AND ANY STATEMENT REGARDING IT SHOULD NOT BE INTERPRETED AS A WARRANTY. FIRST COMMUNICATIONS DOES NOT GUARANTEE THAT ANY PRODUCT OR SERVICE WILL DETECT, OBSTRUCT AND/OR PREVENT ANY VIRUSES, TROJANS, WORMS OR UNAUTHORIZED ACCESS TO YOUR NETWORK AND/OR COMPUTER SYSTEM. THE ONLY WARRANTY APPLICABLE TO THE EQUIPMENT USED IN CONNECTION WITH THE PROFESSIONAL SERVICES IS THAT PROVIDED BY THE EQUIPMENT MANUFACTURER, IF ANY. FIRST COMMUNICATIONS MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO

PROFESSIONAL SERVICES PERFORMED BY THIRD PARTY SERVICE PROVIDERS. THIS PARAGRAPH WILL SURVIVE TERMINATION OR EXPIRATION OF THE AGREEMENT. FIRST COMMUNICATIONS DOES NOT WARRANT THAT TIME IS OF THE ESSENCE WITH RESPECT TO ANY PROFESSIONAL SERVICES.

Force Majeure

First Communications will not be responsible for, and will not incur any liability arising out of, any event beyond our reasonable control such as lightning, hurricane or other exceptionally severe weather, acts of God, flood, fire or explosion, civil disorder, terror attacks, war or military operations, national or local emergency, anything done by any government or other competent authority or labor difficulties of any kind (including those involving our Service Providers), malicious mischief, riots, accident, transportation tie-ups, electrical outage or shortage, unavailability of network facilities (including third parties) or unavailability or shortage of underlying services, or supply or materials.

Liens and Encumbrances

Customer has no power, authority or right to create, and shall not permit, any lien or encumbrance with respect to any Materials and/or Equipment regardless of location, including, without limitation, tax liens and mechanics' liens, with respect to work performed or Materials and/or Equipment furnished, or in connection with the installation, repair, maintenance or operation of Customer's facilities. Notwithstanding the foregoing, if any such lien is filed at any time against any Materials or Equipment or other property of First Communications or any Service Provider, or any part thereof, Customer shall cause such lien to be discharged of record within thirty (30) days of Customer's receipt of notice of the lien, except that if Customer desires to contest such lien, it will furnish First Communications, within such thirty (30) day period, security reasonably satisfactory to us in the amount of the claim or, Customer shall provide a bond issued by a surety in good standing in the relevant State in the amount of such lien. If Customer fails to discharge the lien and/or provide the security set forth above within the time period set forth above, First Communications may, at its option, pay such charge and related costs and interest, and the amount so paid, together with reasonable attorneys' fees incurred in connection with such lien, will be immediately due from Customer to First Communications.

Resolution of Disputes

PLEASE READ THIS SECTION CAREFULLY. IT PROVIDES FOR RESOLUTION OF DISPUTES THROUGH FINAL AND BINDING ARBITRATION INSTEAD OF IN A COURT BY A JUDGE OR JURY OR THROUGH A CLASS ACTION; PROVIDED HOWEVER, THAT WE MAY INITIATE COLLECTIONS ACTIONS AGAINST YOU IN COURT WITHOUT ARBITRATION. ARBITRATION IS FINAL AND BINDING AND SUBJECT TO ONLY VERY LIMITED REVIEW BY A COURT. YOU CONTINUE TO HAVE CERTAIN RIGHTS TO OBTAIN RELIEF FROM A FEDERAL OR REGULATORY AGENCY. THIS SECTION SHALL SURVIVE TERMINATION OR EXPIRATION OF THE AGREEMENT.

Choice of Law Forum

Where our Professional Service terms and conditions are regulated by a state agency or the Federal Communications Commission ("FCC"), the regulations are available for your inspection. If there is any inconsistency between the Agreement and those regulations, those regulations shall govern and the Agreement shall survive and be deemed amended as necessary to conform to such regulations. To the extent the Agreement is not subject to FCC or state regulations, you agree that the laws of the State of Ohio govern the Agreement and the relationship between First Communications and you, without regard to conflict of laws principles. The Parties further agree that to the fullest extent permitted under the Agreement, Akron, Ohio will be the exclusive jurisdiction for any claim, dispute or other difference that may arise between the Parties, including any collections suit initiated by First Communications against you. Each Party consents to personal jurisdiction and venue in Akron, Ohio and waives any objection it may have based on inconvenient forum. **Notwithstanding anything set forth herein, each Party irrevocably waives any right to trial by jury in connection with any claim.**

Pre-Arbitration

Except for our collections suits which are not subject to the following arbitration provisions, before the initiation of any arbitration between the Parties, written notice of any claim, dispute or other difference (collectively, "Disputes") shall be provided pursuant to the notice provisions of the Agreement, see Notices Section below. If the Dispute cannot be resolved within sixty (60) days of receipt of such notice, either Party may initiate arbitration of the Dispute.

Arbitration

Disputes that arise between the Parties, except for those Disputes that fall exclusively within the jurisdiction of a state or federal regulatory body, shall be exclusively resolved by binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association with arbitration to occur in Akron, Ohio. **The Parties agree that their Disputes will be resolved individually and shall not be resolved on a consolidated or class basis or joined with Disputes of any third-party.** Subject to the limitations of liability set forth herein, the arbitrator(s) may award declaratory relief, preliminary and permanent injunctive relief, and direct compensatory damages, but may not award any incidental, consequential, punitive or other damages disclaimed herein and each Party waives, to the fullest extent permitted by law, any claims for any such damages. To the extent such damages may not be so waived, if an arbitrator decides to award such damages they shall be limited to the total amount of Charges paid by you to us in connection with the Professional Service that is the subject of the dispute.

Regulatory/Provider Action

Notwithstanding anything to the contrary in the Agreement, in the event that any regulatory agency, legislative body, court or incumbent or other provider modifies or creates regulations or laws or changes charges and or fees to First Communications in a manner that increases the costs for First Communications to provide its services, First Communications reserves the right to pass such increased costs to the Customer.

Changes to the Agreement

First Communications may change the Charges for the Professional Services at any time and from time to time. We may decrease Charges without providing advance notice. To the extent required by applicable law, we will inform the Customer of increases in Charges by bill insert, bill message or other applicable communication. With respect to other changes to the Agreement including increases in Charges not regulated by law, First Communications will notify you, by a posting on its website at www.firstcomm.com, bill insert, bill message, newspaper ad, postcard, letter, call to your billed/account number, call to any phone number (including any cell number) associated with the account, email to an address provided by you or other appropriate form of notice, and you consent to be contacted by such form(s) of communication and/or notice. Choice of notification methods will remain in First Communications' sole discretion and as directed by applicable law, if any. Notwithstanding the above, First Communications withholds the right to make any changes, without notice to you, that it deems necessary or appropriate (increases or decreases) to any taxes, surcharges, fees, assessments, or other recoveries arising under, or based upon or required by state or federal statute or regulation. For Customers who do not agree to a material change(s) made by First Communications to the Agreement, not applicable for taxes, surcharges or other recoveries noted above, you may terminate the Agreement by giving us notice as described below without ETFs within thirty (30) days of the effective date of a material change ("Customer's Material Change Termination Notice"). Furthermore, Professional Services that are not terminated within thirty (30) days of the Customer's Material Change Termination Notice date will be deemed to be Customer's agreement to the material change. Customer's termination of Professional Services after thirty (30) days of the Customer's Material Change Termination Notice date will incur ETFs.

Attorney Fees

If suit is brought or an attorney is retained by us to enforce the terms of the Agreement, including to collect any Charges due under the Agreement or to collect money damages for breach of the Agreement, then we will be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, witness fees, court costs, costs of investigation, arbitration costs and other related expenses incurred in connection therewith.

Notices

From You

All notices, requests or other communications shall be in writing and delivered as follows, except as otherwise permitted herein:

- Via overnight courier or registered mail, postage prepaid and return receipt requested to First Communications, LLC; 3340 West Market Street; Akron, OH 44333; Attn: Notices-Legal; or
- Electronic mail to legal@firstcomm.com, with confirmed receipt and subject line beginning with "NOTICE-LEGAL".

Written notice to us will be effective when directed as set forth above to Notices-Legal and received by us. Your notice must specify your account number(s) and telephone number(s) and reasonably detail the reason for the Notice.

To You

If we change our address or toll-free Customer Service telephone number, we will notify you on your bill or by other means as specified in Changes to the Agreement.

Except for notice as otherwise permitted herein, written notification to you will be considered delivered three days after the notice was deposited in the U.S. Mail, one day after receipt via overnight courier, or immediately if delivered electronically such as e-mail, facsimile, text or short messaging service. You are responsible for notifying us of any change in your address or other account contact information.

MISCELLANEOUS

Privacy; Law Enforcement

We are not liable for any lack of privacy that may be experienced with regard to the Professional Services. You authorize our monitoring and recording of calls to us concerning your account or the Professional Services and you consent to our use of automatic dialing equipment to contact you. If you have provided an email or cell phone number(s) that is necessary for provision of the Professional Services, you expressly consent to our contact by cell phone, SMS and/or email alerts. We have the right to intercept and disclose any transmissions over our facilities in order to protect our rights or property or pursuant to court order or subpoena. We reserve the right to cooperate with law enforcement.

Assignment

First Communications may assign all or part of the Agreement without such assignment being considered a change to the Agreement

and without notice to you. We are then released from all liability. Customer shall not assign this Agreement without First Communications' prior written consent.

Severability

Each section, paragraph or provision of this Agreement (including, without limitation, a Statement of Work issued hereunder) is severable from the entire Agreement, and if one provision shall be declared invalid or unenforceable, the other provisions shall remain in full force and effect without regard to the invalidity of said provision.

Entire Agreement

The Agreement represents the entire agreement between you and us relating to the subject matter of the Agreement, which may only be amended as described in the Agreement. The Agreement supersedes any prior written or oral understanding, agreement, representation or promise between you and us relating to the subject matter of the Agreement, including, without limitation, any Proposal. Notwithstanding anything set forth in the Agreement, all samples, diagrams, descriptive materials, specifications and advertising issued or used by First Communications and any descriptions or illustrations contained in First Communications' catalogues, brochures, reports or manuals are for general informational purposes only and shall in no event form part of the Agreement.

Capacity

You represent that you are legally competent to enter into the Agreement, that you are over eighteen (18) years old, and that you are not aware of any disability that would prevent you from entering into the Agreement.

Waiver

If we do not enforce a claim or right, this does not amount to a waiver of our rights to enforce such a claim or right.

Execution

The Agreement may be executed by the Parties in separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same Agreement. Facsimile and electronic signatures shall be deemed and will be treated as an original signed Agreement or counterpart, as applicable.

Headings

Sections headings used herein are for convenience only and shall not be construed in interpreting this Agreement.

Survival

The provisions of the Agreement that are contemplated to be enforceable after the termination or expiration of the Agreement survive such termination or expiration of the Agreement.