

The terms and conditions set forth below and in the Service Order, the Terms and Conditions of Business Services ("T&Cs") and applicable rates, tariffs and/or price/service guides posted on First Communications' website [www.firstcomm.com](http://www.firstcomm.com) from time to time apply to the Cloud IP PBX Service provided pursuant to the Agreement. Customer expressly agrees that any changes, including additions, deletions or replacement, to the Service ordered hereunder (such as adding/deleting/replacing lines, equipment or licenses, increasing bandwidth or licenses, changing length of Term or installing or upgrading software) to the extent relating to, arising out of or connected with the original Service shall be governed by the Agreement, regardless of whether such Service changes are documented on a separate, later signed Service Order or Amendment or otherwise changed in connection with provisioning or delivery of the Service. Customer understands and agrees that any online click through order for Cloud IP PBX Service accepting the T&Cs, these Service Terms and the Agreement shall bind Customer to all such terms and conditions. Defined and/or capitalized terms used herein and not otherwise defined shall have the meanings given to them in the T&Cs.

## **1. SERVICE OFFERING/CLOUD IP PBX**

1.1 Cloud IP PBX is a hosted voice over IP ("VoIP") service that requires Internet service, but does not include Internet service. Internet and/or other telecommunication services may be purchased in addition to the Cloud IP PBX Service or separately through another provider. Cloud IP PBX Service will provide Customer with access via Representative software to a Web-based administrative portal to configure its telephony features and capabilities. Customer will also be able to access a Web portal to manage its individual feature settings. Cloud IP PBX Service may require Customer's download, installation or access of third party or Representative software and/or licensing in connection with certain Service provisioning, including Customer acceptance of Representative or third party terms and conditions applicable thereto. Customer agrees to comply with all requirements and restrictions of third parties or Representatives relating to such software as if fully set forth herein and incorporated herein by reference and otherwise to comply with all software terms in this Agreement. Further, Customer acknowledges that certain features, functionality and capacity of the Cloud IP PBX Service will vary based on the product level or package of Service for which Customer subscribes, including, without limitation, availability of desktop/mobile application, meeting collaboration service or call recording. Optional readiness assessment and implementation services are also available for additional fees. Cloud IP PBX and its Features described below (collectively, "Service" or "Cloud IP PBX Service") are not available for resale by Customer, or transfer to, or use by a third party other than Customer for its internal business purposes and are offered only to non-government commercial end user business customers. Cloud IP PBX Service is provided only to Customer locations within the U.S. 48 contiguous states and may not be available at every location. Customer is prohibited from extending Cloud IP PBX Service beyond the U.S. mainland. Any Voice Operator Panel and related equipment, software, maintenance or service are offered as is, as available, without representation or warranty of any kind and subject to all third party licensor, supplier and/or Representative terms, conditions, limitations and restrictions.

1.2 The Call Recording Feature is an add on feature to Cloud IP PBX with up to five gigabytes of storage capacity and, to the extent purchased by Customer, provides Customer with access to a Web-based administrative portal for Customer's use of third party call recording software with respect to calls that traverse the Cloud IP PBX platform.

1.3 The Call Center Feature is an add on feature to Cloud IP PBX and, to the extent purchased by Customer, provides Customer with access to a third party call center application for automatic call distribution/routing to a group of users.

1.4 The Contact Center Feature is an add on feature to Cloud IP PBX and, to the extent purchased by Customer, provides Customer with access to a third party contact center application for automatic call distribution/routing to a group of users, electronic transmissions, supervisory and administrative dashboards, data analytics and call recording.

## **2. BILLING; FEES; CREDIT REQUIREMENTS**

Billing for the Cloud IP PBX Service will begin when the Cloud IP PBX Service is made available to Customer. Customer shall make timely payments to First Communications of all Charges invoiced to Customer during the Term. Customer understands that the monthly recurring charges ("MRCs") may be in addition to other charges for services and may include, but not be limited to, international calls, long distance charges, local features, directory assistance, overage charges or other surcharges and fees, and shall be subject to applicable federal, state, local use, excise, sales, lease, or privilege taxes, duties or similar liabilities as further set forth within the T&Cs, and applicable long distance and international rates, tariffs, and/or price/service guides which can be found at [www.firstcomm.com](http://www.firstcomm.com). Customer may also be responsible for all charges related to installation, site survey, shipping, change orders, expedite charges, maintenance or other non-recurring charges ("NRCs") not detailed herein. Specifically, First Communications reserves the right to charge Customer for additional cabling, special or additional installation work/service, including site survey and all labor, materials and other service relating to such cabling and/or additional work or service. Such NRCs will be in addition to the MRCs and related Charges. Installation and activation will occur at Customer premises and charges therefore are billed as NRCs as may be identified in the Service Order. In the event First Communications must ship replacement equipment to Customer, Customer may be charged for the shipping costs. Such costs will vary based on the quantity of the equipment ordered and the destination. Provision by First Communications of Cloud IP PBX Service pursuant to the Agreement may be subject to a Customer credit check, and Customer agrees that it will complete the required Credit Application to commence such credit check and failure to do so will be deemed to be a breach of the Agreement. In the event Customer terminates the Agreement prior to the end of the term (including any renewal term), Customer may be subject to Early Termination Fees as described in the T&Cs.

**3. CUSTOMER-OBTAINED FACILITIES; RESPONSIBILITIES**

Except as otherwise expressly stated herein, Customer is responsible for obtaining, installing, configuring and maintaining all equipment, including, but not limited to, routers, switches, firewalls, software, cat 5 or equivalent cabling, wiring, power sources, telephone connections and/or communications services ("Facilities") necessary for interconnection with First Communications' network or otherwise for use in conjunction with Cloud IP PBX Service at each of Customer's locations covered under this Agreement. Customer is responsible for ensuring that such Facilities are compatible with First Communications' requirements, including being certified by First Communications for use with Cloud IP PBX Service, and that they continue to be compatible with subsequent revision levels of First Communications provided equipment, software and services. Customer will provide First Communications or its designated Representative with access to its Facilities as necessary or desirable for provisioning, support, auditing or measuring use of the Services and/or underlying software, licenses or equipment. In the event Customer does not provide the Facilities as described herein and as further identified during the site survey, Customer understands and agrees that Customer will be responsible to provide such Facilities prior to any provisioning or installation or for any additional costs, as outlined in Section 6 Field Services, for First Communications to provide Customer with necessary Facilities prior to any provisioning or installation. Customer shall also be responsible for any delays and related costs in connection with its Facilities not being prepared for provisioning or installation. In addition, Customer is responsible for taking all proper actions as necessary for any required disconnection of previous service with a third party. Customer is responsible for operation and configuration of its computer(s) and LAN/WAN, including, without limitation, establishing, maintaining and securing any passwords in connection with the Cloud IP PBX Service and/or equipment. Customer agrees that it shall not use passwords consisting of default passwords or passwords consisting of names or repeating or consecutive numbers or letters in conjunction with any Service or any equipment, and in any event, Customer is solely liable and responsible for, and shall indemnify, defend and hold harmless First Communications and its Representatives with respect to, all security, fraud or related issues in connection with passwords relating to voicemail, portals, databases, computers, other equipment, software, or otherwise. If Customer connects any Facilities to Cloud IP PBX Service that Customer reasonably should know may not be compatible with Cloud IP PBX Service, Customer is solely responsible for any effects that arise from that connection on the Cloud IP PBX Service equipment or software or any other services provided by First Communications. Customer and/or any of its third-party representatives or agents waive any claims against First Communications and its Representatives relating to the performance of Cloud IP PBX Service. Customer represents and warrants that it is the end user business customer and shall not resell the Services and agrees to defend, indemnify and hold harmless First Communications and its Representatives with respect to any breach of this representation and/or any such third-party claim.

First Communications is not responsible for the installation, operation, maintenance, compatibility or performance of any Customer premise equipment or Facilities. If Customer connects incompatible equipment to the Service, First Communications makes no commitments regarding the delivery or performance of the Service. If third party hardware or software impairs operation of the Service, Customer remains liable for payment of all charges and fees for the Service, and, if third party equipment is likely to cause a hazard or Service interruption or obstruction, Customer will eliminate such likelihood at First Communications' request. First Communications shall not be liable or responsible for any Customer or third-party equipment and hereby disclaims any and all such liability.

Customer shall assign a Project Manager as a primary point of contact for First Communications who shall meet with and be available for consultation with First Communications as necessary for implementation/installation, including without limitation, mandatory meeting participation with a First Communications' Project Manager prior to any installation and/or implementation of selected Features. The Project Manager must work with First Communications' personnel including engineering as required by First Communications in order to plan, establish and finalize call flow, as applicable, and shall complete and submit a final call flow plan to First Communications. Failure of Customer to adhere to the foregoing requirements and responsibilities may result in delays and unnecessary costs to Customer.

**4. LOCAL NUMBER PORTABILITY**

4.1 Where applicable, First Communications shall only provide Customer with the dedicated DIDs or SIP trunks ordered by Customer and accepted by First Communications. First Communications will exercise commercially reasonable efforts to gain access to phone number quantities as specified for each geographic location by Customer, but First Communications does not guarantee phone number availability for each geographic location. First Communications shall make all decisions regarding expansion of its Services to new geographic locations. First Communications may, upon ten days prior written notice, reclaim any DIDs provided by First Communications to Customer hereunder that have not been used by Customer in connection with any Cloud IP PBX in the 120-day period immediately preceding such notice. No refunds shall be made to Customer regarding the unused reclaimed DIDs. First Communications may revoke the unused DIDs, in First Communications' sole discretion.

4.2 First Communications will exercise commercially reasonable efforts to "port" Customer's phone numbers, subject to applicable legal restrictions (if any). First Communications does not guarantee a specific time interval for any porting activities. Upon termination or expiration of the Service, First Communications may, at its sole discretion, process Customer's LNP requests to Customer's new service provider, if such new service provider is able to accept such phone number.

**5. CALL ORIENTATION INFORMATION/CALL JURISDICTION**



5.1 Customer acknowledges that First Communications classifies local and long distance calls to determine appropriate call jurisdiction (i.e., local or interstate). First Communications bases this classification on the information in First Communications' systems identifying each call's originating location. Accurate information regarding the origination point of calls is necessary to make the appropriate call jurisdiction, and therefore it is a material condition of the Agreement that Customer provide First Communications with accurate information reflecting its calls' originating location. Customer shall defend, indemnify and hold First Communications harmless with respect to any third-party claims arising out of Customer's delivery of call origination information to First Communications or to such third parties.

5.2 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. Calls to Alaska, Hawaii and all international calls are subject to additional charges. Unlimited Services are provided solely for live dialogue between two or more individuals and may be used only for reasonable internal commercial use consistent with the types and levels of usage by typical First Communications customers. "Typical" refers to the calling or other use patterns and/or average volume of at least 95% of First Communications' 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. Use of Unlimited Services beyond reasonable, typical use shall be deemed abusive and is prohibited. 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 may monitor and review usage with respect to Unlimited Services to ensure compliance with typical commercial use policies. 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 reserves the right to move Customer to an alternate service offering or service plan or to suspend, terminate or restrict 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 modify, suspend, terminate or restrict the Services immediately with no ability of Customer to reactive the Service.

**6. FIELD SERVICES**

Customer will be charged for Field Services, as described herein, in the event Customer requests and First Communications agrees to provide any Customer necessary Facilities described in Section 3 above. In addition to applicable MRCs, if Customer requires moves, add-ons, deletions, changes, or maintenance (except maintenance to the extent directly caused by the negligence of First Communications) after installation and/or activation of the Cloud IP PBX Service and/or its Features and a field service representative is dispatched, Customer will be billed at the following Rates.

6.1 **Rates.** All scheduled Field Services will require a four hour minimum charge at the rates indicated below with each additional time period billed in one hour increments, and subject to the following conditions. All Field Service appointments will be scheduled with a four hour arrival window with Customer's Point of Contact ("POC"). If Customer cancels or changes any Field Service appointment less than 48 hours prior to such appointment, Customer will be charged a \$150 appointment cancellation fee. First Communications, in its sole discretion, reserves the right to invoice for less than a four hour minimum with respect to certain Field Services on a case by case basis; provided, however, any such modification of the minimum charge shall be made on a one-time basis and specific to the particular instance and shall in no event be deemed a waiver of the four hour minimum charge for any future Field Service whatsoever.

6.1.1 **Standard Hourly Rate.** Customer may schedule Field Services during normal business hours of 8 a.m. to 5 p.m. Monday thru Friday ("Normal Business Hours") and must provide First Communications with at least 48 hour notice in order to schedule the Field Services. All Field Services scheduled during Normal Business Hours will be charged at the Standard Hourly Rate of \$150. If a Field Service appointment extends beyond Normal Business Hours, Customer will be charged the After Hours Rate for any time period beyond Normal Business Hours.

6.1.2 **After Hours Rate.** If Customer schedules Field Services outside of Normal Business Hours, Customer will be charged the After Hours Rate of \$250 per hour.

6.1.3 **Expedited Hourly Rate.** If Customer requires Field Services with less than 48 hour notice, Customer may be charged the Expedited Hourly Rate of \$250, regardless of whether Customer is scheduling during or after Normal Business Hours.

**6.2 Responsibilities.**

6.2.1 First Communications will endeavor to schedule a four hour arrival window with Customer's POC no later than two business days from the date of scheduled arrival at Customer's site. If First Communications determines that the Field Services cannot be performed successfully, a failure report describing the reason(s) for the failure will be provided to Customer's representative at the affected site. First Communications is not responsible for any failures that are not within the direct control and responsibility of First Communications in accordance with applicable terms of the Agreement.



6.2.2 First Communications will break down any boxes for the equipment installed by First Communications and generally clean up wire, plastic, paper or any other trash created by First Communications as a result of any Field Services. First Communications will dispose of all debris into Customer's dumpster or other Customer provided trash receptacle, if provided.

6.2.3 First Communications will not be responsible for any work stoppages that occur as a result of waiting for Customer call-backs, releases, or other activities of a similar nature. First Communications will not be responsible for data backup, loss, or retrieval associated with performance of Field Services.

6.2.4 Customer must provide access to the premise(s) or facilities necessary to complete the Field Services. Any delay due to inaccessibility to required areas or connections will count against the time required to perform Field Services. Customer must provide all necessary premise and equipment preparation, unless otherwise mutually and expressly agreed to in writing, prior to First Communications' performance of its required preparation and service activities. Any delay on-site due to lack of preparation will be considered out of scope and subject to additional charges, which may be charged at the Expedited Hourly Rate set forth above.

**7. SERVICE DISCLAIMER**

First Communications is not responsible and disclaims all liability for conditions or equipment that may affect Cloud IP PBX Service, including, without limitation, the following, and Customer shall indemnify, defend and hold harmless First Communications and its Representatives from any claims, damages, costs, expenses, or losses of any nature whatsoever (including of third parties) relating to or arising out of the following conditions:

7.1 Failure or poor performance of Customer's Domain Name Service ("DNS Server") and/or local area network ("LAN") upon which Cloud IP PBX Service relies. Network-related outages also may occur, and service restoration intervals may vary from those associated with traditional telecommunications service.

7.2 Failure or poor performance of Customer's Internet access service and/or routers, switches or other Customer equipment not provided by First Communications, with effects including, but not limited to, loss of circuit connectivity, high jitter, latency or packet loss.

7.3 Customer's establishment and maintenance of, or failure to establish and maintain, secure passwords in connection with Cloud IP PBX Service.

7.4 Communications from analog modems may have protocol interaction issues when used over Cloud IP PBX Service technology (due to their handshake and error-checking rules) and cannot be assured of the same quality as other communications.

7.5 Modems may not be used on Cloud IP PBX Service except with Codec G.711 without silence suppression.

7.6 Fax transmission is highly dependent on Customer's facsimile device, its ability to disable error correction and other factors.

7.7 Alarm lines (whether or not they use modems) are wholly unsupported on Cloud IP PBX (with respect to both service and wiring, without limitation). Specifically, Customer understands and agrees that if Customer is switching any landline telecommunications service, including but not limited to, Plain Old Telephone Service (POTS), any alarm lines, fire suppression, elevator phones, or any other safety and/or security service that must be provided over a landline, such systems are not supported by, and will not work with, Cloud IP PBX Services.

7.8 All inside wiring and special construction.

7.9 Delays, outages or other failures attributable to Customer or any facilities, networks, technologies, equipment, infrastructure or software furnished by a third party including those ordered and/or billed by or through First Communications.

7.10 Mistaken, incomplete or insufficient information in Customer orders or supporting documentation.

**8. SERVICE RESTRICTIONS**

Customer understands that use of Cloud IP PBX Service is restricted in the following manner:

8.1 Customer shall not modify the First Communications installed configuration without the previous written consent of First Communications. Customer expressly acknowledges that First Communications may immediately suspend Customer's use of Cloud IP PBX Service if Customer violates the foregoing restriction.

8.2 Except as otherwise specifically agreed in writing between First Communications and Customer, Customer shall not utilize Cloud IP PBX Service in any (a) outbound call center environment, (b) contact center environment, or in connection with any such similar application.



8.3 Except as otherwise specifically agreed in writing between First Communications and Customer, Customer shall not use Cloud IP PBX Service for telemarketing, fax broadcasting, fax blasting, or continuous or extensive call forwarding or conferencing, regardless of any features provided with the Cloud IP PBX Service.

8.4 Customer shall not represent to First Communications multiple remote locations (i.e., locations remote to or residing behind Customer's hub location) as a single site during the design and provisioning process.

8.5 Except as otherwise specifically agreed in writing between First Communications and Customer, Customer shall not utilize auto-dialers or any similar type of device in connection with Cloud IP PBX Service.

8.6 Customer shall not, directly or indirectly, sublicense, resell, rent, lease, distribute, or otherwise transfer or assign rights or usage of the Cloud IP PBX Service or any component thereof, software, license, portal or equipment used to operate any such Service including Features for any purpose, including any outsourcing, application service provider, timesharing or service bureau purposes or arrangement.

8.7 Notwithstanding anything to the contrary set forth in the Agreement or otherwise including any configuration at Customer's site location, Customer shall not use Cloud IP PBX to support any alarm lines, fire suppression systems or equipment, elevator alarms or phones, or any other safety and/or security service as such systems are wholly unsupported by and will not work with Cloud IP PBX service.

8.8 Customer shall not allow multiple Customer employee users to be assigned or use any single DID/DOD or seat license for a Cloud IP PBX Service for purposes other than primary line replacement application (i.e., multiple calls will not be placed/received at the same time on the same DID/DOD, or a user seat license will not be shared across multiple employee users). In addition to the remedies set forth herein and available at law, in the event Customer violates this restriction as reasonably determined by First Communications in its discretion, First Communications will retroactively charge Customer for all applicable fees for such multiple DID/DOD and seat license use.

8.9 Voicemail message transcription is limited to 180 seconds of voicemail message, and any message exceeding such limitation will be truncated. First Communications reserves the right to increase Charges, in its reasonable discretion, in the event that Customer's average duration of voicemail message exceeds the typical customer average duration of 20 seconds or less.

8.10 The standard Cloud IP PBX meeting collaboration service feature accommodates a maximum of 25 attendees via Zoom (or any replacement Representative).

8.11 Unlimited Services may not be used for resale or any wholesale use, 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, fax/voice blasts, other connections that do not consist of substantially uninterrupted live dialog between two individuals, or any other activity that would be inconsistent with normal and reasonable small business commercial usage.

**Customer expressly acknowledges and agrees that its use of Cloud IP PBX, including any Call or Contact Center Feature, shall comply with the Agreement and all laws and/or regulations applicable to the Cloud IP PBX Services and to its business and activities, including with respect to any telemarketing, collections, call recording, solicitation, sales, facsimile or other electronic communication, or similar application whether inbound, outbound or blended. Customer agrees that violation of the Agreement or any such applicable laws and/or regulations may result in the immediate suspension or termination of any or all Cloud IP PBX Service by Company, and Customer agrees to defend, indemnify and hold Company harmless with respect to any violation thereof. Customer further expressly acknowledges that any violation of the foregoing restrictions on its use of Cloud IP PBX and/or any of its Features or components thereof may result in the immediate suspension or termination of Cloud IP PBX Service and Customer agrees to defend, indemnify and hold First Communications and its Representatives harmless with respect to any such violation.**

**9. ADDITIONAL TERMS APPLICABLE FOR CALL RECORDING FEATURE**

The Call Recording Feature is available for Customer use, to the extent purchased as an add on feature by Customer, including as a component of the Contact Center Feature, subject to the following additional terms and conditions:

9.1 Applicable laws regarding notice, notification, and consent requirements for recording conversations vary from state to state. In addition, recorded media may be subject to privacy and other applicable laws depending on the nature of such media and Customer's business. Customer agrees that First Communications has no way of analyzing Customer's data, services or applications deployed in this environment, and Customer is solely responsible for complying with all federal, state, and local laws in any relevant jurisdiction when using this Feature. Recorded media is the sole responsibility of Customer. First Communications expressly disclaims all liability with respect to Customer's recording and storage of telephone conversations, including, without limitation, the viability, integrity, security or state of recorded media. Customer hereby agrees to fully, finally, and forever release, discharge, hold harmless, and indemnify First Communications and its Representatives from and against any damages or liabilities of any kind related to Customers' recording of any telephone conversations using the Cloud IP PBX Service.

9.2 Customer understands and agrees that First Communications is not obligated to store Customer's call recordings and does so only as a convenience for Customer. The Call Recording Feature includes up to five gigabytes of call recording storage space, and Customer is responsible for deleting or downloading recordings so that additional Charges are not incurred and/or data is not lost or deleted due to capacity issues ("standard storage capacity"). Customer will be liable for any additional Charges incurred for increased recording storage capacity, if available, but no capacity or storage beyond the standard storage capacity is guaranteed or warranted. Customer agrees that First Communications has no responsibility or liability whatsoever for the deletion or failure to store call recordings maintained or transmitted by the Cloud IP PBX Service. Recorded media as a component of the Contact Center Feature is generally accessible by Customer for 30 days after creation to the extent within Customer's standard storage capacity, and thereafter, is permanently deleted. Recorded media under the Call Recording Feature (other than for Contact Center application) is generally accessible by Customer for 365 days after creation to the extent within Customer's standard storage capacity, and thereafter, is permanently deleted. Customer hereby acknowledges and agrees to First Communications' policy regarding retention of recorded media.

#### **10. ADDITIONAL TERMS APPLICABLE FOR CALL CENTER OR CONTACT CENTER FEATURE**

Either of the Call Center Feature or Contact Center Feature is available for Customer use, to the extent either is purchased as an add on feature by Customer, subject to the following additional terms and conditions:

10.1 First Communications may at any time, in its sole discretion, restrict ports (via DIDs and/or SIP Trunks) or the amount of Customer's calls per second ("CPS"). Customer must comply with First Communications' restrictions with respect to Customer's CPS and ports (via DIDs and/or SIP Trunks). Customer understands and agrees that the Call Center Feature and Contact Center Feature are available only to non-governmental entities, and Customer represents and warrants that it is not a governmental entity to the extent applicable hereto. Customer understands and agrees that each of the Call Center Feature and Contact Center Feature pricing includes one queue as standard, and Customer agrees that it shall incur an additional MRC per queue in excess of the one standard.

10.2 Customer understands and agrees that the SIP and/or DID Service provided with the Call Center Feature or Contact Center Feature is intended for use as an inbound-only service, and does not directly support outbound calling capability, including but not limited to 911 calls. Customer is solely responsible for complying with all federal, state, and local laws in any relevant jurisdiction when using this Feature. First Communications expressly disclaims all liability with respect to Customer's call or contact center activities, including, without limitation, any data reporting, analysis or analytics or other capability managed by Customer, and Customer hereby agrees to fully, finally, and forever release, discharge, hold harmless, and indemnify First Communications and its Representatives from and against any damages or liabilities of any kind related to Customers' call or contact center activity using the Cloud IP PBX Service.

10.3 Customer understands and agrees that the Call Center Feature or Contact Center Feature provides local inbound-only connectivity from the PSTN together with enhanced functionality, including, but not limited to, conversion and delivery to Customer in an IP-based format. For regulatory purposes, First Communications treats all inbound services as local in nature, although there is no guarantee that such interpretation will be accepted by the relevant regulatory authority. In the event of any change in applicable law, regulation, decision, rule or order that finds that the connectivity associated with any inbound service is not eligible for regulatory treatment as a local service, First Communications reserves the right to modify the terms and conditions, from time to time and at any time with or without notice to you, as legally required, to be consistent with such regulatory ruling, decision or determination. In such case, for a period of 30 days after such modification by First Communications, Customer may terminate this SIP and/or DID service without any termination liability (other than charges for the SIP and/or DID service provided through the effective date of termination).

10.4 Upon provisioning of the Contact Center Feature by First Communications, Customer shall notify First Communications in writing within five days of completion if the Contact Center Feature is not provisioned according to First Communications' parameters for such Feature and such notice must include specific details and information regarding the portion of the Contact Center Feature that is not completed as required. If valid notice is delivered, First Communications shall re-perform such Contact Center Feature service to conform to its parameters, which shall be Customer's sole remedy. First Communications may charge Customer for re-performing any such Contact Center Feature services to the extent any non-conformance, incompatibility or other inoperability is attributable to Customer or information provided by Customer, Customer's site, equipment, facilities, or other occurrence beyond the reasonable control of First Communications.

#### **11. FIRST COMMUNICATIONS 911/E911 SERVICES**

First Communications is required by the Federal Communications Commission to route emergency 911 calls in conjunction with Interconnected VoIP service where such 911 calling is available. First Communications provides for both Basic 911 Service and Enhanced 911 Service. **911 emergency calling service laws may also apply to Customer and it is solely Customer's responsibility to understand and comply with such laws.**

11.1 **Basic 911 Service.** If Customer has Basic 911 Service and dials 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 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.

11.2 **Enhanced 911 Service ("E911").** If Customer has E911 Service and dials 9-1-1, the call is sent to the appropriate public safety answering point ("PSAP") by dialing 9-1-1 with Automatic Number Identification ("ANI") and Automatic Location Identification displayed at the PSAP. The ANI may be the calling party number or the billing telephone number depending on Customer's configuration. Emergency operators will have access to this information regardless of whether the caller is able to verbally provide such information. **Pursuant to FCC requirements, First Communications enables the routing of E911 calls only in locations where such E911 calling is available and only in the limited circumstances described below.** Customer's ability to access an appropriate PSAP depends on the type, configuration and location of the phone used. Furthermore, much like access to Basic 911 emergency service via traditional PSTN local service, access to a PSAP will be unavailable if Customer's access circuit or local gateway fails.

11.3 **Customer Notice Requirements.** Customer represents and warrants that it will notify all of its Cloud IP PBX Service users (a) of the interaction and/or limitations of E-911 with Cloud IP PBX Service as set forth herein, (b) what procedures such users must follow for registering a new location prior to moving an IP phone or soft-phone; and (c) the effects of re-registration of user addresses on existing user office phones and E-911. Customer shall be solely responsible for any third-party claims and liability arising from Customer's failure to so notify its users.

**PLEASE READ THE INFORMATION BELOW ABOUT 911/E911 DIALING CAREFULLY. CUSTOMER HEREBY ACKNOWLEDGES AND AGREES TO ALL OF THE INFORMATION BELOW REGARDING THE LIMITATIONS OF FIRST COMMUNICATIONS 911/E911 EMERGENCY DIALING SERVICE, AND THE DISTINCTIONS BETWEEN SUCH SERVICE AND TRADITIONAL WIRELINE 911 OR E-911 CALLS. CUSTOMER ALSO HEREBY AGREES TO (i) PROVIDE FIRST COMMUNICATIONS WITH AN ACCURATE SERVICE ADDRESS, MEANING THE ACTUAL PHYSICAL LOCATION WHERE CUSTOMER WILL BE LOCATED AND (ii) IMMEDIATELY UPDATE THE SERVICE ADDRESS IF CUSTOMER MOVES SERVICE TO ANOTHER LOCATION. FIRST COMMUNICATIONS RESERVES THE RIGHT TO TERMINATE CUSTOMER'S SERVICE IN THE EVENT CUSTOMER DOES NOT PROVIDE AND MAINTAIN AN ACCURATE SERVICE ADDRESS.**

CUSTOMER ACKNOWLEDGES THAT FIRST COMMUNICATIONS HAS TOLD CUSTOMER THAT THE SERVICE DOES NOT SUPPORT TRADITIONAL WIRELINE 911. CUSTOMER AGREES TO ADVISE ALL INDIVIDUALS OF THIS LIMITATION WHO MAY HAVE OCCASION TO PLACE CALLS OVER THIS SERVICE FROM THE LOCATION AT WHICH CUSTOMER HAS INSTALLED IT. CUSTOMER ACKNOWLEDGES THAT FIRST COMMUNICATIONS DOES NOT OFFER PRIMARY LINE OR LIFELINE SERVICES, AND THAT FIRST COMMUNICATIONS STRONGLY RECOMMENDS THAT CUSTOMER 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 CUSTOMER DIALS 911 ON CUSTOMER'S PHONE UTILIZING FIRST COMMUNICATIONS' SERVICE, CUSTOMER'S 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 CUSTOMER LISTED AT THE TIME CUSTOMER REGISTERED FOR THE SERVICE OR OTHER BACK-UP EMERGENCY ANSWERING SERVICES. IN ADDITION, CUSTOMER'S 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/E911 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/E911 CALL. THEREFORE, IF CUSTOMER DIALS 9-1-1 USING FIRST COMMUNICATIONS' SERVICE, CUSTOMER MUST IMMEDIATELY TELL THE DISPATCHER CUSTOMER'S LOCATION (OR THE LOCATION OF THE EMERGENCY, IF DIFFERENT). CUSTOMER MUST ALSO TAKE CARE NOT TO DISCONNECT THE LINE, AS THE DISPATCHER MAY NOT HAVE A PHONE NUMBER TO USE TO CALL CUSTOMER BACK. IF CUSTOMER IS UNABLE TO SPEAK AND DESCRIBE CUSTOMER'S LOCATION, THE EMERGENCY DISPATCHER MAY NOT BE ABLE TO LOCATE THE CUSTOMER.

B. FIRST COMMUNICATIONS 911/E911 SERVICE WILL NOT FUNCTION IF CUSTOMER'S TELEPHONE FAILS OR IS NOT CONFIGURED CORRECTLY OR IF CUSTOMER'S 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 CUSTOMER'S SERVICE BECAUSE OF BILLING ISSUES. IF THERE IS A POWER OUTAGE, CUSTOMER MAY BE REQUIRED TO RESET OR RECONFIGURE THE EQUIPMENT PRIOR TO BEING ABLE TO USE CUSTOMER'S FIRST COMMUNICATIONS SERVICE, INCLUDING FOR 911/E911 PURPOSES. FIRST COMMUNICATIONS CANNOT GUARANTEE THAT ALL PSAPS WILL MAINTAIN LINES TO ANSWER ALTERNATIVE 911/E911 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/E911 CALLS, FIRST COMMUNICATIONS SHALL MAKE REASONABLE EFFORTS TO NOTIFY SERVICE USERS WITH REGISTERED SERVICE ADDRESSES WITHIN



## CLOUD IP PBX SERVICE TERMS

THE AREA SERVICED BY THE PSAP.

FOR TECHNICAL REASONS ASSOCIATED WITH THE POSSIBILITY OF NETWORK CONGESTION, WITH FIRST COMMUNICATIONS 911/E911 SERVICE THERE IS A GREATER POSSIBILITY THAT CUSTOMER'S 9-1-1 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 CUSTOMER HAS CALL FORWARDING, LOCATE ME, DO NOT DISTURB, OR OTHER FEATURES PROGRAMMED AND IN USE AT THE TIME CUSTOMER DIALS A 911/E911 CALL, AND CUSTOMER'S 911/E911 CALL IS INTERRUPTED, THE EMERGENCY DISPATCHER MAY NOT BE ABLE TO CALL CUSTOMER BACK AT THE PHONE FROM WHICH CUSTOMER DIALED THE CALL.

IF CUSTOMER DOES NOT CORRECTLY IDENTIFY THE ACTUAL LOCATION WHERE CUSTOMER'S EQUIPMENT WILL BE LOCATED AT THE TIME CUSTOMER REGISTERS FOR THE SERVICE, 911/E911 COMMUNICATIONS MAY BE MISDIRECTED TO AN INCORRECT LOCAL EMERGENCY SERVICE PROVIDER.

FIRST COMMUNICATIONS 911/E911 WILL NOT FUNCTION CORRECTLY IF CUSTOMER MOVES CUSTOMER'S EQUIPMENT TO A LOCATION OTHER THAN THAT PROVIDED WHEN CUSTOMER REGISTERED FOR THE SERVICE. IN SUCH EVENT, IN ORDER TO HAVE 911 CALLING ROUTED CORRECTLY, CUSTOMER MUST UPDATE CUSTOMER'S SERVICE ADDRESS BY CONTACTING THE BUSINESS CUSTOMER SERVICE DEPARTMENT TOLL-FREE AT (877) 274-6277. UNTIL CUSTOMER HAS UPDATED CUSTOMER'S SERVICE ADDRESS AND ALLOTTED THE SUFFICIENT, ADVISED TIME FOR THE SERVICE ADDRESS UPDATE PROVISIONING TO COMPLETE, FIRST COMMUNICATIONS RECOMMENDS THAT CUSTOMER USES ALTERNATIVE MEANS OF ACCESSING 911/E911.

IN THE EVENT THAT CUSTOMER INTENDS TO USE FIRST COMMUNICATIONS 911/E911 SERVICE IN MULTIPLE LOCATIONS, AT LEAST ONE TELEPHONE NUMBER WILL BE REQUIRED FOR EACH LOCATION. CUSTOMER ACKNOWLEDGES AND AGREES TO THIS LIMITATION AND AGREES THAT CUSTOMER WILL OBTAIN AT LEAST ONE TELEPHONE NUMBER FOR EACH LOCATION ASSOCIATED WITH FIRST COMMUNICATIONS 911/E911 SERVICE.

CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT FIRST COMMUNICATIONS WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE AND/OR INABILITY TO DIAL 911/E911 USING CUSTOMER'S SERVICE OR TO ACCESS EMERGENCY SERVICE PERSONNEL OR BE LOCATED BY SUCH PERSONNEL DUE TO THE FIRST COMMUNICATIONS 911/E911 CHARACTERISTICS AND LIMITATIONS SET FORTH IN THIS DOCUMENT. CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS FIRST COMMUNICATIONS, ITS AFFILIATES AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS AND ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO CUSTOMER 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, CUSTOMER OR ANY THIRD PARTY OR USER OF THE SERVICE RELATING TO THE FAILURE OR OUTAGE OF THE SERVICE, INCLUDING THOSE RELATED TO 911/E911 DIALING.

FIRST COMMUNICATIONS UNDERSTANDS THAT CUSTOMER HAS READ, UNDERSTANDS, AND AGREES TO THE LIMITATIONS ASSOCIATED WITH THE BASIC 911 AND E-911 EMERGENCY SERVICES AVAILABLE THROUGH THE FIRST COMMUNICATIONS 911/E911 SERVICE.

CUSTOMER SHOULD CAREFULLY REVIEW THE TERMS AND CONDITIONS OF BUSINESS SERVICES SET FORTH ON FIRST COMMUNICATIONS' WEBSITE FOR ADDITIONAL PROVISIONS APPLICABLE TO FIRST COMMUNICATIONS' PROVISION OF SERVICE HEREUNDER, INCLUDING, WITHOUT LIMITATION, CONSENT TO DO BUSINESS ELECTRONICALLY, POTENTIAL CHARGES OR FEES, CONDITIONS OF USE, BILLING AND PAYMENT PROCEDURES, 911/E911 SERVICES, INCLUDING SIP OVER MPLS 911 SERVICES, INDEMNIFICATION, WARRANTY DISCLAIMERS AND LIMITATIONS OF FIRST COMMUNICATIONS' LIABILITY.