



## ETHERNET SERVICE TERMS AND DIA SERVICE LEVEL AGREEMENT

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 Ethernet Service provided pursuant to the Agreement ("Service"). Defined and/or capitalized terms used herein and not otherwise defined shall have the meanings given to them in the T&Cs.

### 1. **TERM**

Customer has 24 hours to test the Service once it is made available to Customer. If Customer has not contacted First Communications within 48 hours of such Service availability regarding non-acceptance of the Service specifying in detail the testing failure, the Term and billing for Service will begin effective as of the date such Service was first made available to Customer. At the end of the Term, Service will be provided on a month-to-month basis at the then current month-to-month rate subject to the terms and conditions of the Agreement, unless and until prior written notice of termination of Service is received by Customer from First Communications, or by First Communications from Customer as required below. At any time after expiration of the Term, if Customer elects to renew Service at the then current rates, Customer must enter into a new Service Order or Amendment with First Communications, subject to approval of any such renewal by First Communications in its sole discretion. Customer must provide 60 days prior written notice to terminate/disconnect Service, including any termination at or after expiration of the Term, and will be subject to an Early Termination Fee in the event of termination of Service prior to expiration of any Term.

### 2. **PROJECTED INSTALLATION TIMEFRAME**

Projected installation timeframe is within 120 days from the date of order acceptance by First Communications' underlying carrier. In the event of Special Construction, the projected installation timeframe may be extended. The projected timeframe is not a commitment to delivery or delivery date of Service. Customer acknowledges and agrees that Service is subject to the terms and conditions of the Agreement and may be delayed due to credit-related, construction, site preparation, Force Majeure Event or other foreseeable or unforeseeable issues.

### 3. **SPECIAL CONSTRUCTION REQUIREMENTS AND CHARGES**

Service is subject to availability and operational limitations of carrier systems, facilities, materials and equipment. If such systems, facilities, materials and equipment (including, but not limited to, outside plant, cable, repeater, conduit, structures and/or electronics) are not available, "Special Construction" will be required and Special Construction costs ("Special Construction Costs") will apply and be charged to Customer. All Special Construction Costs associated with delivery of the Service shall be the responsibility of Customer, which costs include, but are not limited to, recovery of all direct costs associated with the length, type, and/or size of facility and/or cable deployment required, equipment deployment required, and Term of Service requested. In the event of Special Construction Costs, First Communications will notify Customer via e-mail or otherwise of any Special Construction Costs, additional MRC due to additional equipment necessary to provide Service, or extensive Special Construction delivery timeframe. Customer must submit the signed acceptance of Special Construction Costs and/or conditions to First Communications within 25 calendar days after the date of e-mail or other delivery by First Communications of the Special Construction notification or Customer shall be deemed to have cancelled the request for Service without incurring Early Termination Fees. First Communications, at its sole discretion, may require pre-payment of all or part of the Special Construction Costs upon Customer acceptance before proceeding with the order, and the remaining Special Construction Costs will be included on the first invoice for the Service. If there are no Special Construction Costs, additional MRCs or extensive Special Construction timeframes or if Customer has given notification of acceptance and, as applicable, paid based on the Special Construction notification, First Communications will proceed with the order. Any executed acceptance agreement shall become part of the Agreement as if fully set forth herein.

### 4. **CONDUIT REQUIREMENTS AND CHARGES**

Service is subject to availability and operational limitations of conduit or other designated pathway ("conduit") from Customer property line to the minimum point of entry (MPOE) within which the access vendor may place carrier facilities to terminate service from the carrier network to the MPOE. If such conduit is unavailable, Customer must arrange for construction of such conduit through either First Communications and/or a third-party vendor, and all associated costs of constructing said conduit shall be the responsibility of Customer. If conduit is needed, First Communications and/or its access vendor will notify Customer via hard-copy, e-mail or other notice of any necessary conduit construction during the access vendor's site survey.

Customer must submit signed acceptance of responsibility to furnish required conduit to First Communications within 14 calendar days after the date of notice of the conduit construction requirement, or Customer shall be deemed to have cancelled the request for Service without incurring Early Termination Fees. In the event Customer selects First Communications to handle construction of necessary conduit, First Communications, at its sole discretion, may require pre-payment of all or part of the conduit construction costs upon Customer acceptance before proceeding with the order, and the remaining conduit construction costs will be included on the first invoice for the Service. If there are no conduit construction requirements or if Customer has given notification of acceptance and, as applicable, paid based on the conduit requirement notification, First Communications will proceed with the order. Any executed acceptance agreement shall become part of the Agreement as if fully set forth herein.



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### 5. SITE PREPARATION

Customer agrees to make Customer's site ready for entrance facilities and to be responsible for all access and preparation required to deliver the Services, including working with the property owner or other third party if applicable. Customer shall provide one dedicated fused/breaker: 15 amps, 110V AC outlet within 6 feet of First Communications' NTE equipment. Said outlet shall be 3-pronged and properly grounded. In addition, Customer shall provide all site requirements, which will be detailed in First Communications' Site Survey Form.

### 6. INSTALLATION DELAY BY CUSTOMER

If Customer expects to miss a projected Start of Service Date by more than 24 hours, Customer must advise First Communications in writing at least 7 days before the projected Start of Service Date and pay \$400.00 or First Communications' then current delay fee, in addition to any third party provider charges resulting from Customer's delay. If Customer fails to comply with this notice requirement, billing will commence on the projected Start of Service Date.

### 7. IP ADDRESS

First Communications will provide IP address assignments for use with its Internet Service, which is subject to the Use of Service requirements and Acceptable Internet Use Policy set forth in the T&Cs. First Communications adheres 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 its customers. IP addresses assigned by First Communications are non-transferable and remain the sole property of First Communications. First Communications reserves the right to recover any IP address(es) due to non-use or a violation of the Agreement, at its sole discretion. Upon Service termination or expiration, First Communications requires, and Customer agrees, to return all assigned IP addresses.

### 8. 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 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 or software is likely to cause hazard or service interruption or obstruction, Customer will eliminate such likelihood at First Communications' request, or at First Communications' option First Communications may take such action as necessary to eliminate such likelihood. Any costs incurred by First Communications as a result of such action may be recovered by First Communications through invoice of such amounts to Customer

**CUSTOMER SHOULD CAREFULLY REVIEW THE TERMS AND CONDITIONS OF BUSINESS SERVICES FOR ADDITIONAL PROVISIONS APPLICABLE TO FIRST COMMUNICATIONS' PROVISION OF ETHERNET SERVICE HEREUNDER, INCLUDING, WITHOUT LIMITATION, POTENTIAL CHARGES OR FEES, CONDITIONS OF USE, ACCEPTABLE INTERNET USE POLICY, BILLING AND PAYMENT PROCEDURES, 911/E911 SERVICES, INCLUDING SIP OVER MPLS 911 SERVICES, INDEMNIFICATION, WARRANTY DISCLAIMERS AND LIMITATIONS OF LIABILITY.**



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This Service Level Agreement (“SLA”) is subject to the terms and conditions of the applicable Agreement between First Communications and Customer regarding Ethernet Dedicated Internet Access (DIA) Service (for purposes of this SLA only, “Service”). This SLA is not applicable to Business Internet or any LTE Service, which is provided on an as is basis. Defined and/or capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Company’s Terms and Conditions of Business Services posted on the [www.firstcomm.com](http://www.firstcomm.com) website.

**1. Network and Port Components.** This SLA applies solely to the Service and the underlying network components of the First Communications IP Network (“IP Network”) used solely for the purpose of providing the Service, and does not modify or affect any other SLAs provided by First Communications (if any) for telecommunications or information services purchased by Customer. The IP Network includes routers, switches, fiber and any other facilities that are owned by First Communications or other providers specifically selected by First Communications. As defined in this SLA, a Point of Presence (“POP”) means a First Communications POP location that represents the provider edge of the IP Network.

**2. Network and Port-Related Goals.** The following service level goals (“Goals”) apply to Ethernet DIA IP Ports purchased from First Communications. The Goals associated with Latency and Packet Loss are measured using monthly averages from the First Communications IP Network and apply after the Service has been accepted for use.

**Network Availability**

Total amount of Internet Service “downtime” (in minutes) from all trouble tickets relative to Network Outage time (per individual Service) rounded up to the nearest hour.

*Example: Total Network Outage time of 20 minutes = 1 hour*

**Network Latency**

Latency measured by averaging sample measurements (in 5 minute intervals) taken during a calendar month between First Communications IP Network routers.

**Packet Loss**

Packet Loss measured by averaging sample measurements taken during a calendar month between First Communications IP Network routers.

**Mean Time to Repair (MTTR)**

MTTR is measured by the following formula:

$$\frac{\text{Sum of all trouble tickets Service restoration intervals relative to the Network Outage in the calendar month}}{\text{Total number of trouble tickets relative to Network Outage in the calendar month}}$$

Applicable Components	Goal	Service Credits***
*Network Availability	Ethernet DIA: 99.9% availability Premium Ethernet DIA: 99.999 % availability	1 day credit = 1/30 of the monthly fees for the applicable location(s) per each hour of downtime (e.g., downtime between 1 to 60 minutes = 1 day credit eligible) in a given billing period
**Latency	Less than or equal to 65ms maximum monthly average	1 day credit = 1/30 of the monthly fees for the applicable location(s) if average monthly latency exceeds 65ms
**Packet Loss	Less than 1% average per month	1 day credit = 1/30 of the monthly fees for the applicable location(s) per each percentage above the monthly average packet loss of 1%
****Mean Time to Repair (MTTR)	4 hours (monthly average)	1 day credit = 1/30 of the monthly fee(s) for the applicable Affected Service(s) for each hour that exceeds the initial 4 hour MTTR in a given calendar month

**In all instances, see Section 4 for remedies, requirements and exceptions.**

**\*NOTE:** First Communications Components Included in Network Availability: (a) First Communications dedicated facilities used to provide connectivity between Customer’s location, or First Communications provided access to the First Communications POP, and (b) First Communications provided CPE (Channel Bank, Router, CSU/DSU) if any.

**\*\*NOTE:** First Communications Network Latency and Packet Loss are relative to the First Communications IP Network only and do not include local access or Customer specific performance. Latency and Packet Loss are measured on an ongoing basis, therefore if Customer believes First Communications has failed to meet the network performance goals set forth above (Latency and Packet Loss), then Customer must contact First Communications as described below. Upon First Communications verification that the actual average IP Network Latency for the preceding 30 days has exceeded 65ms, Customer will be eligible for SLA credit.

\*\*\*\*NOTE: MTTR is calculated less access time. Access time is (a) the time it takes for Customer to respond to First Communications' repair questions related directly to current open trouble ticket(s), or (b) the time a First Communications on-site repair technician waits to gain access to the Customer or other required premises.

### 3. Maintenance.

**3.1 Network Normal Maintenance.** "Network Normal Maintenance" means scheduled maintenance, including but not limited to upgrades of hardware or software or upgrades to increase capacity. Normal Maintenance may temporarily degrade the quality of the Service, including possible Network Downtime. Such effects related to Network Normal Maintenance will not entitle Customer to service credits. "Local Time" means the local time in the time zone in which an Affected Service is located. First Communications may change the maintenance window times upon posting to the website or other notice to Customer.

**3.2 Network Urgent Maintenance.** "Urgent Maintenance" means efforts to correct network conditions that are likely to cause a material Service outage and that require immediate action. Urgent Maintenance may degrade the quality of the Service, including possible Network Downtime. Such effects related to Urgent Maintenance will entitle Customer to service credits only as set forth in this SLA. First Communications may undertake Urgent Maintenance at any time deemed necessary and will provide notice of Urgent Maintenance to Customer as soon as is commercially practicable under the circumstances.

### 4. General.

**4.1 Remedies; Requirements.** To be eligible for service credits under this SLA, Customer must be in good standing with First Communications and current in its obligations. To receive service credits, Customer must contact Customer Care and submit the relevant trouble ticket information within five business days following the end of the month in which the relevant Goal was not met. First Communications will determine the credits provided to Customer in accordance with the requirements of this SLA. A credit will be applied only to the month in which the event giving rise to the credit occurred. The credits will apply to the MRCs of the Affected Service after application of all discounts and do not apply to MRCs of other Services. The maximum service credits issued in any one calendar month will not exceed: (a) seven days charges pro-rated from the MRC of the Affected Service with respect to solely Network Availability, or (b) 50% of the MRCs of the Affected Service with respect to Latency or Packet Loss. "Affected Service" means the applicable Service hereunder that fails to meet the applicable Goal. In no event will the total credit, in the aggregate for all credits issued in one month, exceed the equivalent of 50% of the relevant MRCs for the Affected Service. Cumulative credits in any one month must exceed \$25.00 to be processed. If Customer fails to notify First Communications in the manner set forth above with respect to the applicable SLA credits, Customer will have waived its right to such SLA credits for that month. CUSTOMER'S RIGHT TO RECEIVE SUCH CREDITS SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND FIRST COMMUNICATIONS' SOLE AND EXCLUSIVE OBLIGATION IN THE EVENT OF A PERFORMANCE FAILURE, EVEN IF SUCH REMEDY IS DEEMED TO FAIL OF ITS ESSENTIAL PURPOSE.

**4.2 Service Credit Exceptions.** Service credits will not be issued where the SLA is not met as a result of:

- (a) The acts or omissions of Customer, its affiliates or their respective employees, contractors, agents or end users;
- (b) The failure or malfunction of equipment, applications, facilities or systems not owned or controlled by First Communications;
- (c) A Force Majeure Event;
- (d) Network Normal Maintenance, alternation or implementation;
- (e) The unavailability of required Customer personnel, including as a result of failure to provide First Communications with accurate, current contact information; or
- (f) First Communications lack of access to the Customer or other premises where reasonably required to restore the Service.

**4.3** First Communications reserves the right to review and deny any credits under this SLA or otherwise claimed by Customer if, in First Communications' reasonable judgment, the claim does not meet the criteria established above for such claim.