

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

**CONTRACT INFORMATION**

These Terms & Conditions ("T&Cs") set forth the legal contractual obligations governing the provision to you of intrastate, interstate and international long distance, dedicated and local telecommunications and other services ("Service" or "Services") by First Communications, LLC ("First Communications"). **PLEASE READ THESE T&Cs CAREFULLY.** In conjunction with certain other documents (as set forth below), these T&Cs form the Agreement between you and First Communications and explain the respective legal rights concerning all aspects of the business relationship between you and First Communications.

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

**Definitions**

As used in these T&Cs, the following words have these respective meanings:

- a. **"Agreement"** means the legal contract for Services between you and First Communications, and consists of these T&Cs, the Service Order Agreement and/or any other executed agreement between the Parties, the Letter of Agency ("LOA") if any, any Service Plan under which you take Services from First Communications and any related agreement referenced herein or therein. Notwithstanding any language to the contrary, these T&Cs take precedence over any conflicting language in any LOA or Service Plan.
- b. **"BaaS/RaaS Service"** means BaaS or backup as a service that is intended to provide you with storage space to backup files, and if applicable upon Customer's election to include RaaS; RaaS means recovery as a service to enhance the BaaS service which is intended to provide management for data restoration capability based on target recovery objectives.
- c. **"Charges"** means any billed item or group of items on your account. This includes but is not limited to minutes of use, airtime, access, features, texting, data usage, long distance, directory and operator or directory assistance charges, equipment, material, labor, travel, monthly recurring charges ("MRCs"), non-recurring charges including special construction costs ("NRCs"); any taxes, surcharges, fees, assessments and/or recoveries determined by us to be imposed on you or us as a result of use of the Services on your account, including taxes on leased or provided equipment; and Early Termination Fees or other amounts payable under the Agreement.
- d. **"Cloud IP PBX Service"** is a managed hosted voice over IP ("VoIP") service with certain optional features offered as is, as available, that requires internet service, but does not include internet service. Cloud IP PBX Service is offered pursuant to a Product Contract subject to First Communications Terms and Conditions of Cloud IP PBX Service applicable thereto, which are separate and in addition to these T&Cs. Internet and/or other telecommunication services may be purchased in conjunction with or in addition to the Cloud IP PBX Service through First Communications.
- e. **"Customer"** or **"you"** means the person subscribing to our Services and with whom we have entered into the Agreement. This includes a person we reasonably believe is acting with the authority or knowledge of the person whose name is on the account.
- f. **"Firewall"** means a device for the detection, obstruction, destruction and/or prevention (as applicable) of computer viruses, trojans, worms, unauthorized access or use and/or any similar act or thing which may affect a computer system, or network.
- g. **"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".
- h. **"Incomplete Call Ratio"** or **"ICR"** is the ratio of total call attempts less completed calls to the total number of attempted calls expressed as a percentage;  $ICR = [(Total\ Call\ Attempts - Total\ Completed\ Calls) / Total\ Call\ Attempts] * 100$ . A completed call is a call for which First Communications receives answer supervision from the terminating end. Total call attempts means the total of all calls attempted, whether completed or incomplete.
- i. **"Managed Services"** means the provision by us of services for Managed Router Solution, Customer Router Management Services, SD-WAN Service, Managed Security Service, Cloud IP PBX Service, Server Application Monitoring or Server Application Monitoring Plus, BaaS/RaaS Service, and/or nonstandard features expressly added by written agreement (e.g., limited SIP signaling encryption), and any management, monitoring and/or other services performed or features provided by or through First Communications directly related thereto.
- j. **"Managed Security Service"** means the provision by us of management and monitoring of your Firewall, as described in these T&Cs, and any applicable Agreement(s) and/or Service Level Agreements.
- k. **"Parties"** means First Communications and you.
- l. **"Server Application Monitoring"** provides you with access to an application portal to monitor certain usage and service metrics for your SQL, Microsoft or Linux servers, as applicable.

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- m. **“Server Application Monitoring Plus”** is Server Application Monitoring service that may require administrative access to your application servers by First Communications intended to provide additional monitoring capabilities to you for application specific servers.
- n. **“Service”** or **“Services”** means any and all telecommunication services and technical, engineering, configuration or training labor or other services: intrastate, interstate or international long distance voice and data transmission service, local voice and data transmission service and internet service we provide to you, and other services that we may offer now or in the future, including, without limitation, Managed Services to the extent (if any) provided alone, in conjunction with or in addition to such telecommunication services. The Agreement applies to all in-state (“intrastate”) long distance, including IntraLata toll (sometimes called “local toll”) calls in those states that do not regulate rates through filings with the state public utility commissions. In states where rates are regulated through filings with the state public utility commissions, the Agreement will apply to the extent permitted by law.
- o. **“Service Level Agreement”** or **“SLA”** means the Service Level Agreement relating to a specific and applicable Service which describes the service levels to be met by us. Managed Services are offered and provided by First Communications without service level agreement of any kind or nature, and in no event shall any SLA for telecommunications services be applicable with respect to location(s) for which Managed Services are provided by First Communications in conjunction with or in addition to telecommunication services provided by any third party.
- p. **“Service Plan”** means any service plan, service agreement, rate plan, or written service price list or description, describing the Services and their rates, fees and Charges, as the same may be amended from time to time and at any time.
- q. **“Short Duration Call”** is a call that is 6 seconds or less in duration.
- r. **“SIP”** means Session Initiation Protocol.
- s. **“Representative(s)”** means First Communications’ employees, agents, contractors, subcontractors, representatives, suppliers, vendors, carriers, hosting partners, providers, licensors, or anyone providing Services under the Agreement or underlying services with respect to the Services hereunder.
- t. **“Subscribe”** means the point at which any First Communications Service is available for your use.

## FIRST COMMUNICATIONS SERVICE

### Rates; Parameters

Information concerning your Service rates and other Charges and conditions are described in your Service Plan, which is incorporated herein by reference as if fully written herein and are part of the Agreement. Where required by applicable law, Service Plan information is maintained at <http://www.firstcomm.com>. Rates for Alaska, Hawaii and International countries can be found online at <http://www.firstcomm.com/?s=international>. First Communications’ public reference document is available for inspection at First Communications’ headquarters located at 3340 West Market St., Akron, OH 44333. To obtain a copy of the Agreement, First Communications’ T&Cs, or any Service Plan information see Notices Section below for contact information. First Communications provides the initial T&Cs at no charge. We may, however, charge you for copying, handling and postage charges we incur if additional copies are requested. If you misrepresent your eligibility for any Service Plan, you agree to pay us the additional amount you would have been charged under the most favorable Service Plan for which you are eligible. We may change the prices or add new products with prices, or we may delete products or prices, in accordance with state law. The appropriate Charges for your purchase will be billed to you on your bill. Usage Charges for Service are based upon the total time that you use First Communications Services, subject to applicable billing increments and any additional Charges that may apply. Usage begins when the called party picks up the receiver, as determined by hardware answer supervision. Chargeable time ends when either party hangs up, thereby releasing the connection. The Service Plan you select determines billing increments, and detailed information is available with your Service Plan. Calls that involve a fraction of a billing increment will be rounded up to the next whole billing increment. In addition, if the computed call Charges include any fraction of a cent then the fractional cents will be rounded up to the next whole cent unless otherwise expressly stated in the Service Plan.

Customer will adhere to the following call parameters/thresholds, including without limitation with respect to Unlimited Services, or applicable surcharges will be applied. Customer acknowledges and agrees that First Communications provisions Services to Customer not to exceed 10 calls per second (“CPS”) per DS3 or SIP equivalent. Customer agrees that it will not intentionally use the Services for Short Duration Call traffic, and in any event, will not have Short Duration Call traffic equal to 10% or greater of Customer’s total aggregate call traffic with any 7 day period (“Short Duration Call Threshold”). Customer further agrees that its Incomplete Call Ratio will not exceed 55% (“ICR Threshold”). If Customer violates the Short Duration Call Threshold and/or ICR Threshold, in addition to any and all applicable per minute or usage rates or other Charges, First Communications may in its sole discretion impose a surcharge for any applicable billing period equal to: (1) \$0.03 per Short Duration Call made at the 10% or greater Short Duration Call Threshold level; and (2) \$0.03 per incomplete call in excess of the ICR Threshold. First Communications will endeavor, but is not obligated, to notify Customer (which for this purpose includes notice by email) of a Customer Short Duration Call traffic pattern change or ICR issue, in which event in either case, Customer shall take appropriate curative action within 24 hours to comply with the applicable thresholds. First

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Communications reserves the right to modify the ICR Threshold or Short Duration Call Threshold upon notice at any time and from time to time in the event industry or Representative call standards change.

All commercial Plain Old Telephone Service ("POTS") products are designed for Customers who use their phone lines primarily to conduct normal business, i.e. calling clients, vendors, etc. These business products are voice services and not intended for call center environment or for data service use such as calls connected to the Internet for extended periods of time. See also Confidentiality of Information; Compliance below for additional applicable terms.

For all unlimited long distance and local service offerings ("Unlimited Services"), unlimited service applies only to calls or use made within the continental United States and Canada. Calls to Alaska, Hawaii and all non-Canadian international calls are subject to additional charges. Unlimited Services are provided solely for live dialogue between two or more individuals. Unlimited Services may not be used for conference calling (other than for conference services provided by us for typical internal commercial use), call forwarding, monitoring or transcription services, data transmissions, transmission of broadcasts, transmission of recorded material, auto, constant or iterative dialing, other connections that do not consist of substantially uninterrupted live dialog between individuals, or any other activity that would be inconsistent with normal and reasonable small business usage. First Communications' Unlimited Services are for reasonable commercial internal use consistent with the types and levels of usage by our typical customers. "Typical" refers to the calling or other use patterns and/or average volume of at least 95% of our business customers using such Service for internal commercial use and does not represent typical usage by unique organizations such as call centers, resellers, fax messaging services, telemarketers, or for use without live dialog such as transcription services, intercom or monitoring services. Customer agrees that it will not employ methods or use devices to take advantage of any Unlimited Services by using Service in an abusive manner, in violation of the terms herein or for means not intended by us. Use of Unlimited Services beyond typical use shall be deemed abusive and is prohibited. Customer agrees that First Communications in its sole discretion shall determine if use of any Unlimited Services is abusive, and in such case, Customer agrees to pay a per minute or other applicable overage fee for use in excess of typical levels at the applicable current rate established by First Communications. In addition, First Communications shall be afforded all other rights and remedies set forth below with respect to abusive or prohibited use.

Customer agrees that at least 80% of the Customer's monthly domestic long distance minutes will originate and/or terminate in a Regional Bell Operating Company ("RBOC") territory. We will have the right, at any time and from time to time without prior notice or further action by us, to apply a surcharge of \$0.005 per minute on all non-RBOC originated and/or terminated traffic where such non-RBOC traffic exceeds 20% of Customer's total monthly service for domestic long distance traffic.

Services provided by First Communications, including Unlimited Services, are intended for Customer's normal internal commercial use and not for wholesale use, use with automated dialing equipment, for fax/voice blasts or for resale. First Communications presumes that certain usage, dialing, or calling patterns indicate that Customer is not using the Service for Customer's own reasonable internal commercial use. First Communications reserves the right to suspend, terminate or restrict Services, including Unlimited Services, immediately in the event First Communications reasonably believes that Customer is engaging in prohibited or abusive activity hereunder. If Customer believes that First Communications is in error as to its determination of prohibited or abusive use by Customer, Customer may contact customer service, and depending on the circumstances, First Communications may reactivate Service; provided, however, if the usage, dialing or calling patterns that First Communications deems to indicate prohibited or abusive use continue, First Communications reserves the right to again suspend, terminate or restrict the Services immediately with no ability of Customer to reactivate the Service.

If First Communications suspects potential usage fraud or abuse, First Communications may begin investigation into the potential fraud or abuse and may contact you for additional information which you agree to provide and cooperate with such investigation. First Communications may also monitor and review usage at any time and from time to time with respect to Unlimited Services to ensure compliance with our typical reasonable use policy. In addition to the rights set forth herein, First Communications reserves the right to disconnect and move Customer to an alternate product, offering, service or plan (upon notice to the extent required by applicable law) for any prohibited or abusive transmissions or uses, to terminate, restrict, modify or suspend Services, and/or to charge or increase applicable rates including back charges or overage fees with respect to any such use in the event of a violation of any of the foregoing use restrictions, parameters and/or thresholds, including, without limitation, with respect to CPS, ICR, Short Call Duration and/or Unlimited Services.

### Use of Service

You agree not to use any Service in any way for an unlawful, fraudulent or abusive purpose, for purposes or in ways that infringe upon others' intellectual property rights including any Representatives' rights, in any way that damages our property or interferes with or disrupts our system or other users' or Representatives' property or systems, that violates trade or economic sanctions and prohibitions as promulgated by the departments of Commerce, Treasury or any other U.S. government agency, that exceeds your permitted access

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to our Service, or that interferes with the network's ability to fairly allocate capacity among users or that otherwise degrades Service quality for other users. Examples of prohibited use include, but are not limited to: (1) accessing, altering, circumventing or interfering with, or attempting or assisting to access, alter, circumvent or interfere with, our facilities and/or our information or facilities or information of others by rearranging, tampering or making an unauthorized connection with any equipment, facilities or system using any scheme, false representation or false credit devices or by or through any other fraudulent means or devices whatsoever, whether within or outside of our service area (including, without limitation, Cloning Fraud and the alteration, modification or other change to equipment which would be viewed by us as a provision of two pieces of equipment through one number, or subscription fraud); (2) server devices or host computer applications that are broadcast to multiple servers or recipients such that they could enable "bots" or similar routines (as set forth in more detail in (3) below) or otherwise denigrate network capacity or functionality; (3) "auto-responders," "cancel-bots," or similar automated or manual routines that generate amounts of net traffic that could disrupt net user groups or email use by others; (4) generating "spam," junk faxes or unsolicited commercial or bulk messages, email or transmissions (or activities that facilitate the dissemination of such messages, email or transmissions); (5) any activity that adversely affects the ability of other users or systems to use either First Communications' services or the Internet based resources of others, including the generation or dissemination of viruses, malware or "denial of service" attacks; (6) accessing or attempting to access without authority the services, information, accounts or devices of First Communications or others, or penetrating or attempting to penetrate First Communications' or another entity's network or systems; (7) running software or other devices that maintain continuous active Internet connections when a computer's connection would otherwise be idle, or "keep alive" functions; (8) outpulsing digits from CPE in violation of rules and regulations governing such outpulsing; (9) altering your voice CPE in such a manner that interferes with our ability to provide emergency service, such as but not limited to, moving IP phones to other locations, or using voice services provided to a single location to other locations over a private network; or (10) conveying information deemed to be unlawful or offensive, including but not limited to, foul, profane, obscene, salacious or prurient language, or impersonating another person with fraudulent or malicious intent or for any purpose in violation of law or regulation or in such a manner as to interfere unreasonably with the use of services by us.

You must comply with all laws and regulations while using the Services and you must not transmit any communication that would violate any laws, court orders, or regulations, or would likely be offensive or injurious to the recipient. You must also comply with all authorized use policies, terms and conditions of any Representative as applicable. You are responsible for all content you transmit while using the Services. **Resale or transfer, in whole or part, of any Service hereunder is strictly prohibited.** You may not install any amplifiers, enhancers, repeaters or other devices or software or service that, in our sole discretion, modify, disrupt, circumvent or interfere in any way with the facilities, wires or radio frequencies utilized by us to provide service or to control access to service. Some services may not be available or may operate differently in selected markets or jurisdictions. We may add or delete coverage without providing notice to you.

We further reserve the right to take measures to protect our network and other users or service providers from harm, compromised security or capacity or degradation in performance. These measures may impact Customer's Service, and we reserve the right to deny, modify, suspend or terminate Service, with or without notice, to anyone we believe is using the Service in a manner that adversely impacts our network or other users or service providers. We may monitor Customer's compliance, or other subscribers' compliance, with these T&Cs, but we will not monitor the content of Customers' communications except as otherwise expressly permitted or required by law.

### Number

First Communications will provide telephone number(s) for your use of our Services. Prior to activation, reserved telephone number(s) for new Service or telephone number(s) changes may be altered without notice to you, however we will inform you of any change shortly after activation. We may change active telephone number(s) by providing notice, such as an area code change. You have no ownership rights and you may not: (1) modify the telephone number(s) assigned to you, or programmed into any device; (2) transfer or duplicate any assigned telephone number(s) other than as authorized by us; or (3) transfer the telephone number(s) to any other individual or entity without our permission. First Communications understands that, per FCC regulations, you have the right to take your telephone number(s) to another service provider at any time; however, Early Termination Fees may apply. First Communications reserves the right to recover any telephone number(s) due to a violation of Customer's use of First Communications' Services, as determined in First Communications' sole discretion. See also MDN/SIM; Third Party Rights below for additional applicable terms.

### Authorized Usage

You are responsible for all usage on your account. First Communications will not be responsible for any fraud or misuse of Services, including but not limited to, calling card misuse or fraud. If your Service is fraudulently used, you must immediately notify us and provide us with the documentation and information we request (including affidavits and police reports). Once you notify us of fraudulent use, it may be necessary for us to interrupt your Service. You agree to cooperate with us in any fraud investigation and to use any fraud prevention measures we reasonably request. Failure to provide reasonable cooperation may result in your liability for any additional fraudulent usage. In addition to rights and remedies set forth herein and available at law or equity, First Communications also reserves

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the right to suspend, interrupt or restrict Service in accordance with state law, without notice to you, if we suspect any use of Service, whether by you or any other party, that is in First Communications' sole opinion deemed to be fraudulent or illegal. First Communications will endeavor to notify Customer of activity in violation of the Agreement prior to termination, suspension, interruption or restriction of Service.

### **Availability, Modification and Interruption**

We do not warrant or represent that the Services will operate without interruption or continuously. Services we offer are subject to necessary facilities, equipment, materials, software and/or services being available from other carriers and/or Representatives. We may have to do things such as change the code or telephone number(s) assigned to or used by you or the technical specifications of the Service, interrupt Service in order to perform tests and inspections, for operational or emergency reasons, to install equipment, or to provide information we think is necessary for health or safety or concerning the quality of Services we provide. If we must interrupt your Service for any of these reasons, we will endeavor, using reasonable means, to restore it as quickly as the underlying matter is resolved without any promise as to when we will be able to restore Service; however, we do reserve the right to suspend, interrupt, restrict or terminate Service when in First Communications' sole opinion it is necessary for the integrity, safety or maintenance of First Communications' network or when we must comply with laws or regulations, or if you are using Service in violation of any provisions of the Agreement or applicable law or regulations in our sole discretion. Service is subject to transmission limitation or interruption caused by weather, terrain, obstructions such as trees or buildings, atmospheric and other conditions. Services may be limited in some areas where coverage is not available or may be temporarily limited or interrupted due to system capacity limitations and system repairs or modifications or to combat potential fraud. Interruption may also result from nonpayment of Charges by you. We may choose to block calls to certain numbers if, in our sole discretion, we are experiencing excessive billing, collection or fraud problems with calls to those numbers. If any Service (other than Managed Services) is interrupted for at least 24 hours and neither you nor someone you authorized to use the affected Service helped cause the interruption, a credit not to exceed the amount of our Service Charges during the affected period may be made to your account for the time Service was interrupted, in accordance with state law. If based on our records and your documentation we determine that you are entitled to a credit, the credit will be provided by us on a subsequent bill.

Customer is aware that some phone or other telecommunications equipment requires continuous electrical power at the Customer location. First Communications is not liable to any person or entity for any direct or indirect, incidental or consequential damages that result from failure or no availability of Services due to loss or interruption of electrical power at the Customer's premise.

Customer is aware that the Services and equipment are not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Services or equipment could lead to death or 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 and/or secure data or information is required.

### **Customer Service**

If you are experiencing an interruption of Service or have a billing question, you may contact First Communications' Business Customer Service Department toll-free at **(800) 860-2934**.

We will use reasonable efforts to resolve your problem or inquiry, see Late Payments and Dispute Section below. First Communications reserves the right to charge the Customer for labor and dispatch costs required to resolve any issues related to Services as a result of Customer's misuse or negligence. Although First Communications provides Internet Service, we do not provide support for LAN, desktop PC or end users.

### **Site/Location/Facility Access and Other Limitations**

Customer will, at no cost to First Communications or its Representatives, timely provide First Communications and/or its Representatives with all necessary or appropriate access, including but not limited to physical access to Customer building, premises or other space or facilities required to provide, modify, maintain, repair and/or cease providing the Services. If First Communications is denied or delayed such access, there will be delays in Service installation or repair or training. If access is required for an installation, repair or other service and the Representative is unable to gain access during the appointment window, your account will be assessed a trip charge.

For POTS lines, a trip charge may be assessed for installation cross connects (tie downs) or Service/repair issues. If a repair issue requires a Representative to go to your place of business and LineProtect has not been purchased, then a trip charge will be assessed if the trouble is inside wiring. For certain Services, you understand that such Services are subject to availability and operational limitations of Customer site/location, facilities, equipment or systems, and in such case based on initial site/location/facility assessment, special construction costs will apply and be charged to Customer which at First Communications' discretion may be required to be paid in advance of provisioning/procurement/installation, or charged to your invoice.

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### **Disconnect, Cancellation and Notice Thereof**

When a business Customer requests a disconnection or cancellation of Service primarily, but not exclusively, involving a circuit or any other Service that is not POTS, including any Managed Service, you must notify First Communications in writing at least 60 days in advance of the date you wish Service to cease, see Notices Section below, and Early Termination Fees may apply. All past due balances, MRCs and outstanding fees and Charges shall be immediately due and payable upon the effectiveness of Service cancellation/disconnection, see Final Bill Section below. See also Term; Early Termination Fee Section below regarding required notices and Charges. If you continue to receive Service after the effective date of any prior disconnect or cancellation notice, you will be deemed to have waived and/or abandoned that request and will continue to be responsible for all Service unless you submit a new disconnect or cancellation notice thereafter in accordance with the timeframes and other requirements set forth herein.

If Customer chooses to move its local POTS Service to another service provider, First Communications will stop billing for local POTS Services on the date contained in the loss notification. Often, First Communications receives this notification from the other service provider and not directly from the Customer. Early Termination Fees may apply, see Term; Early Termination Fee Section below. However, upon loss notification for POTS bundled packages, if the Service contains stand-alone voice mail or Internet products, these products will also be disconnected upon loss notification. For additional information, see Final Bill Section below.

Customer shall be responsible for any Charges that continue to be incurred as a result of Customer's failure to notify us by formal written notice of any disconnect, cancellation, non-renewal or termination, including in connection with Customer's moving service to another service provider or Customer's abandoning Service(s) or vacating the Service location(s).

### **Term; Early Termination Fee**

The term of the Agreement for each Service depends on the Service feature or promotion you select as it is described in the applicable Service Plan or Agreement. The term of the Agreement for your switched long distance Service begins on the date you Subscribe to the Service. The term for POTS begins the day dial tone is active at the demarcation point. Signing an order requiring a circuit installation signifies that First Communications, in good faith, will begin work on the circuit delivery. The term for Service that requires installation of a circuit will begin the date that the Service is made available to you. However, for a circuit with integrated or dynamic Services, billing will begin once at least either the data or voice portion of the Service is available. For Managed Services, the term of Service will begin on the date the Service is made available to you. The Parties agree that all Services ordered will be completed no later than 45 days from the circuit delivery date. If all Services are not complete by day 46, all Service work will be disconnected, the Agreement terminated, and you will be charged an Early Termination Fee along with any charges First Communications incurred on your behalf to fulfill your order. If you cancel the order prior to completion, the cancellation fee will include, but is not limited to, any charges or costs First Communications incurred on your behalf to fulfill your order.

If you select a Service Plan, Agreement or promotion that requires a fixed initial term such as a one year, two year or three year Service Plan or commitment, you agree to purchase Service for the full term. In accordance with state law, terms of the Agreement will automatically renew for continuous one year periods at the end of the applicable initial or renewal term period unless otherwise expressly specified as a longer or shorter renewal period in your specific Agreement or unless First Communications receives a written request for non-renewal or a written notice of disconnection/cancellation from you at least 60 days prior to the end of the applicable term. Any Charges incurred between Customer's written disconnection/cancellation notice and 90 days thereafter will remain your responsibility. At the end of your term and/or after delivery by you of any disconnect or cancellation notice, if you continue to receive Services, such Services will be subject to the terms and conditions of the Agreement for so long as you continue to receive Service and may be provided at the then-prevailing First Communications' monthly rates. If you continue to receive Service after the effective date of any prior disconnect or cancellation notice, you will be deemed to have waived that request and must submit a new disconnect or cancellation notice thereafter in accordance with the timeframes and terms set forth herein. If you select a Service Plan, Agreement or promotion with a fixed initial term or are in a renewal term and terminate your Service before the end of the initial or renewal term (including any cancellation or disconnect), you will be in material breach of the Agreement. You agree our damages may be difficult to determine due to variable usage and agree to pay us an Early Termination Fee as a reasonable estimate of our damages (not as a penalty) and in addition to all other amounts you owe as of the date of termination plus any other costs and charges incurred by First Communications in connection with such termination. The formula used for Early Termination Fee for Services is: the average of the last 3 months usage, plus the MRC times the number of months remaining in the current term, plus any waived installation fees. In addition, you may not be eligible for new Services and/or promotions in the future.

### **FIRST COMMUNICATIONS CHARGES, PAYMENT AND DEFAULT**

You are responsible for paying all Charges to your account, including but not limited to: minutes of use, airtime, access, features, data usage, long distance, directory and operator or directory assistance charges, MRCs, NRCs, travel, labor, material or equipment charges, special construction costs, taxes, surcharges, fees, assessments and/or recoveries determined by us to be imposed on you or us as a

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result of use of the Service on your account, including taxes on leased or provided equipment, and Early Termination Fees. You understand that Charges such as special construction costs based on availability and operational limitations may be imposed based on an initial site/location/facility assessment performed by First Communications and/or its Representative in connection with Service provisioning or installation. See also Site/Location/Facility Access and Other Limitations regarding such costs.

### **Credit, Deposits and Overpayments**

You authorize us to ask commercial reporting agencies, trade references or banking institutions to furnish us with employment and/or credit information. You also consent to our periodic rechecking of this information and to our reporting personal and/or business payment and credit history to the appropriate agencies. If you believe that we have reported inaccurate information about your account to a consumer reporting agency, you may send us a written notice describing the specific inaccuracy.

We may require that you make an initial deposit or we may set a Service limit before we establish or maintain Service for you. An example of this would be selecting a package that contains a limited portion of services we provide instead of all services and products available. The 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. We may require you to increase your deposit at any time and from time to time to reflect your estimated monthly Charges and we will base that increase on your actual use of the Service or on our reevaluation of your ability to pay. You may ask us to reevaluate your deposit on an annual basis, which may result in a partial or total refund of the deposit to you or a credit to your account, at First Communications' discretion. If you default or the Agreement is terminated, we may, without notice to you, apply any deposit toward payment of Charges due. Your deposit will be returned in accordance with applicable law.

Unless otherwise required by state regulatory law, if you believe you have overpaid First Communications, you must submit your dispute in writing within 60 days after the claimed overpayment; otherwise the invoice is deemed correct.

In connection with any credits to Customer under the Agreement, at First Communications' sole discretion, based on administrative costs and charges, no credit shall be due and issued to Customer for any reason if the amount of such credit would not exceed the de minimus amount of \$25.

### **Initial and Final Bills; Billing**

Except as otherwise set forth herein, billing will begin the date Services are first made available. All Services are billed to you on a monthly cycle. For billing purposes, each month is 30 days. If applicable for the initial bill only, First Communications will prorate MRCs for any partial month on a 30-day basis. MRCs and all Service Charges will be billed and earned in full in advance as of the billing date for the applicable month, with any other Charges being billed in arrears; on your first invoice, you will be billed MRCs for the initial month (or fraction thereof) and the following month. For any equipment or materials delivered by or through First Communications or special construction costs, you will remit payments as invoiced, which may be prior to First Communications' procurement, provisioning or installation. You agree to execute and deliver any reasonable documentation required by First Communications or any Representative in connection with procurement, delivery or installation of such materials, equipment or special construction.

Final Bills shall include all amounts and Charges that Customer owes under the Agreement, including any applicable Early Termination Fee and/or the Charges owed for any minimum usage commitments. You acknowledge that you are responsible for any Charges incurred between your written disconnection/cancellation notice and 90 days thereafter. See also Term; Early Termination Fee Section regarding notice requirements and Charges upon disconnect/cancellation.

Furthermore, you agree that in connection with administrative costs and charges relating thereto, you will not receive a credit or refund for any unused minutes in your Usage Service Plan for that month's billing cycle or any MRC which has been billed and earned in full as set forth herein.

### **Payment**

We will provide your bill in a format that reasonably identifies the Charges and which may change at any time and from time to time. Payment of all Charges is due to First Communications within 30 days of the date of your invoice ("Due Date"). Billing cycle end dates may change at any time and from time to time. Except in the case of cancellation or termination, when a billing cycle covers less than or more than a full month, we may make reasonable adjustments and proration. Usage may be back billed in a subsequent month(s), to the extent allowed by applicable law, and if so, this usage will be charged as if used in the month billed. We will charge a fee not to exceed that allowed by applicable law for all returned checks.

## Business Conditions of Use

### **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 Service that may be used or 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 Service 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 use or receive the Service until your account is paid in full.

### **Late Payments and Payment Disputes**

All Charges must be paid by the Due Date. For amounts unpaid 31 days after the date of the invoice, you agree to pay us a late payment fee of 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 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 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 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 Service described elsewhere in the Agreement, if you miss a payment, we may suspend the Services and/or terminate the Agreement 30 days after the Due Date. If we suspend the Services and you miss another payment during the 12 months after we resume the Services, we may then suspend the Services and/or terminate the Agreement 15 days after non-payment notification is sent. If you breach any representation to us, violate the Agreement, or become subject to any proceeding under the Bankruptcy Act or similar state laws, you will be in default and we may, without notice to you, suspend Service and/or terminate the Agreement, in addition to all other remedies available to us. We may require reactivation Charges to renew Service after termination or suspension.

## **ADDITIONAL AGREEMENTS AND SERVICES**

### **Confidentiality of 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 two years thereafter, Customer will not disclose any confidential or proprietary information of First Communications or its Representatives or use the same for any other purpose. First Communications and/or its Representatives will retain all ownership rights, including intellectual property rights, in their respective confidential and proprietary information, and Customer agrees to return all copies of such information including but not limited to the RaaS Playbook(s) to First Communications promptly upon its request at any time, provided if return is impossible as to any portion of the information then Customer will promptly certify to First Communications that all such information has been destroyed. While we use telecommunications provider 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.

Customer understands and acknowledges that it is solely responsible for determining if any Services and any applications, data or third party service related thereto comply with any laws, standards, regulations and policies relating to Customer's own business or industry, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), the Payment Card Industry Data Security Standard, the Telephone Consumer Protection Act, or the Telemarketing and Consumer Fraud Abuse Prevention Act. Notwithstanding anything set forth in the Agreement, First Communications makes no representation or warranty regarding compliance with such laws, standards, regulations and policies. Customer agrees that it will not store, transmit, monitor, process or provide access to any Personal Health Information ("PHI") or credit card information, related data or other information protected by such



## Business Conditions of Use

laws and regulations. Unless expressly agreed in writing as specified in the Agreement, Customer acknowledges that the Services are not intended for call center environments, and Customer shall not use any Services for telemarketing or telephone solicitation sales or otherwise within such an environment. Regardless, Customer understands and acknowledges that it is solely responsible for ensuring all compliance, privacy, and/or security with respect to local, state and federal telemarketing laws, including without limitation, the Telephone Consumer Protection Act, the Telemarketing and Consumer Fraud Abuse Prevention Act and all licensing and regulation relating to telemarketing, call recording, auto dialers, predictive dialers, robo-calls, junk faxes, bulk email, spam, unsolicited commercial messages, and do not call registries. Customer agrees that it will fully defend, indemnify and hold harmless First Communications and its Representatives from any breach of this section, including, but not limited to all third party claims relating thereto, without regard to any limitations of liability set forth herein or in any Agreement. See also Services Compliance below.

### CPNI

First Communications maintains privacy policies relating to CPNI and uses telecommunications provider industry-accepted technologies to safeguard information. We do collect various anonymous information, such as the number of lines you have, the features you use, your monthly minutes of use, systems service and/or performance metrics, etc. This generic information allows us to keep up to date with offerings and helps us to provide and/or improve the Service we provide to you.

The personal information we collect, such as your name, address, date of birth, etc., is only used to conduct business with you, provide the Service you request and keep in communication with you. We may also use this information to inform you of additional or new products and service offerings by First Communications or its affiliates. NO INFORMATION IS EVER SOLD, RENTED OR GIVEN TO AN UNAFFILIATED THIRD 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 third party service providers or Representatives); 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 Services jointly with selected third parties and/or Representatives 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 new Services. 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 Services. We may assume that any person able to provide your password is authorized by you to receive call detail or other information. If you are receiving 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 Service.

If you use First Communications' website or any 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.

### Internet Service

This section applies to our Internet Services, including access to or use of any Internet website or portal operated or owned by First Communications. Generally, any conduct that violates a law or regulation, the accepted norm of the Internet community, or that may damage First Communications' reputation, whether or not expressly set forth in the Agreement or company policy, is prohibited. Written permission from First Communications is required prior to posting any link to First Communications' Internet website(s).

First Communications maintains a strict policy regarding network abuse, and reserves the right in its sole discretion to make a determination of what constitutes abuse. If the Customer abuses First Communications' Service to send bulk e-mail (spam), unsolicited commercial messages, harass, defraud, hack or otherwise attempt to gain unauthorized access to any systems, or engages in any other improper or inappropriate conduct, First Communications may suspend and/or cancel Customer's account, any or all Services and/or the Agreement with no advance notice.

## Business Conditions of Use

THE INTERNET IS A WORLDWIDE-SHARED RESOURCE USED BY MILLIONS OF PEOPLE. BECAUSE OF THIS, THERE IS A RISK THAT THE CUSTOMER COULD BE SUBJECT TO A VARIETY OF SECURITY BREACHES, INCLUDING BUT NOT LIMITED TO, EAVESDROPPING OR HACKERS GAINING ACCESS TO YOUR COMPUTER. THIS MEANS THAT OTHER PEOPLE MAY BE ABLE TO ACCESS, MONITOR AND/OR ALTER YOUR FILES, DATA OR OTHER ITEMS SENT OR RECEIVED USING THE SERVICES AND/OR NEGATIVELY AFFECT YOUR ABILITY TO USE THE SERVICES. ANY INFORMATION SENT BY THE CUSTOMER OVER FIRST COMMUNICATIONS' INTERNET SERVICE IS SENT AT THE CUSTOMER'S SOLE RISK, AND FIRST COMMUNICATIONS OR ITS REPRESENTATIVE SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTION, DAMAGES, SUITS OR PROCEEDINGS ARISING OUT OF OR OTHERWISE RELATING TO CUSTOMER'S USE OF FIRST COMMUNICATIONS' PROVIDED INTERNET SERVICE. NEITHER FIRST COMMUNICATIONS NOR ITS REPRESENTATIVE ACCEPTS ANY RESPONSIBILITY OR ANY LIABILITY FOR THE SECURITY OF CUSTOMER'S ELECTRONIC ENVIRONMENT, WHETHER OR NOT FIRST COMMUNICATIONS OR ITS REPRESENTATIVE HAS PROVIDED OR INSTALLED ANY INTERNET SECURITY EQUIPMENT, SERVICE OR DEVICE.

### **IP Address**

First Communications will provide IP address assignments for use with our Internet Service. We adhere to the American Registry of Internet Numbers (ARIN), and ultimately the Internet Corporation of Assigned Names and Numbers (ICANN), recommended guidelines for assignment/allocation of Internet IP addresses to our customers. IP addresses assigned by First Communications are non-transferable and remain the sole property of First Communications. We reserve the right to recover any IP addresses due to non-use or a violation of the Agreement at our sole discretion. Upon Service or Agreement termination, First Communications requires you to return all assigned IP addresses.

### **Data and Other Equipment**

First Communications is not responsible for the installation, operation, maintenance, compatibility or performance of any Customer premise equipment. We are not the manufacturer of any equipment provided by or through First Communications, and unless otherwise indicated herein, the only warranties on any equipment provided and/or sold by First Communications are limited warranties, if any, extended by the manufacturers of such equipment to third party end users. If Customer connects incompatible equipment to the Service, First Communications does not guarantee the performance of the Service. If third-party hardware or software impairs operation of the Services, you remain liable for payment of all Charges for the Service, and, if this third-party equipment or software is likely to cause hazard or Service interruption or obstruction, Customer will eliminate such likelihood at First Communications' request.

If Customer has installed or furnished equipment or other property for use in connection with a Service in any area owned or controlled by First Communications, its affiliates or their respective Representatives, and if Customer fails to remove such equipment from such area within 10 days after the expiration of the applicable Term or termination of an applicable Service Order, First Communications may, without notice or demand, take possession of such equipment, without being guilty of trespass. First Communications may use all force necessary to effect such entry, to remove Customer, to remove any person or end user, or to remove any or all of Customer's or its customer's equipment from such areas and store the same, all at Customer's expense. Any equipment removed may be stored in any public warehouse or elsewhere at the cost of and for the account of Customer, and First Communications shall not be responsible for the care or safekeeping thereof. Customer expressly waives any and all claims for loss, destruction, damage, or injury, which may be occasioned by any of the aforesaid acts. Any equipment so removed will be returned to Customer upon payment in full of all storage costs, unpaid Charges and any other related costs. If within 10 days following such equipment removal, Customer has not requested the return of its equipment and paid any sums owed, then First Communications may exercise all rights of ownership over such equipment including the right to sell same and retain possession of any sale proceeds. First Communications' exercise of any remedies provided for in this section shall be without prejudice to any other remedies First Communications may have provided for herein or by applicable law.

### **Third Party Representatives; Software**

You understand that First Communications uses third party vendors, hosting partners, providers and/or Representatives in order to provide the necessary hardware, software, networking and related technology or services required to run its Services, and all such Services may be subject to the availability of such third parties and their respective services or products. You understand and agree that you must comply with all Representative authorized use policies, terms and conditions. First Communications is not responsible for any failures attributable to third parties and does not guarantee or warrant the continued availability of such underlying services. We do not represent or warrant that any defects in any third party hardware or software will be corrected, and you are solely responsible for any updates, upgrades, maintenance or support relating to hardware, equipment, software and/or related applications, features or components. You agree that you will not, and will not allow any third party to, sublicense, resell, rent, lease, distribute or otherwise transfer rights or usage to any hardware, equipment, software, technology, patented or copyrighted material or other proprietary rights for any purpose. You agree to defend, indemnify and hold us and our Representatives harmless from any third party claim arising from your breach of the Agreement and/or misuse of the Services.

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You acknowledge that certain pricing set forth in the Agreement may be based on underlying services being available to us, and we may cancel or refuse to provide Services for any Services for which we are unable to secure or maintain such underlying services at quoted pricing. In such event, we will notify you of the affected Services, and if the Parties are unable to agree on any required modifications to the Agreement, including but not limited to pricing, within 10 days after notice by us, then we will not be required to provide such affected Services.

### Services Compliance

Customer understands and acknowledges that it is solely responsible for determining if any Services and any applications, data or third party service that Customer runs in the First Communications provided environment must comply with any laws, standards and policies, including, without limitation, HIPAA, the Payment Card Industry Data Security Standard, the Telephone Consumer Protection Act, or the Telemarketing and Consumer Fraud Abuse Prevention Act and ensuring that the Service, application, data or third party service does comply with all such applicable requirements. Customer agrees that First Communications has no way of analyzing Customer's data, services or applications deployed in the Services environment. Customer agrees that it will not use any Services to store, transmit, monitor, process or provide access to any PHI or credit card information, related data or other information protected by such laws and regulations. Unless expressly agreed in writing as specified in the Agreement, Customer shall not use any Services for telemarketing or telephone solicitation sales, and regardless, Customer understands and acknowledges that it is solely responsible for ensuring all compliance, privacy, and/or security with respect to local, state and federal telemarketing laws, including without limitation, the Telephone Consumer Protection Act, the Telemarketing and Consumer Fraud Abuse Prevention Act and all licensing and regulation relating to telemarketing, call recording, auto dialers, predictive dialers, robo-calls, junk faxes, bulk email, spam, unsolicited commercial messages and do not call registries. Customer agrees that it will fully defend, indemnify and hold harmless First Communications and our Representatives from any breach of the Services Compliance obligations set forth in this section, including, but not limited to any and all third party claims relating thereto, without regard to any limitations of liability set forth herein or in any Agreement. Customer agrees to notify First Communications immediately in the event of any breach of these Services Compliance provisions or other impermissible PHI or credit card data storage, access or disclosure.

### Wireless Internet Access

First Communications offers wireless access to the Internet in a limited geographic area. Unless expressly stated in writing by First Communications, all equipment provided by First Communications to Customer remains the property of First Communications and must be returned in proper working order, normal wear and tear accepted, to First Communications at the termination of the Service or Agreement.

For Wireless Internet Access, Customer is responsible for providing electrical power (110 VAC) and network connection (RJ45) within six feet of the CPE location. Customer is responsible for network and workstation configuration according to specifications for protocol provided by First Communications. First Communications will demonstrate proper setup of one Workstation (network client). Additional wiring and configuration will be at Customer's expense.

## 4G & LTE SERVICES

### MDN/SIM; Third Party Rights

First Communications does not guarantee that transfers to or from us will be successful. However, we will make reasonable efforts to resolve porting issues. You acknowledge that except as required by law, you will not acquire any proprietary interest in the number (MDN) or SIM (Subscriber Identity Module) assigned by First Communications for your use. You further acknowledge that any intellectual property or software in the SIM not provided by you or First Communications is the property of the supplier of Services to First Communications, and such third party Representative may change or update the software or other data in the SIM card or the software in the equipment over the air and utilize any capacity in the SIM card for administrative, network, business and/or commercial purposes. The Representative shall have no liability whatsoever for your losses, claims or damages for any cause whatsoever, including but not limited to any failure or disruption of Services provided, regardless of the form of action, whether in contract, tort or otherwise. You shall not be deemed a third party beneficiary of any contract between First Communications and its third party Representative.

### Place of Primary Use

First Communications' domestic data network includes U.S. areas owned and operated by First Communications and U.S. areas owned and/or operated by other carriers. You must provide First Communications with your Place of Primary Use (PPU), which must be your business street address and be within an eligible First Communications' wireless service area.

### Connection Right and Limitations

"Connection Right" is provided to you by First Communications to be used with a host application. The Connection Right is for a single connection, plus an optional backup connection if it is ordered simultaneously with the original single connection. To the extent that you

## Business Conditions of Use

intend to have more than one connection into the network and you do not/did not order the optional backup simultaneously, then you understand and agree that you may pay additional charges for each additional IP charge for each additional connection.

The host application must be used solely in connection with the transmission of your data. You must not offer, resell or otherwise make the Connect Right available to third parties. The Connection Right is not exclusive. Traffic originating from your network may only be addressed to specified IP address ranges of your mobile devices; traffic addressed to any other destination will be silently discarded by First Communications' network. The Connection Right must not be used to send SMS messages, and no data or other content may be passed via an SMS message, either from a host application to a mobile device or from a mobile device to a host application.

### 4G & LTE Usage Charges

**Usage Charges.** Data usage Charges will apply to data transmissions, alerts, and any other information sent through the network and associated with the device. Unless stated otherwise, all data will be calculated and billed in kilobytes. Daily usage will be rounded up to the next kilobyte and the Charge for each billing period will be rounded up to the nearest cent. You understand that the use of compression solutions may or may not impact the amount of kilobytes for which it is billed. Standard Text Messaging (SMS) is charged on a per-message basis.

**Dropped Transmissions.** Data transmissions may be involuntarily interrupted ("dropped") for a variety of reasons. Dropped transmissions will be billed as any other transmission. In addition, First Communications may try to re-send a dropped transmission, which will result in additional charges. If First Communications believes a credit is appropriate, in its sole discretion, it may reduce the Charges accordingly.

**Roaming.** Roaming Charges apply when a Device is used outside of the First Communications' network. Lagging data records will be applied the day they are received by First Communications and not the date used.

**International Roaming.** Service is not permitted to be used under the Agreement for international roaming. Should First Communications, in its sole discretion, determine that you are utilizing international roaming, First Communications may terminate such international roaming with or without notice to you. You agree to indemnify and hold First Communications and its Representatives harmless from any claims, losses or damages resulting from your international roaming.

### Wireless Devices and Equipment

We are not the manufacturer of the wireless devices or other equipment provided by us in connection with or as part of the Services and the only warranties on the wireless devices or other equipment provided are limited warranties extended by the manufacturers, if any.

To return a "damaged" wireless device, all of the following criteria must be met:

- Equipment is either "new" equipment that exhibits immediate failure, defect, or damage out of the box, or is equipment that fails within 30 calendar days of Service activation as verified by First Communications.
- Equipment package is complete (no broken components, except where the breakage occurred during or prior to shipping) and in "like new" condition in an original box or packaging (no markings, writing or stickers). UPC label must be present on the box or package when returned.
- Equipment has no missing or broken components.
- Equipment has not been subjected to damage that resulted, after the equipment was delivered to the end user, from (a) improper operation, storage, misuse or abuse, accident or neglect, such as physical damage (cracks, scratches, etc.) to the surface of the product resulting from misuse; (b) contact with liquid, water, rain, extreme humidity or heavy perspiration, sand, dirt or the like, extreme heat, or food; or (c) abnormal usage or conditions.
- In cases where the equipment is returned for a failure, the equipment has a verified failure that can be duplicated.
- Equipment was purchased within 120 calendar days from the date of the return request.
- Wireless devices, which meet all criteria applicable to a failure as set forth above and that have a soft failure after delivery to you (for example, a software, application, or compatibility issue), may not be returned to First Communications.
- If the equipment does not meet the applicable criteria above, the entire return will be rejected and Customer will be referred to the Original Equipment Manufacturer (OEM) for applicable warranty replacement or repair, if any. First Communications will return wireless device and packaging, along with reason why the return is being rejected. Wireless device and packaging will be mailed back to Customer via FedEx, Direct Signature Required. All return shipping and associated costs are the responsibility of the Customer's account.
- All returned equipment should be shipped to the following address: First Communications; C/O Network Management; 3340 West Market Street; Akron, Ohio 44333.

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### Lost or Stolen Wireless Equipment

If your wireless device is lost or stolen, you must provide notice to us by calling toll-free at (800) 860-2934. First Communications does not replace or provide discounts for lost or stolen devices. To continue Service, you will need to purchase a new device. You are responsible for all Charges for Services provided to the IP address(es) for the lost or stolen equipment before you notify us of the loss or theft. We will deactivate Services to the IP address(es) upon notification to the toll-free number above of any loss or theft. You may be required to provide evidence of the loss or theft (e.g., a police report or affidavit). If the equipment is later found, we may require that you exchange it for another wireless device or other equipment before we reactivate Services (if we elect to reactivate Services), as well as require you to pay a reactivation fee. We may deactivate Services to any IP address(es) without prior notice to you if we suspect any unlawful or fraudulent use of the IP address(es). You agree to reasonably cooperate with us in investigating suspected unlawful or fraudulent use.

### Wireless Facility Modifications; Technology Changes

You acknowledge that wireless and data service is a rapidly changing industry and technology, and as such we shall not be liable to you if changes in any of the facilities, operations, equipment, procedures or Services render obsolete any equipment, Service, software, and/or applications provided in conjunction with use of the Service. First Communications is not obligated to maintain any particular technology and may reduce, modify or terminate network technologies at any time in its sole discretion.

### CloudConnection Service

First Communications' CloudConnection Service provides Customer access to an Ethernet routing and switching infrastructure and certain ports on the switch ("CloudConnection Service") as specified in the applicable Agreement to allow Customer to interconnect its Ethernet networks. The cloud exchange service connection provides Customer the capability to exchange Ethernet frames. First Communications provides Customer the cloud exchange service connection as a logical Ethernet connection between two CloudConnection platforms. CloudConnection Service provides access for connection only to Customer's third party cloud service provider. First Communications cannot and does not control the flow of frames beyond the CloudConnection Service and/or third-party connectivity and has no responsibility related to contracting, service and/or arrangements of Customer with Customer's cloud service provider or performance thereunder. CloudConnection Service, including flow of frames, depends in large part on the performance of Ethernet services provided or controlled by third parties. At times, actions or inactions caused by these third parties can produce situations in which some or all of First Communications' CloudConnection Services may be impaired or disrupted. Although First Communications will use commercially reasonable efforts to take actions it deems appropriate to remedy and avoid such events, First Communications cannot and does not guarantee that they will not occur. Accordingly, First Communications disclaims all liability resulting from or related to such events, including, without limitation, all impairment or disruption attributable to third parties. First Communications does not guaranty or warrant the continuing availability of CloudConnection Services that are dependent upon the availability of underlying service from third party providers.

Customer must comply with all reasonable technical specifications and policies for the use of the CloudConnection Service, as specified from time to time by First Communications. Customer is responsible for securing its own third party agreements to exchange frames and agrees to indemnify and hold harmless First Communications and its Representatives from any liability, costs and damages arising from claims relating to Customer's agreements, arrangements or relationship with such third parties. Customer agrees that it will not: (a) conduct any illegal activities through the CloudConnection Service; (b) conduct any activity that interferes with or impairs the equipment or connectivity of First Communications or any other customer; (c) obtain or attempt to obtain unauthorized access to CloudConnection Service, or circumvent or attempt to circumvent any applicable security features; (d) connect any equipment that is owned or controlled by a third party; or (e) reverse assemble, reverse compile or reverse engineer the CloudConnection Service, or otherwise attempt to discover any CloudConnection Service source code or underlying proprietary information. If Customer violates First Communications' terms of service, First Communications may take reasonable action to correct and/or prevent any problem such violation may cause, including suspending or terminating Customer's use of the CloudConnection Service.

### 911/E911 SERVICES

If you have Enhanced 911 or E911 Service and you dial 9-1-1 with the phone number and properly registered address, the phone number and address are automatically presented to the local emergency center serving the location. Emergency operators will have access to this information regardless of whether the caller is able to verbally provide such information.

If you have Basic 911 Service and you dial 9-1-1, the call is sent to the local emergency center serving that location. Operators answering the call will not have automatic access to the caller's call-back telephone number or the associated registered address, **even if that address has been properly registered**, because with Basic 911 Service, the emergency center is not equipped to receive, capture or retain the telephone number with the registered address. Accordingly, callers must be prepared to provide both call-back and address information. If the call is dropped or disconnected, or if the caller is unable to speak, the emergency operator answering the call

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will not be able to call the caller back or dispatch help to the caller's address if call-back and address information has not been provided by the caller.

PLEASE READ THE INFORMATION BELOW ABOUT 911 DIALING CAREFULLY. YOU HEREBY ACKNOWLEDGE AND AGREE TO ALL OF THE INFORMATION BELOW REGARDING THE LIMITATIONS OF FIRST COMMUNICATIONS 911 EMERGENCY DIALING SERVICE, AND THE DISTINCTIONS BETWEEN SUCH SERVICE AND TRADITIONAL WIRELINE 911 OR E-911 CALLS. YOU ALSO HEREBY AGREE TO (A) PROVIDE FIRST COMMUNICATIONS WITH AN ACCURATE SERVICE ADDRESS, MEANING THE ACTUAL PHYSICAL LOCATION WHERE CUSTOMER WILL BE LOCATED AND (B) IMMEDIATELY UPDATE THE SERVICE ADDRESS IF YOU MOVE YOUR SERVICE TO ANOTHER LOCATION. FIRST COMMUNICATIONS RESERVES THE RIGHT TO TERMINATE YOUR SERVICE IN THE EVENT YOU DO NOT PROVIDE AND MAINTAIN AN ACCURATE SERVICE ADDRESS.

YOU ACKNOWLEDGE THAT WE HAVE TOLD YOU THAT THE SERVICE DOES NOT SUPPORT TRADITIONAL WIRELINE 911. YOU AGREE TO ADVISE ALL INDIVIDUALS OF THIS LIMITATION WHO MAY HAVE OCCASION TO PLACE CALLS OVER THIS SERVICE FROM THE LOCATION AT WHICH YOU HAVE INSTALLED IT. YOU ACKNOWLEDGE THAT FIRST COMMUNICATIONS DOES NOT OFFER PRIMARY LINE OR LIFELINE SERVICES, AND THAT FIRST COMMUNICATIONS STRONGLY RECOMMENDS THAT YOU ALWAYS HAVE AN ALTERNATIVE MEANS OF ACCESSING 911 SERVICES VIA A TRADITIONAL PHONE LINE OR A WIRELESS PHONE.

FIRST COMMUNICATIONS 911 SERVICE IS STATIC 911 AND THEREFORE IT IS LIMITED TO THE SPECIFIC TELEPHONE NUMBER AND OFFICE LOCATION. WHEN YOU DIAL 911 ON YOUR PHONE UTILIZING FIRST COMMUNICATIONS SERVICE, YOUR CALL MAY BE ROUTED TO A DIFFERENT DISPATCHER THAN THAT USED FOR TRADITIONAL WIRELINE 911 DIALING. THE DISPATCHER WILL BE LOCATED AT EITHER A PUBLIC SAFETY ANSWERING POINT (PSAP) OR LOCAL OR REGIONAL EMERGENCY SERVICE PERSONNEL DESIGNATED FOR WIRELESS SERVICES FOR THE ADDRESS YOU LISTED AT THE TIME YOU REGISTERED FOR THE SERVICE OR OTHER BACK-UP EMERGENCY ANSWERING SERVICES. IN ADDITION, YOUR FIRST COMMUNICATIONS 911 SERVICE HAS FEWER CAPABILITIES THAN TRADITIONAL WIRELINE 911 SERVICE AS FOLLOWS:

a. THE PSAP OR LOCAL EMERGENCY SERVICE DISPATCHER RECEIVING FIRST COMMUNICATIONS 911 CALLS MAY NOT ANSWER THE CALLS OUTSIDE OF NORMAL BUSINESS HOURS AND MAY NOT BE ABLE TO CAPTURE AND/OR RETAIN AUTOMATIC NUMBER OF LOCATION INFORMATION. THIS MEANS THAT THE DISPATCHER MAY NOT KNOW THE PHONE NUMBER OR PHYSICAL LOCATION OF THE PERSON WHO IS MAKING THE 911 CALL. THEREFORE, IF YOU DIAL 911 USING FIRST COMMUNICATIONS SERVICE, YOU MUST IMMEDIATELY TELL THE DISPATCHER YOUR LOCATION (OR THE LOCATION OF THE EMERGENCY, IF DIFFERENT). YOU MUST ALSO TAKE CARE NOT TO DISCONNECT THE LINE, AS THE DISPATCHER MAY NOT HAVE A PHONE NUMBER TO USE TO CALL YOU BACK. IF YOU ARE UNABLE TO SPEAK AND DESCRIBE YOUR LOCATION, THE EMERGENCY DISPATCHER MAY NOT BE ABLE TO LOCATE YOU.

b. FIRST COMMUNICATIONS 911 SERVICE WILL NOT FUNCTION IF YOUR TELEPHONE FAILS OR IS NOT CONFIGURED CORRECTLY OR IF YOUR FIRST COMMUNICATIONS SERVICE IS INTERRUPTED OR NOT FUNCTIONING FOR ANY REASON, INCLUDING, BUT NOT LIMITED TO, IN THE EVENT OF A POWER OUTAGE, BROADBAND SERVICE OUTAGE, OR SUSPENSION OR DISCONNECTION OF YOUR SERVICE BECAUSE OF BILLING ISSUES. IF THERE IS A POWER OUTAGE, YOU MAY BE REQUIRED TO RESET OR RECONFIGURE THE EQUIPMENT PRIOR TO BEING ABLE TO USE YOUR FIRST COMMUNICATIONS SERVICE, INCLUDING FOR 911 PURPOSES. FIRST COMMUNICATIONS CANNOT GUARANTEE THAT ALL PSAPS WILL MAINTAIN LINES TO ANSWER ALTERNATIVE 911 SERVICES. IN THE EVENT THAT ANY PSAP SHALL PROVIDE REASONABLE NOTICE TO FIRST COMMUNICATIONS OF ITS DECISION AS OF A DATE CERTAIN TO DISCONTINUE LINES TO ANSWER 911 CALLS, FIRST COMMUNICATIONS SHALL MAKE REASONABLE EFFORTS TO NOTIFY SERVICE USERS WITH REGISTERED SERVICE ADDRESSES WITHIN THE AREA SERVICED BY THE PSAP.

FOR TECHNICAL REASONS ASSOCIATED WITH THE POSSIBILITY OF NETWORK CONGESTION, WITH FIRST COMMUNICATIONS SERVICE THERE IS A GREATER POSSIBILITY THAT YOUR 911 CALL WILL PRODUCE A BUSY SIGNAL OR WILL EXPERIENCE UNEXPECTED ANSWERING WAIT TIMES AND/OR TAKE LONGER TO ANSWER, AS COMPARED TO TRADITIONAL WIRELINE 911 CALLS.

IF YOU HAVE CALL FORWARDING, LOCATE ME, DO NOT DISTURB, OR OTHER FEATURES PROGRAMMED AND IN USE AT THE TIME YOU DIAL A 911 CALL, AND YOUR 911 CALL IS INTERRUPTED, THE EMERGENCY DISPATCHER MAY NOT BE ABLE TO CALL YOU BACK AT THE PHONE FROM WHICH YOU DIALED THE CALL.

IF YOU DO NOT CORRECTLY IDENTIFY THE ACTUAL LOCATION WHERE YOUR EQUIPMENT WILL BE LOCATED AT THE TIME YOU REGISTER FOR THE SERVICE, 911 COMMUNICATIONS MAY BE MISDIRECTED TO AN INCORRECT LOCAL EMERGENCY

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### SERVICE PROVIDER.

FIRST COMMUNICATIONS 911 WILL NOT FUNCTION CORRECTLY IF YOU MOVE YOUR EQUIPMENT TO A LOCATION OTHER THAN THAT PROVIDED WHEN YOU REGISTERED FOR THE SERVICE. IN SUCH EVENT, IN ORDER TO HAVE 911 CALLING ROUTED CORRECTLY, YOU MUST UPDATE YOUR SERVICE ADDRESS BY CONTACTING THE BUSINESS CUSTOMER SERVICE DEPARTMENT TOLL-FREE AT **(800) 860-2934**. UNTIL YOU HAVE UPDATED YOUR SERVICE ADDRESS AND ALLOTTED THE SUFFICIENT, ADVISED TIME FOR THE SERVICE ADDRESS UPDATE PROVISIONING TO COMPLETE, FIRST COMMUNICATIONS RECOMMENDS THAT YOU USE ALTERNATIVE MEANS OF ACCESSING 911.

IN THE EVENT THAT CUSTOMER INTENDS TO USE FIRST COMMUNICATIONS 911 SERVICE IN MULTIPLE LOCATIONS, AT LEAST ONE TELEPHONE NUMBER WILL BE REQUIRED FOR EACH LOCATION. YOU ACKNOWLEDGE AND AGREE TO THIS LIMITATION AND AGREE THAT YOU WILL OBTAIN AT LEAST ONE TELEPHONE NUMBER FOR EACH LOCATION ASSOCIATED WITH FIRST COMMUNICATIONS 911 SERVICE.

YOU ACKNOWLEDGE AND UNDERSTAND THAT FIRST COMMUNICATIONS WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE AND/OR INABILITY TO DIAL 911 USING YOUR SERVICE OR TO ACCESS EMERGENCY SERVICE PERSONNEL OR BE LOCATED BY SUCH PERSONNEL DUE TO THE FIRST COMMUNICATIONS 911 CHARACTERISTICS AND LIMITATIONS SET FORTH IN THIS DOCUMENT. YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS FIRST COMMUNICATIONS, ITS AFFILIATES AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES AND ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION WITH THE SERVICE, FROM ANY AND ALL CLAIMS, LOSSES (INCLUDING LOSS OF PROFITS OR REVENUE), DAMAGES, FINES, PENALTIES, COSTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS FEES) BY, OR ON BEHALF OF, YOU OR ANY THIRD PARTY OR USER OF THE SERVICE RELATING TO THE FAILURE OR OUTAGE OF THE SERVICE, INCLUDING THOSE RELATED TO 911 DIALING.

FIRST COMMUNICATIONS UNDERSTANDS THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO THE LIMITATIONS ASSOCIATED WITH THE 911 AND E-911 EMERGENCY SERVICES AVAILABLE THROUGH THE FIRST COMMUNICATIONS 911 SERVICE.

### **MANAGED SERVICES**

In addition to the other terms and conditions set forth in these Terms and Conditions of Business Service, the following provisions shall apply with respect to Managed Services:

#### **Managed Router Solution**

First Communications Managed Router Solution ("MRS") is a First Communications service offering within the domestic United States consisting of network management services for either Internet or WAN connectivity solutions. MRS is monitored via First Communications' Network Management Center ("NMC") and provides a web portal from the Performance Management Portal platform which is available and co-terminus with MPLS, DIA, and/or P2P Services, including any and all renewal terms.

For MRS, Customer is responsible for providing electrical power (110 VAC) and network connection (RJ45) within six feet of the CPE location. Customer is responsible for network and workstation configuration according to specifications for protocol provided by First Communications. First Communications will demonstrate proper setup of one Workstation (network client). Additional wiring and configuration will be at Customer's expense.

#### **Customer Router Management Services**

First Communications Customer Router Management Services consist of network management services for routers not owned by First Communications. For Customer Router Management Services, First Communications does not provide any materials, equipment or supplies for Customer use unless equipment is expressly identified as being purchased through First Communications. You understand and agree that you are responsible, at your own cost, for purchasing, installing and maintaining any and all equipment, materials and supplies that First Communications identifies as being necessary for us to perform the Customer Router Management Services, including, without limitation, the purchase, installation and maintenance of hardware or software upgrades, updates, maintenance or support at your cost, regardless of whether any such equipment is purchased through First Communications. First Communications is not the manufacturer of any routers or other related equipment provided by us, and you acknowledge and agree that the only warranties, if any, on such equipment provided are limited warranties extended by the original manufacturers to third party end users. For any equipment, materials or supplies delivered or supplied by a third party Representative to or through First Communications, you will remit payments as invoiced, which may be prior to First Communications' receipt or procurement. You agree to execute and deliver any reasonable documentation required by First Communications or any Representative in connection with procurement, delivery or installation of such third party materials, equipment or supplies. In no event will we be responsible or liable for replacement or repair

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costs of router related equipment, materials or supplies including but not limited to routers, hardware, or software, or the use thereof by you, that are Customer or third party supplied and/or manufactured. Further, in no event will we be responsible or liable for any acts or omissions attributable to a third party in connection with, underlying or related to the Services. You may not install or use any equipment, materials or supplies that disrupt or interfere with the Services. See also Data and Other Equipment above for additional applicable terms.

MRCs and all Service Charges for Customer Router Management Services will be billed and earned in full in advance as of the billing date for the applicable month, with any other Charges being billed in arrears; on your first invoice, you will be billed MRCs for the initial month (or fraction thereof) and the following month. You acknowledge that the Services, including without limitation, technical and engineering work, are highly dependent on Customer-specific configurations and other Customer issues, constraints, limitations, requirements and needs that must be identified by you to First Communications and which may affect the productivity and success of the Services. Such Customer-specific requirements and any changes thereto may result in the use of additional resources, time, materials and costs that will be passed through to Customer. Travel and expense costs associated with any such Services will be charged and passed through at First Communications' cost.

### **SD-WAN Service**

SD-WAN Service is software-defined wide area networking service using First Communications provided hardware and/or software that is licensed or leased by First Communications in conjunction with remote configuration capability by First Communications or its Representative. Customer acknowledges that First Communications may use third party vendors, providers and/or Representatives for provision of the SD-WAN Services and such Services are subject to all third party licensor, supplier and/or Representative terms, conditions, limitations and restrictions. First Communications is not responsible for any failures attributable to third parties and does not guarantee or warrant the continued availability of such underlying services. See Third Party Representatives; Software and see Managed Services Equipment, below for additional applicable terms. Customer acknowledges that the Services, including without limitation, technical and engineering work, are highly dependent on Customer-specific configurations and other Customer issues, constraints, limitations, requirements and needs that must be identified by you to First Communications and which may affect the productivity and success of the Services. Such Customer-specific requirements and any changes thereto may result in the use of additional resources, time, materials and costs that will be passed through to Customer, including any necessary travel. Where applicable, you must separately accept any Representative terms and conditions as required by First Communications or its Representative in order to be eligible for SD-WAN Service. Notwithstanding anything set forth in the Agreement, you expressly agree that the terms of your Agreement with us for SD-WAN Service, including but not limited to the LEGAL AND REGULATORY provisions set forth herein, are applicable and intended to inure to the benefit of any Representative(s) including any underlying third party provider with respect to the SD-WAN Service, and you acknowledge and agree that such Representative(s) and/or underlying providers shall be third party beneficiaries thereof.

### **Cloud IP PBX Service**

Cloud IP PBX Service is a managed hosted VoIP service offering within the domestic United States that provides Customer with access to a Web-based administrative portal to configure its telephony features and capabilities. Cloud IP PBX Service is subject to the terms and conditions of the First Communications Product Contract applicable thereto, as the same may be amended from time to time. Notwithstanding anything to the contrary, First Communications does not guaranty the voice quality for Cloud IP PBX Service or any SLA for Services that are supported by Customer provided equipment or access facilities, including internet services not purchased through First Communications, and disclaims any responsibility for issues or liabilities relating thereto.

You are responsible for all usage on your account. First Communications will not be responsible for any fraud, abuse or misuse of Cloud IP PBX Service. It is the Customer's responsibility to properly secure the PBX to prevent the PBX from being compromised and fraudulent calls from being made. If your Service is fraudulently used, you must immediately notify us and provide us with the documentation and information we request (including affidavits and police reports). Once you notify us of fraudulent use, it may be necessary for us to interrupt your Service. You agree to cooperate with us in any fraud investigation and to use any fraud prevention measures we reasonably request. Failure to provide reasonable cooperation may result in your liability for any additional fraudulent usage.

You are responsible for establishing, maintaining and securing any passwords in conjunction with the Cloud IP PBX Service and/or equipment. You agree that you shall not use passwords consisting of default passwords or passwords consisting of names or repeating or consecutive numbers or letters in conjunction with any First Communications Managed Service or any equipment including with Cloud IP PBX Service, and in any event, you are solely liable and responsible for, and shall indemnify, defend and hold harmless First Communications with respect to, all security, fraud or related issues in connection with passwords relating to voicemail, portals, databases, computers, other equipment, software or otherwise.



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First Communications will configure Customer accounts for use of the applicable features, provided, however, all such features and capacity are provided as is, as available, and subject to all third party licensor, supplier and/or Representative terms, conditions, limitations and restrictions. We make no guaranty or warranty regarding features or capacity of your account and accept no liability for any loss or damage relating thereto including the loss of any third party provided feature or capacity. Where applicable, you must separately accept any such Representative terms and conditions as required by First Communications or its Representative in order to be eligible for use of any component or application of or relating to the feature. Customer agrees that it will not, and will not allow any third party to, sublicense, resell, rent, lease, distribute or otherwise transfer rights or usage to any software, copyrighted material or other proprietary rights for any purpose. You agree to indemnify, defend and hold harmless First Communications from any breach of such terms and conditions. First Communications is not responsible for any hardware, software, application, feature or any maintenance, support, updates or upgrades of any of the foregoing, and you agree to assume responsibility for any such requirements including any loss of functionality or use relating thereto or arising therefrom.

### **Managed Security**

Managed Security Service is a managed, stateful packet filtering Firewall using First Communications provided hardware and software that is owned, licensed or leased by First Communications. Customer acknowledges that the Managed Security Service does not guarantee full protection from all security risks.

### **Server Application Monitoring and Server Application Monitoring Plus**

Server Application Monitoring or Server Application Monitoring Plus provides you with access to an application portal to monitor certain usage and service metrics for your applicable servers. You represent, warrant and agree that you are the legal owner of all computer and other systems, servers or data to be monitored by Server Application Monitoring or Server Application Monitoring Plus and that you have the legal right and authority to allow and enable access to and to manage all such systems and data. You understand that operation of the Service will require your downloading data from any Customer server monitored by the Service and that you are responsible for the security of all such data including any encryption. If and to the extent required as part of the Server Application Monitoring Plus Service, you hereby grant First Communications administrative access to you application server. You understand that any Server Application Monitoring Service is provided on an "as available" basis and that any loss, damage or disruption of First Communications' underlying platform will result in loss of Service functionality. You further understand and agree that SMS and/or email alerts will be provided by First Communications as part of the Service, and by contracting for such Managed Service, you expressly consent to be contacted by text or email communication. First Communications does not make any warranty as to the results that may be obtained from use of the Service, as to the accuracy or reliability of any information obtained through the Service or that the Service will diagnose or correct any problem in your systems and/or infrastructure. You expressly agree that any use of Server Application Monitoring or Server Application Monitoring Plus, including transmission of data, is at your sole risk.

Any termination, expiration, cancellation, disconnection or suspension of your Service will result in deactivation or deletion of your Server Application Monitoring or Server Application Monitoring Plus account and/or access to your account, and the forfeiture and relinquishment by you of all content in your account. First Communications has no obligation to retain, maintain or deliver historical data or information relating to the Service. We make no guaranty or warranty regarding loss or deletion of or failure to store data, features or capacity of your account and accept no liability for any such loss. You are responsible for maintaining the confidentiality of your account information (including account name and password) and other sensitive information, as we cannot guaranty its security. No method of electronic storage or transmission over the internet is fail-safe or fully secure. You are responsible for all activities that occur within your account and you agree to notify us immediately of any unauthorized account use. We are in no way responsible for any loss or damage to you or to any third party incurred as a result of any unauthorized access and/or use of your account.

For Server Application Monitoring or Server Application Monitoring Plus, Customer is responsible for obtaining, installing, configuring and maintaining all equipment, including, but not limited to, computer(s), power sources, communications services, software, firewalls and antivirus protections. Specifically, Customer is solely responsible for: (a) configuring and maintaining the operating systems for the Services as required by First Communications and/or its Representatives; (b) installation and/or patching of any applications for the Services; (c) obtaining and maintaining all licenses required for the operating systems installed on the Services; (d) performing downloads of Customer's data; (e) providing First Communications with its IP address information in order to establish the private connection between Customer's private network and First Communications' network; (f) the security, including the encryption of data to nationally recognized standards; (g) its compliance with all laws in connection with the Services; (h) loss of stored data; (i) the integrity of its data; (j) any host-based antivirus malware or spyware; and (k) the on and/or off boarding of Customer's data onto the Services.

### **BaaS/RaaS Services**

BaaS/RaaS Service provides you with storage space infrastructure that you may use for Customer backups. First Communications and its Representative are in no way responsible for the viability, integrity or state of server backups. In addition, if you elect RaaS as an add on Service to BaaS, we will provide management of data restoration for backups based on target recovery time objectives outlined in a

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recovery-as-a-service playbook (“RaaS Playbook”) maintained by Customer. Customer is solely responsible for working with First Communications and/or its Representative to establish and maintain a RaaS Playbook with all necessary information from Customer to restore Customer’s environment. You must use First Communications’ BaaS to be eligible for RaaS. In addition, you must use First Communications’ network access to be eligible for RaaS, which Services(s) are subject to First Communications’ website Terms and Conditions and other agreements applicable to such Service(s). BaaS/RaaS Service is not available for resale and is offered only to non-government commercial end user business Customers.

You agree to use the BaaS/RaaS Service to store, retrieve and serve software applications, data and/or content owned, licensed or lawfully obtained by you. You understand that we will provide you with access to a Web-based administrative portal to manage data backup, and operation of the Service will require your downloading Customer data for storage. You are responsible for maintaining the confidentiality of your account information (including account name and password) and other sensitive information, including but not limited to any encryption of data, as we cannot guaranty its security. No method of electronic storage or transmission over the internet is fail-safe or fully secure. You are responsible for all activities that occur within your account and you agree to notify us immediately of any unauthorized account use or access. We are in no way responsible for any loss or damage to you or to any third party incurred as a result of any unauthorized access and/or use of your account. You expressly agree that any use of BaaS/RaaS Services, including transmission of data, is at your sole risk.

You understand that the Service is provided on an “as available” basis and that any loss, damage or disruption of First Communications’ underlying platform or services will result in loss of Service functionality. BaaS/RaaS Service uses certain Acronis products installed on or used with Customer’s virtual machines. Customer’s use shall be governed by the terms of an Acronis End User Software License Agreement, as the same may be modified at any time, entered into by Customer as part of the Agreement and incorporated by reference herein. Customer will indemnify, defend and hold harmless First Communications and its Representatives including Acronis from and against any and all damages, fines, penalties and claims and all related costs and expenses arising out of or relating to any noncompliance by Customer with the Acronis terms.

For BaaS/RaaS Service, Customer is solely responsible for: (a) configuring and maintaining the operating systems for the Services as required by First Communications and/or its Representatives; (b) installation and/or patching of any applications for the Services; (c) obtaining and maintaining all licenses required for the operating systems installed on the Services; (d) performing backups of Customer’s data; (e) providing First Communications with its IP address information in order to establish the private connection between Customer’s private network and First Communications’ network; (f) the security, including the encryption of data to nationally recognized standards; (g) its compliance with all laws in connection with the Services; (h) loss of stored data; (i) the integrity of its data; (j) any host-based antivirus malware or spyware; and (k) the on and/or off boarding of Customer’s data onto the Services. Customer agrees to any execution of the RaaS Playbook, and/or any updates thereto where applicable, via hard copy, electronic system or any other means as required by First Communications or its Representative.

Any termination, expiration, cancellation, disconnection or suspension of your Service may result in deactivation or deletion of your BaaS/RaaS account and/or access to your account, and the forfeiture and relinquishment by you of all data and content in your account. First Communications has no obligation to retain data for more than 30 calendar days after any termination or expiration of the Service and shall destroy any data that remains after such removal interval. We make no guaranty or warranty regarding loss or deletion of or failure to store data, features or capacity of your account and accept no liability for any such loss.

### **Nonstandard Add-On Features; SIP Signaling Encryption**

First Communications will configure Customer accounts for use of any applicable nonstandard add-on feature(s) only to the extent expressly agreed in writing between the parties, provided, however, all such features and capacity are provided as is, as available, and subject to all third party licensor, supplier and/or Representative terms, conditions, limitations and restrictions. We make no guaranty or warranty regarding features or capacity of nonstandard add-on features and accept no liability for any loss or damage relating thereto including the loss of any third party provided feature or capacity. Where applicable, you must separately accept any such Representative terms and conditions as required by First Communications or its Representative in order to be eligible for use of any component or application of or relating to a feature. First Communications is not responsible for any hardware, software, application, feature or any maintenance, support, updates or upgrades of any of the foregoing to the extent applicable, and you agree to assume responsibility for any such requirements including any loss of functionality or use relating thereto or arising therefrom. Provision of any such add-on feature is not a stand-alone service or product, and as such, you shall lose functionality or use of the feature if you fail to maintain the underlying Service with First Communications.

SIP Signaling Encryption is provided on a limited basis by First Communications as a nonstandard add-on feature for SIP Trunks or SIP over VoIP and does not apply to any other service or product, whether offered or provided by First Communications or any third party. First Communications employs standardized encryption protocols for encryption of signaling traffic only at Customer’s PBX box and

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Company-owned network. Customer acknowledges and agrees that SIP Signaling Encryption does not encrypt data, media, information, program or content transmitted, stored or accessed at either point, and does not provide encryption of such materials or of signaling at any other transmission or transfer point other than Customer's PBX box and the Company-owned network. As such, First Communications cannot provide or guaranty any encryption of data, media, information, program or content or the security of such materials, and Customer is responsible for any such encryption or confidentiality. No method of electronic storage or transmission over the internet is fail-safe or fully secure. Customer acknowledges that the Managed Service, including without limitation, technical and engineering work, are highly dependent on Customer-specific configurations and other Customer issues, constraints, limitations, requirements and needs that must be identified by Customer to First Communications and which may affect the productivity and success of the Managed Service.

### Managed Services Support

First Communications will provide the ongoing configuration support and troubleshooting services on the First Communications' MRS or other Managed Services equipment provided by First Communications for as long as the Initial Term or any Renewal Term of the Agreement, subject to the Suspension, Termination for Non-Payment and Default Section of these T&Cs. Customers may contact Customer Support at 1-800-860-2934 for Service issues and change requests. First Communications does not provide support or troubleshooting services for Managed Services equipment that is not owned, licensed or leased by First Communications except as specifically identified as Customer Router Management Services. Managed Services will be performed at First Communications or Representative facilities or locations, Customer facilities or locations, or other location(s) as deemed necessary by First Communications in its sole discretion for provision of such Services. Customer agrees and acknowledges that all Managed Services are offered and provided by First Communications without service level agreement of any kind or nature with respect to the Managed Service.

### Managed Services Billing

Charges for Managed Services will be invoiced, billed and paid as set forth herein with respect to Charges. Changes to Managed Services may result in the use of additional resources, time, materials, costs and other Charges. Any services requested or provided outside the scope of the covered services described in the Agreement for Managed Services shall be charged on a time and materials basis by First Communications at First Communications' then current hourly rates.

### Managed Services Equipment

Managed Services equipment provided by First Communications and delivered to Customer is only to be used in conjunction with the Service, and Customer is not authorized to use the equipment for any other purpose. For any such First Communications provided equipment owned by First Communications, First Communications manages the configuration of the equipment, including any updates, and, if applicable, the repair or replacement of hardware should a failure occur. We are not the manufacturer of the equipment used in conjunction with Managed Services and the only warranties on the equipment provided are limited warranties extended by the manufacturers, if any, to third party end users of First Communications. First Communications may tax Managed Services equipment that it provides or leases to Customer in connection with the Services. Repair or replacement shall be Customer's sole and exclusive remedy with respect to any Managed Services equipment provided and owned by First Communications in connection with the Services, subject to compliance with the criteria set forth below for return of "damaged" Managed Services equipment owned by First Communications. All such equipment owned and provided by First Communications to Customer remains the property of First Communications and must be returned in proper working order, normal wear and tear excepted, to First Communications at the termination or expiration of the Service or Agreement, or as otherwise requested by us. Customer assumes responsibility and risk of loss for any equipment or materials upon procurement. If the Managed Services equipment is damaged beyond normal wear and tear, lost, or not returned, Customer shall be responsible and will be charged to replace such Managed Services equipment, in addition to any other unpaid Charges, ETFs, and/or other fees.

To return "damaged" Managed Services equipment, all of the following criteria must be met:

- Managed Services equipment is either "new" equipment that exhibits immediate failure, defect, or damage out of the box, or is equipment that fails within 30 calendar days of Service activation as verified by First Communications.
- MRS equipment package is complete (no broken components, except where the breakage occurred during or prior to shipping) and in "like new" condition in an original box or packaging (no markings, writing or stickers). UPC label must be present on the box or package when returned. Managed Services equipment is installed by First Communications and generally will not be shipped.
- Managed Services equipment has no missing or broken components.
- Managed Services equipment has not been subjected to damage that resulted from (a) improper operation, storage, misuse or abuse, accident or neglect, such as physical damage (cracks, scratches, etc.) to the surface or interior of the product resulting from misuse; (b) contact with liquid, water, rain, extreme humidity or heavy perspiration, sand, dirt or the like, extreme heat, food or like elements; or (c) abnormal usage or conditions.

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- In cases where the Managed Services equipment is returned for a failure, the Managed Services equipment has a verified failure that can be duplicated.

Unless otherwise specifically set forth in the Agreement as materials and equipment being paid for by First Communications, you are responsible, at your own cost, for purchasing, installing and maintaining any and all equipment, materials and supplies that First Communications identifies as being necessary for us to perform the Managed Services, including, without limitation, the purchase, installation and maintenance of hardware or software upgrades, updates, maintenance or support at your cost. In no event will we be responsible or liable for equipment, materials or supplies, or the use thereof by you, that are Customer or Representative supplied or owned. You may not install or use any equipment, materials or supplies that disrupt or interfere with the Managed Services. See also Data and Other Equipment for additional applicable terms.

### **Managed Services Implementation; Additional Customer Obligations**

First Communications is not responsible for any Customer-related availability delays. In order for First Communications to implement the Service on or prior to any requested ready for Service date, Customer must ensure that the following requirements are satisfied without delay: (a) Each Customer site or location on which Managed Services equipment will be located must be prepared in compliance with First Communications' standards, if any (to be provided to Customer on or prior to the Effective Date or as otherwise required during the term), and good telecommunications industry and engineering practices; and (b) Customer must satisfy such additional requirements that may be applicable to the Service, as notified by First Communications in writing, including provision of any materials, supplies and equipment required of Customer. Customer is responsible for the prompt provision of all relevant and accurate systems and other facilities, equipment, materials, supplies or services not provided by First Communications. Customer will provide responses to questions, issues and information requests by Representatives without delay. Customer shall, at no cost to First Communications and/or its Representatives, timely provide necessary or appropriate access, including but not limited to physical access to Customer buildings, premises, other space or facilities or personnel or third parties, and/or authorization, required to provide, modify, maintain, repair and/or cease providing any Managed Services. If access and/or authorization is required for any Managed Services and such access or authorization is not made available during the appointment window or other designated timeframe, your account will be assessed a trip charge and your Service may be adversely affected, delayed or impaired. All Managed Services timelines including requested ready for Service dates are estimates and conditional upon Customer's timely response, performance and cooperation throughout the process.

You are responsible for all usage on your account, including in connection with Managed Services. First Communications will not be responsible for any fraud, abuse or misuse, as it is Customer's responsibility to properly secure any Managed Services equipment to prevent it from being compromised and fraudulent usage, access or calls from being incurred. Further, you are responsible for establishing, maintaining and securing any passwords in conjunction with the Managed Services and/or equipment including for voicemail, portals, databases, computers, software, programs, or otherwise. You agree that you shall not use passwords consisting of default passwords or passwords consisting of names or repeating or consecutive numbers or letters in conjunction with any First Communications Managed Service or any equipment. In addition, you agree that you are responsible for any encryption, security or confidentiality of data, media, information, program or content and that First Communications does not provide encryption of any such materials. In any event, you are solely liable and responsible for, and shall indemnify, defend and hold harmless First Communications with respect to, all security, fraud, abuse or related issues with respect to Managed Services. If your Managed Service is fraudulently used or accessed, you must immediately notify us and provide us with the documentation and information we request (including affidavits and police reports). Once you notify us of fraudulent use or access, it may be necessary for us to interrupt your Managed Service. You agree to cooperate with us in any fraud investigation and to use any fraud prevention measures we reasonably request. Failure to provide reasonable cooperation may result in additional liability for any recurring or further fraud.

### **Managed Services Modifications**

You acknowledge that Managed Services is a rapidly changing industry and technology, and as such we shall not be liable to you if changes in any of the facilities, operations, equipment, procedures or Services render obsolete any equipment, Service, software, and/or applications provided in conjunction with use of the Managed Services.

### **Managed Services Training**

Charges for Managed Services training provided by or on behalf of First Communications will be invoiced, billed and paid as set forth herein with respect to Charges on a time and materials basis at First Communications' then current rates and costs. Travel and expense costs associated with any such training will be charged and passed through at First Communications' cost. All training work is deemed delivered as it is performed. All training timelines are estimates and conditional upon Customer's timely response and cooperation throughout such process. Changes to training services may result in the use of additional resources, time, materials and costs. All data and information associated with any such training services and all rights relating thereto are First Communications property, and no such materials shall be deemed "works made for hire." Any Customer specific business information furnished by Customer in connection with any such training shall remain the property of Customer; provided, however, that no work or product

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created, developed or first reduced to practice by First Communications, alone or with others including yourself, in connection with providing the Services shall be deemed to be Customer property or information. 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) used or received in connection with training services and shall have no further right or license to use any such materials.

### **LEGAL AND REGULATORY**

The following legal and regulatory provisions shall apply to all Services, including Managed Services:

#### **Limitation of Our Liability**

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

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, EXCLUDING MANAGED SERVICES, 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 SERVICES, EXCLUDING MANAGED SERVICES, DURING THE AFFECTED PERIOD. WITH RESPECT TO ANY CLAIM RELATING TO OR INVOLVING MANAGED SERVICES, WE WILL NOT BE LIABLE FOR MORE THAN AN AMOUNT EQUAL TO ONE (1) MONTH RECURRING CHARGE PAID BY CUSTOMER FOR THE APPLICABLE MANAGED SERVICE. IN ADDITION, FOR ANY CLAIM WHATSOEVER, NEITHER FIRST COMMUNICATIONS NOR ANY OF ITS REPRESENTATIVES WILL 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 SERVICES, DEVICES, EQUIPMENT OR ACCESSORIES USED IN CONNECTION WITH 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 FIRST COMMUNICATIONS OR ANY OF ITS REPRESENTATIVES 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 SERVICES ARE INTERRUPTED OR THERE IS A PROBLEM WITH THE SERVICES OR EQUIPMENT OR MATERIALS OF SOME OTHER PARTY. WE ARE NOT AN OPERATOR SERVICE PROVIDER AND AS SUCH DO NOT HANDLE EMERGENCY CALLS. 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 REPRESENTATIVES (INCLUDING UNDERLYING THIRD PARTY SERVICE PROVIDERS) IN CONNECTION WITH THE SERVICES, AND THAT WE SHALL NOT BE LIABLE FOR ANY FAILURE AND/OR DELAY IN SERVICES TO THE EXTENT CAUSED OR CONTRIBUTED TO, WHETHER DIRECTLY OR INDIRECTLY, ANY FAILURE OF EQUIPMENT, MATERIALS, SERVICES, AND/OR SOFTWARE PROVIDED BY ANY THIRD PARTY INCLUDING ANY SUCH EQUIPMENT, MATERIALS, SERVICES OR SOFTWARE PROVIDED, LEASED OR LICENSED BY US. FURTHER, NO REPRESENTATIVE (INCLUDING ANY UNDERLYING THIRD PARTY SERVICE PROVIDER) SHALL BE LIABLE TO YOU IN CONNECTION WITH OR RELATING TO ANY SERVICES PROVIDED HEREUNDER, AND YOU HEREBY EXPRESSLY RELEASE ANY SUCH REPRESENTATIVE (INCLUDING ANY THIRD PARTY SERVICE PROVIDER) TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW AND AGREE THAT ANY SUCH REPRESENTATIVE'S LIABILITY SHALL BE LIMITED TO THE FULLEST EXTENT PERMISSIBLE BY LAW. THIS PARAGRAPH WILL SURVIVE TERMINATION OR EXPIRATION OF THE AGREEMENT.

#### **Indemnification**

YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD US, OUR AFFILIATES, AGENTS AND REPRESENTATIVES AND ANYONE ELSE PROVIDING SERVICES TO YOU ON OUR BEHALF, HARMLESS FROM CLAIMS OR DAMAGES RELATING TO THE AGREEMENT OR OUR PROMISES OR STATEMENTS MADE IN IT AND USE OF THE EQUIPMENT OR SERVICE, UNLESS DUE TO OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. IT IS YOUR RESPONSIBILITY TO CONFORM TO ALL SUCH LAWS OR REGULATIONS AND YOU WILL INDEMNIFY US AND OUR REPRESENTATIVES FROM CLAIMS ARISING FROM ANY SUCH USE WHETHER LAWFUL OR NOT. THIS PARAGRAPH WILL SURVIVE TERMINATION OR EXPIRATION OF THE AGREEMENT.

#### **No Warranties**

WE MAKE NO EXPRESS WARRANTY REGARDING THE SERVICE OR EQUIPMENT OR MATERIALS AND DISCLAIM ANY IMPLIED WARRANTY, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. 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, OR ANY COMPONENT THEREOF, INCLUDING BUT NOT LIMITED TO, SYSTEMS,

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SOFTWARE, PERSONNEL, PROGRAMMING ASSISTANCE OR CONSULTATION PROVIDED AS PART OF THE SERVICES, THAT THE 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 SERVICES AND 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 SERVICES OR EQUIPMENT OR MATERIALS COULD LEAD TO DEATH OR SEVERE INJURY TO BUSINESS, PERSONS, PROPERTY 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, WE MAKE NO REPRESENTATION OR WARRANTY ON BEHALF OF ANY REPRESENTATIVE, AND IN EACH CASE, 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 SERVICES IS THAT PROVIDED BY THE EQUIPMENT MANUFACTURERS, IF ANY, TO THIRD PARTY END USERS OF FIRST COMMUNICATIONS. FIRST COMMUNICATIONS DOES NOT WARRANT THAT TIME IS OF THE ESSENCE WITH RESPECT TO ANY SERVICES. THIS PARAGRAPH WILL SURVIVE TERMINATION OR EXPIRATION OF THE AGREEMENT.

### **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 Representatives), malicious mischief, riots, accident, transportation tie-ups, electrical outage or shortage, unavailability of network facilities or underlying services (including third parties) or unavailability or shortage of 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 the Premises or any equipment or materials located within the Premises or otherwise regardless of location, including, without limitation, tax liens and mechanics' liens, with respect to work performed or equipment or materials furnished, or in connection with the installation, repair, maintenance or operation of Customer's facilities installed within the Premises or elsewhere. Notwithstanding the foregoing, if any such lien is filed at any time against the Premises and/or First Communications' or its Representatives' property, or any part thereof, Customer shall cause such lien to be discharged of record within 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 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 and costs incurred in connection with such lien, will be immediately due from Customer to First Communications.

### **Eminent Domain/Condemnation**

If the building in which the Premises is located is damaged by fire or other casualty, or is otherwise taken by a public or quasi-public governmental authority, First Communications will give prompt notice thereof to Customer. If a landlord or First Communications exercises an option to terminate an agreement applicable to a particular location due to damage, destruction, or taking of the Premises subject to such agreement, or landlord or First Communications decides not to rebuild such building or portion thereof in which the Premises is located or relocate the same, this Agreement with respect to that particular Premises shall terminate as of the date of such exercise or decision as to the affected Premises and the recurring fees paid by Customer shall be modified accordingly. If neither the landlord of the affected Premises nor First Communications exercises the right to terminate, we shall repair the particular Premises to substantially the same condition it was in prior to the damage or taking (or relocate the Customer's facilities) completing the same with reasonable diligence. In the event that we fail to complete the repair or relocation within 90 days, Customer shall thereupon have the option to terminate this Agreement with respect to the affected Premises which option shall be the sole remedy available to Customer against First Communications relating to such failure. If any portion of the Premises is rendered uninhabitable by reason of such damage or taking, the Parties will agree upon a proportional abatement of the charges for the affected Customer facilities, for the period from the date of the damage or taking to the date of the repairs or relocation.

### **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

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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 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 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 Service Charges paid by you to us in connection with the Service that is the subject of the dispute.

### Regulatory/Provider or Representative Action

Notwithstanding anything to the contrary in the Agreement, in the event that any regulatory agency, legislative body, court or incumbent or other provider or Representative 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.

Customer acknowledges that certain pricing set forth in the Agreement may be based on underlying facilities being available to First Communications as unbundled network elements (UNEs). In this instance, pricing does not include special access service Charges, and First Communications may cancel or refuse to provide Service for any or all location(s) under this Agreement for which First Communications is unable to secure or maintain underlying facilities at quoted pricing. In such event, we will notify Customer of the affected location(s), and if special access service is available the additional Charges required in order for First Communications to provide Services to such location(s). If the Parties are unable to agree on such increased Charges within 10 days after notice by First Communications, then we will not be required to provide Services for such location(s).

### Changes to the Agreement

First Communications may change the Charges for the Services at any time and from time to time. We may decrease Charges without providing advance notice. According to applicable state law, First Communications will notify the Customer of increases in Charges by bill insert, bill message or other notice. With respect to other changes to the Agreement, First Communications will notify you, by a posting on its website at [www.firstcomm.com](http://www.firstcomm.com), recorded announcement, bill insert, bill message, newspaper ad, postcard, letter, facsimile, call to your billed/account number, call to any phone number (including any cell number) associated with the account, e-mail to an address provided by you, or other appropriate form of notice, and you consent to be contacted by such form of communication and/or notice. Choice of notification methods will remain in First Communications' sole discretion and as directed by state law. 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 (including without limitation the recovery of costs associated with Universal Service obligations and primary interexchange carrier charges) arising under, based upon or required by

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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 Early Termination Fees within 30 days of the effective date of a material change ("Customer's Material Change Termination Notice"). Furthermore, Service that is not terminated or migrated to another service provider within 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 terminating or migrating Services after 30 days of the Customer's Material Change Termination Notice date will incur Early Termination Fees. You have the option to change your Service or features at any time by notifying us, and you may take advantage of our promotions for which you qualify, provided that you comply with any requirements of the change or the promotion, including, where applicable, but not limited to, change Charges and changes to your contractual obligations. If we allow you to suspend your account for a temporary period, we may extend the term of your Agreement by the length of the temporary suspension.

### Technology Evolution

In the normal course of technology evolution and enhancement, First Communications updates and upgrades its networks, products and Services. In some instances, these efforts will result in the need to ultimately replace or discontinue certain offerings or technologies. In such event, we will undertake such efforts in a customer-focused and commercially reasonable manner. Accordingly and notwithstanding anything in the Agreement to the contrary, First Communications reserves the right, in its sole discretion, after providing the notice set forth below, to: (1) migrate Customer to a replacement technology; or (2) discontinue any product or Service without either Party being in breach of the Agreement or incurring ETFs or other liability relating to the discontinuance of the affected product or Service.

If First Communications takes any action set forth above, we will provide advance notice reasonable designed to inform each affected Customer of such pending action. The form of our notice may include without limitation, calling any phone number (including any cell number) associated with the account or providing written notice to any address associated with the account or the Agreement including via email or any address First Communications uses for billing in the form of bill insert, bill message or other notice, or as set forth in a Service Order. Customer agrees that such notice is reasonable and sufficient notice of our pending action.

### 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 (including your notice of disconnect or cancellation), requests or other communications shall be in writing and delivered as follows, except as otherwise permitted herein:

- All matters, except notice of disconnect or cancellation, may be submitted via electronic mail to [businesscare@firstcomm.com](mailto:businesscare@firstcomm.com);
- Otherwise for disconnects or cancellations, send via electronic mail to [businesscustomercancellations@firstcomm.com](mailto:businesscustomercancellations@firstcomm.com), with confirmed receipt and subject line beginning with "NOTICE OF DISCONNECT/CANCELLATION/TERMINATION-LEGAL" or via overnight courier, certified or registered mail, postage prepaid and return receipt requested to First Communications, LLC; 3340 West Market Street; Akron, OH 44333; Attn: Notices-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 Service. You authorize our monitoring and recording of calls to us concerning your account or the Service and you consent to our use of automatic dialing equipment to contact you. If you have provided an email or cell phone number that is necessary for provision of the Service, you expressly consent to our contact by SMS and/or email alerts as part of receiving such Service. 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**

We 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. You may not assign the Agreement without our prior written consent.

### **Severability**

The provisions of the Agreement (including, without limitation, a Service Plan issued hereunder) shall be severable, and if any of the terms are held unenforceable or invalid because of scope of activity, duration, or any other reason, such provision shall be adjusted to cure such invalidity to the minimum extent necessary. The unenforceable or invalidity of one provision will not affect any other and the remaining terms of the Agreement will remain in full force and effect.

### **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. Notwithstanding anything set forth in the Agreement, all proposals, 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.

### **Other Services**

You may receive special promotions or discounts on other services and products offered by First Communications or its affiliates in connection with the purchase of certain Services and products. These promotions or discounts may terminate upon termination or expiration of the Agreement or suspension of the Services.

### **Capacity**

You represent that you are legally competent to enter into the Agreement, that you are over 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.

### **Copyright, Trademark, License and Site Access**

All content included on First Communications' website or other material presented or made available to you as part of the 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 express written consent of First Communications. With respect to other material presented to you as part of the Services, you are only permitted to use the content as expressly authorized by First Communications and/or its Representative in connection with the 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 Services.

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### **TTY Access**

A TTY (also known as TDD or Text Telephone) is a telecommunications device that allows people who are deaf or hearing impaired, or who have speech or language disabilities, to communicate by telephone. TTY doesn't work with all devices. **If you have a TTY-capable device, it may not function effectively, or at all, when attempting 911 calls and should not be relied on for such calls.**

### **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**

Section headings are for descriptive purposes only and are not intended to be used to interpret the Agreement.

### **Survival**

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