

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

These Terms & Conditions (“T&Cs”) set forth the legal contractual obligations governing the provision to you of intrastate, interstate and international long distance, 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 these terms of the Agreement, including the T&Cs.** If you are an existing customer, your continued use of or subscription to our Services represents your acceptance of these terms and conditions of service. **If you do not agree to the T&Cs set forth in this Agreement, please contact us prior to using our Service or as soon as possible thereafter, and cancel your subscription by notifying us, see Notices Section below.** If you cancel your subscription, First Communications will terminate your ability to make calls using our Services; you must make arrangements with your local telephone company to switch to a new provider for long distance and/or local services.

**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 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. **“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, monthly recurring charges (“MRCs”), non-recurring charges (“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; or other amounts payable under the Agreement.
- c. **“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.
- d. **“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.”**
- e. **“Parties”** means First Communications and you.
- f. **“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, mobility service and internet service we provide to you, and other services that we may offer now or in the future. 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.
- g. **“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.
- h. **“Subscribe”** means the point at which any First Communications Service is available for your use.

**FIRST COMMUNICATIONS SERVICE**

**Rates**

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. Service Plan information is maintained at <http://www.firstcomm.com>. Rates for Alaska, Hawaii and International countries can be found online at <http://firstcomm.com/internationalrates.asp>. 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’ Terms and Conditions, or any Rate Plan information, see Notices Section below. 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,

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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 fractional cents will be rounded up to the next whole cent unless otherwise expressly stated in the Service Plan.

All residential products are designed for customers who use their phone lines primarily for residential voice calling, i.e. calling friends, family, etc. that is personal, non-commercial use only. These products are not intended for phone lines that are connected to the Internet for extended periods of time or for commercial applications, such as, but not limited to, using your residential line for call center activity, telemarketing, medical transcription or facsimile broadcasting.

If First Communications suspects potential usage fraud, First Communications will begin investigation into the potential fraud and may contact you for additional information. First Communications reserves the right to disconnect or move to an alternate product upon notice as required by applicable law for any prohibited transmissions or uses and to terminate or suspend Services in the event of a violation of the foregoing use restrictions.

### Use of Service

You agree not to use any Service in any way for an unlawful, fraudulent or abusive purpose, for purposes that infringe upon others' intellectual property rights, in any way that damages our property or interferes with or disrupts our system or other users' 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, 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, or interfering with or attempting or assisting to access, alter, 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; (4) "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; (5) generating "spam" or unsolicited commercial or bulk email (or activities that facilitate the dissemination of such email); (6) 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; (7) accessing or attempting to access without authority the information, accounts or devices of others, or penetrating or attempting to penetrate, First Communications' or another entity's network or systems; (8) running software or other devices that maintain continuous active Internet connections when a computer's connection would otherwise be idle, or "keep alive" functions; (9) outpulsing digits from CPE in violation of rules and regulations governing such outpulsing; (10) 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, using voice services provided to a single location to other locations over a private network without our knowledge; or (11) 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 are responsible for all content you transmit while using the Services. Resale of Service is prohibited without our prior written consent and your attainment of any required regulatory approvals. You may not install any amplifiers, enhancers, repeaters or other devices that, in our sole discretion, modify, disrupt or interfere in any way with the facilities, wires or radio frequencies utilized by us to provide 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

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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; (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. 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.

### **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 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 and equipment being available from other carriers. 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 is interrupted for at least twenty-four (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 Service**

If you are having a problem or need to make an inquiry with respect to any Service or billing, you may contact us at the telephone number on your bill, see Notices Section below. 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.

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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 severe injury to persons or environment. These high risk activities may include, without limitation, vital business or personal communications, or activities in which absolutely accurate data or information is required.

### **Site Access**

If First Communications is denied or delayed access to the Customer's premise, there will be delays in Service installation or repair. If access is required for an installation or repair, and the technician is unable to gain access during the appointment window, your account will be assessed a trip charge.

A trip charge may be assessed for installation cross connects (tie downs) or Service/repair issues. If the trip charge is related to an installation, that charge can be broken into three (3) monthly payments. If a repair issue requires a service technician to go to your home and LineProtect has not been purchased, then a trip charge will be assessed if the trouble is inside wiring.

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

Customer may request a disconnection of Service by notifying us, see Notices Section below.

If the Customer chooses to move its local Service to another service provider, First Communications will stop billing for local 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. However, upon loss notification for Plain Old Telephone Service ("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 Initial and Final Bill: Billing Section below.

Customer shall be responsible for any Charges that continue to be incurred as a result of Customer's failure to notify us 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).

### **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; taxes, surcharges, fees, assessments and/or recoveries determined by us to be imposed on you or us as a result of use of the Service on your account. If you subscribe to or activate Service on behalf of another but were unauthorized to do so, you will be personally responsible for all Charges to the account and will be fully bound by this Agreement as though you had activated Service on your own behalf.

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

You authorize us to ask consumer and/or 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 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 claim within 60 days after the claimed overpayment; otherwise the invoice is deemed correct. If a billing error resulted in an over billing or over charge, First Communications may refund the over billed or overcharged amount by issuing your account a credit in accordance with applicable law.

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### **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 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.

### **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.

### **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 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 (1) 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 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 notice of a dispute, see Notices Section below, otherwise the invoice is deemed correct. You may be asked to provide additional information about a billing dispute or late payment. If you dispute any portion of an invoice, you must pay the undisputed portion of the invoice. 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 dispute 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 overcharged amount by issuing your account a credit in accordance with applicable law. Initial complaints can be made by phone to First Communications at (800) 274-1015, via e-mail at [homecare@firstcomm.com](mailto:homecare@firstcomm.com) or by writing to us at First Communications LLC, Care Department, 3340 West Market St., Akron, OH 44333. You may also contact the Public Utility Commission; specific contact information is located on your bill. 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 one year thereafter, Customer will not disclose any confidential or proprietary information of First Communications or use the same for any other purpose.

### **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, etc. This generic information allows us to keep up to date with offerings and helps us to improve the Service we provide to you.

Under federal law, you have the right, and we have the duty, to protect your CPNI. First Communications and its authorized Representatives are permitted by law to use your CPNI to offer you the type of Services you already received from us and to offer enhancements to those Services. First Communications would like to use your CPNI to offer services to you beyond the types to which you already subscribe. Your consent, as described herein, will permit First Communications to offer you a complete package of services tailored to your specific needs on an on-going basis and to advise you of additional telecommunications, information and managed services that may assist you in the conduct of your business. No action is necessary on your part in connection with this approval, and accept of the Agreement will indicate your express and affirmative consent. We will assume this express consent is granted unless we hear from you within 45 days after acceptance of the Agreement. Notwithstanding this section, if you wish to restrict First Communications from using your CPNI to offer you types of services unrelated to those Services to which you subscribe, please complete your opt out preference by emailing your Company name and address, account number and opt out preference to [CPNIoptout@firstcomm.com](mailto:CPNIoptout@firstcomm.com). A denial/revocation of approval will in no way affect the provision of any Services, and any denial or approval will remain valid until affirmatively revoked or modified by you. We will not use your CPNI for any other purpose nor disclose your CPNI to any party except as permitted or required by law.

### **Personally Identifiable Information**

The personal information or data we collect, such as your name, address, date of birth, email, cell phone, etc., is only used to conduct business with you, provide the Service you request and keep in communication with you regarding ongoing and enhanced services. By acceptance of the Agreement, you also expressly and affirmatively consent that we may use this personally identifiable information and data to inform you of additional, enhanced or new products, technology and service offerings by First Communications or its affiliates, including, without limitation, via email, cell phone or otherwise. NO PERSONAL INFORMATION IS EVER SOLD, RENTED OR GIVEN TO AN UNAFFILIATED THIRD PARTY unless required or permitted 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 for certain Services); provided, however, if we go through a business transaction involving transfer of First Communications' assets, your personal information or data will likely be among the assets transferred. In some cases, we may provide Services jointly with selected third parties and/or vendor or provider 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. We may assume that any person able to provide your password is authorized by you to receive call detail 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, 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 arising from your failure to comply with this section.

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### Internet Service

This section applies to our Internet Services, including access to or use of any Internet website 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), 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.

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 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' INTERNET SERVICE. FIRST COMMUNICATIONS ACCEPTS NO RESPONSIBILITY OR ANY LIABILITY FOR THE SECURITY OF CUSTOMER'S ELECTRONIC ENVIRONMENT, WHETHER OR NOT FIRST COMMUNICATIONS 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 Equipment

First Communications is not responsible for the installation, operation, maintenance, compatibility or performance of any Customer premise equipment. 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 is likely to cause hazard or Service interruption or obstruction, Customer will eliminate such likelihood at First Communications' request.

### 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 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 DURING THE AFFECTED PERIOD. IN ADDITION, FOR ANY CLAIM, WE WILL NOT BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS OR REVENUE OR INCREASED COSTS OF OPERATION OR ANY HEALTH-RELATED CLAIMS ALLEGEDLY ARISING FROM THE USE OF SERVICES, DEVICES, EQUIPMENT OR ACCESSORIES USED IN CONNECTION WITH SERVICES. FURTHER, AT NO TIME WILL WE BE LIABLE FOR PUNITIVE, EXEMPLARY, RELIANCE OR SPECIAL DAMAGES OF ANY TYPE. THESE LIMITATIONS APPLY EVEN IF THE DAMAGES WERE FORESEEABLE OR IF WE WERE TOLD THEY WERE POSSIBLE, AND THE LIMITATIONS APPLY WHETHER THE CLAIM IS BASED ON CONTRACT, TORT, STATUTE, FRAUD, MISREPRESENTATION, OR ANY OTHER LEGAL OR EQUITABLE THEORY. FIRST COMMUNICATIONS WILL NOT BE LIABLE FOR ANY DAMAGES IF SERVICES ARE INTERRUPTED OR THERE IS A PROBLEM WITH THE SERVICES OR EQUIPMENT 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

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TO SUCH PROVIDER OR ANY ACTION THAT OCCURS OR FAILS TO OCCUR AS A RESULT. YOU ACKNOWLEDGE AND AGREE 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 TO COMPANY. THIS PARAGRAPH WILL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

### **Indemnification**

YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD US, OUR AFFILIATES AND AGENTS AND ANYONE 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 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 AND DISCLAIM ANY IMPLIED WARRANTY, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. WE DO NOT AUTHORIZE ANYONE TO MAKE ANY WARRANTY ON OUR BEHALF AND YOU SHOULD NOT RELY ON ANY SUCH STATEMENT. WE ARE NOT THE MANUFACTURER OF EQUIPMENT AND ANY STATEMENT REGARDING IT SHOULD NOT BE INTERPRETED AS A WARRANTY. THE ONLY WARRANTY APPLICABLE TO THE EQUIPMENT USED IN CONNECTION WITH THE SERVICES IS THAT PROVIDED BY THE EQUIPMENT MANUFACTURERS, IF ANY. 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 employees or service providers), 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.

### **Resolution of Disputes**

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

### **Choice of Law Forum**

Where our 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.



## Residential Conditions of Use

### Arbitration

For Residential customers, the PUCO may assist in resolution of complaint either on an informal or formal basis. 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 Action

Notwithstanding anything to the contrary in the Agreement, in the event that any regulatory agency, legislative body, court or incumbent or other provider modifies or creates regulations or laws or changes the 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 Company may cancel or refuse to provide Service for any or all location(s) under this Agreement for which Company is unable to secure or maintain underlying facilities at quoted pricing. In such event, Company 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 Company 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 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 state or federal statute or regulation. 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.

### 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.

## Residential Conditions of Use

### **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**

The notice given under this Agreement may be:

by telephone at **(800) 274-1015**,

by e-mail at [homecare@firstcomm.com](mailto:homecare@firstcomm.com) or

by mail at First Communications LLC; **3340 West Market Street**; Akron, OH 44333; Attn: Customer Care

Written notice to us will be effective when directed as set forth above to our Legal Department and received by us. Your notice must specify your account number(s) and telephone number(s) and reasonably detail the reason for the Notice. Verbal notices will be deemed effective on the date reflected in our records.

#### **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 (3) 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 specified as a contact for the provision of the Service, you expressly consent to our contact, including by cell phone, text, 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 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.

## Residential Conditions of Use

### **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 right to enforce such a claim or right.

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

All content included on First Communications' website, such as text, graphics, logos, button icons, 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.

### **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.

### **Headings; Entire Agreement; Survival**

Section headings are for descriptive purposes only and are not intended to be used to interpret the Agreement. The Agreement (including any referenced documents and attachments) makes up the entire agreement between you and us and replaces all prior written or spoken agreements, representations, promises or understandings between you and us. The provisions of the Agreement that are contemplated to be enforceable after the termination of the Agreement survive termination of the Agreement.