

## Terms and Conditions of Business Services

### FIRST COMMUNICATIONS, LLC TERMS AND CONDITIONS OF BUSINESS SERVICES

#### I. AGREEMENT INFORMATION

- A. Agreement.** These Terms and Conditions of Business Services (formerly referred to as the Business Conditions of Use or Ethernet and MPLS Conditions of Use) (the "T&Cs") govern the provision by First Communications, LLC ("First Communications" or "Company") of all Services (defined below). **PLEASE READ THESE T&Cs CAREFULLY.** These T&Cs are an integral part of your business relationship and Agreement (defined below) with Company for Services, are incorporated by reference as if fully set forth therein in any agreement between the Parties including the Master Service Agreement and/or any Service Order, and are posted on Company's website at [www.firstcomm.com](http://www.firstcomm.com). **By subscribing to or making use of our Services, you are agreeing to abide by the terms of the Agreement, including these T&Cs, and agreeing that the Services are only for non-residential and/or commercial or business use.** Further, you represent and warrant that as a representative of Customer, you are at least 18 years of age and have the power, authority and capacity to enter into the Agreement on behalf of Customer and to legally bind Customer to these T&Cs and the Agreement. If Customer does not agree to these T&Cs, Customer may not use or access the Services.
- B. Consent to Do Business Electronically; Click Through Ordering.** By signing the Agreement, you agree that you have reviewed these T&Cs and consent to transact business using electronic communications, to receive notices, disclosures and other communications electronically, and to use electronic signatures in lieu of paper documents at our discretion. In order to conduct business electronically, you must have access to an electronic device with Internet connection and the ability to print, store or download communications. If you prefer not to sign documents or do business electronically, you may request paper copies or withdraw your consent upon 30 days written notice to us. Your withdrawal of consent to do business electronically will not affect your Agreement or Services, which will remain valid and enforceable. Despite your consent, we reserve the right to provide communications, sign documents and do business with you in paper format at any time. You understand and agree that any click through order for Cloud IP PBX Service and/or other Services accepting these T&Cs shall bind you to the terms and conditions set forth herein, the applicable Service Terms and the Agreement.
- C. Certain Definitions.** As used in these T&Cs, the following words have the respective meanings set forth below:
- i. **"4G LTE Failover"** means a premised-based Managed Services nonstandard add-on feature using routing intelligence between primary connectivity router and cellular-based failover device to re-route certain traffic to the wireless 4G LTE connection upon loss of your MPLS or other Internet or WAN connection.
  - ii. **"911 Service"** means functionality that allows end users to contact emergency services by dialing the digits 9-1-1.
  - iii. **"Agreement"** means the legal contract for Services between you and Company, and consists of your Master Service Agreement, these T&Cs (and any terms referenced or incorporated herein), your Service Order(s) including any click through order via our Cloud IP PBX ordering portal, any Service Level Agreement or Service Terms applicable to an individual Service, the Letter of Authorization, Letter of Agency and/or Change of Responsible Organization (individually or collectively, "LOA") if applicable, and any other executed agreement between the Parties including any Amendment. Notwithstanding any language to the contrary, these T&Cs take precedence over any conflicting language in any LOA.
  - iv. **"Amendment"** means a written Amendment to the Agreement expressly referencing amendment of applicable agreement(s) or terms and executed by each of the Parties.
  - v. **"Basic 911 Service"** means the ability to route an emergency call to the designated entity authorized to receive such calls serving the Customer's registered or user-provided address. With basic 911 Service, the emergency operator answering the phone will not have access to the caller's telephone number or address information unless the caller provides such information verbally during the emergency call.
  - vi. **"Business Internet Service" also referred to as "BCI", "BI" or "HFC",** means business Internet service or Internet over coax or hybrid coax service that may be provided with an optional add-on Wi-Fi router feature for wireless access to the Internet.
  - vii. **"Charges"** means any billed item or group of items on your account, including, without limitation, pricing, rates, fees and Charges applicable to the Services. Charges may include minutes of use, airtime, access, features, texting, data usage, long distance, directory and operator or directory assistance charges, equipment, material, labor, travel, monthly recurring charges ("MRCs"), non-recurring charges including any one-time construction costs ("NRCs"), conduit costs, site, network, facility or equipment preparation costs, Special Construction Costs, or Custom Installation (as defined in Business Internet Service section below) and/or any other additional installation costs, expenses or NRCs, any taxes, surcharges, fees, assessments and/or recoveries determined by us to be imposed on you or us as a result of use of the Services on your account, including taxes on leased or provided equipment; and Early Termination Fee or other amounts payable under the Agreement.
  - viii. **"Cloud IP PBX Service"** means a managed hosted voice over IP ("VoIP") service with certain optional features, including, without limitation, applications, offered as is, as available, that requires Internet service, but does not include Internet service. Internet

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and/or other telecommunication services may be purchased through us in conjunction with or in addition to the Cloud IP PBX Service.

- ix. **"Customer"** or **"you"** means the person or entity subscribing to our Services and with whom we have entered into the Agreement. This includes a person or entity we reasonably believe is acting with the authority, capacity or knowledge of the person or entity whose name is on the account.
- x. **"Enhanced 911 Service"** or **"E911"** means the ability to route an emergency call to the designated entity authorized to receive such calls, which in many cases is a Public Safety Answering Point ("PSAP"), serving the Customer's registered or user-provided address and to deliver the user's telephone number and registered address information automatically to the emergency operator answering the call.
- xi. **"Ethernet"** means Internet access circuits or lines provisioned for Customer's access to the Internet.
- xii. **"Firewall"** means a leased device designed for detection, obstruction, destruction and/or prevention, as applicable of computer viruses, trojans, worms, unauthorized access or use and/or any similar act/thing that may affect a computer system or network that is a feature of Managed Security Service.
- xiii. **"First Communications"** or **"Company"** means First Communications, LLC and its successors and assigns, and is also referred to herein as "us," "our" and "we."
- xiv. **"Fixed Wireless"** means fixed wireless broadband spectrum access for connectivity.
- xv. **"HFC"** means hybrid fiber coaxial Internet service and is provided to you as a "Business Internet Service" as defined above.
- xvi. **"Incomplete Call Ratio"** or **"ICR"** is the ratio of total call attempts less completed calls to the total number of attempted calls expressed as a percentage;  $ICR = [(Total\ Call\ Attempts - Total\ Completed\ Calls) / Total\ Call\ Attempts] * 100$ . A completed call is a call for which Company receives answer supervision from the terminating end. Total call attempts means the total of all calls attempted, whether completed or incomplete.
- xvii. **"LMDS"** is local multipoint distribution service provisioned for Fixed Wireless Service.
- xviii. **"LTE"** means long-term evolution wireless wide area 4G network technology.
- xix. **"Managed Services"** means the provision by us of services for Managed Router Solution, Customer Router Management Services, SD-WAN Service, Managed Security Service, Managed Information Security Service, Cloud IP PBX Service, Managed Wi-Fi, Server Application Monitoring or Server Application Monitoring Plus, Customer Relationship Management (CRM), and/or nonstandard features or applications expressly added by written agreement (e.g., limited SIP signaling encryption or Session Border Controller), and any software, management, monitoring, failover and/or other services performed or features or applications provided by or through us directly related thereto.
- xx. **"Managed Information Security Service"** is a licensed and managed software application and related equipment and features provided by Company or its Representative that augments your own monitoring, identification and analysis of security incidents, events, threats and vulnerabilities within your information systems and network traffic.
- xxi. **"Managed Security Service"** means the provision of Firewall management and monitoring capabilities as described herein.
- xxii. **"MPLS"** means software-driven multiprotocol label switching that is an Internet access value added service.
- xxiii. **"Parties"** means First Communications and you.
- xxiv. **"Professional Services"** means professional services to be provided by us and/or our Representatives as set forth in an executed Service Order, which shall include technical, engineering, configuration, training, site survey or preparation, consulting, remediation, or other similar labor or services that we may offer now or in the future whether provided alone or in conjunction with or in addition to any other Services, in each case that are not included as standard within the provision of our other Services.
- xxv. **"Proof of Concept"** or **"POC"** means any Service provided by us and/or our Representatives on a trial basis to you.
- xxvi. **"Representative"** or **"Representatives"** means First Communications' affiliates, employees, agents, subagents, contractors, subcontractors, representatives, suppliers, vendors, carriers, hosting partners, providers, licensors, or anyone providing Services under the Agreement or underlying services with respect to the Services and their respective affiliates, and you agree that any such Representative(s) shall be third party beneficiaries of the Agreement including these T&Cs.
- xxvii. **"Server Application Monitoring"** provides you with access to an application portal to monitor certain usage and service metrics for your SQL, Microsoft or Linux servers, as applicable.
- xxviii. **"Server Application Monitoring Plus"** is Server Application Monitoring service that may require administrative access to your application servers by Company intended to provide additional monitoring capabilities to you for application specific servers.
- xxix. **"Service"** or **"Services"** means any and all non-residential and/or commercial or business telecommunication or managed services we provide to you, such as local voice and data transmission service, dedicated local, long distance (intrastate, interstate, or international), Business Internet Service, Ethernet, MPLS, SIP, and TDM DIA services, Data Center Services, Managed Services including Cloud IP PBX, and other services directly related thereto, including, without limitation data transmission service, Internet service, web and audio conferencing, features, applications or portals, technical, engineering, configuration, training or other Professional Services or labor, and other similar services that we may offer now or in the future, whether provided alone, in conjunction with or in addition to any other services. The Agreement applies to all in-state ("intrastate") long distance, including IntraLata toll (sometimes called "local toll") calls in those states that do not regulate rates through filings with the state public utility commissions, as well as any other applicable Services. In states where rates are regulated through filings with state public utility commissions, the Agreement will apply to the extent permitted by law.

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- xxx. "Service Level Agreement" or "SLA" means the Service Level Agreement relating to a specific and applicable Service, which describes the Company's service level targets for each of the following Services as discussed in Article VIII below: MPLS, Ethernet, CloudConnection, DIA T1, Essential T1 and FirstConnect T1. Business Internet, Data Center, LMDS/Fixed Wireless or any LTE Service and Managed Services are provided without SLA, and no SLA for any Service shall apply with respect to location(s) for which Company provides Business Internet, Data Center, LMDS/Fixed Wireless or LTE Service and/or Managed Services.
- xxxi. "Service Terms" means our product specific Service Terms for each of Data Center, Cloud IP PBX, MPLS and Ethernet Services posted online separately from these T&Cs but incorporated by reference herein as if fully set forth herein, as further described in Article VIII below.
- xxxii. "Session Border Controller" or "SBC" is provided by us as a Managed Services nonstandard add-on feature, as further described herein under Managed Services.
- xxxiii. "Short Duration Call" means a call that is 6 seconds or less in duration.
- xxxiv. "Service Order" means any Service Order, Service Agreement, applicable rates, tariffs and/or price/service guides posted on Company's website at <http://www.firstcomm.com>, click through order via our Cloud IP PBX ordering portal, or other written agreement executed by Company setting forth Charges applicable to Service(s) ordered thereunder, in each case as the same may be modified by Company at any time. Where required by applicable law, Company maintains rate information at <http://www.firstcomm.com>. Rates for Alaska, Hawaii and international countries are located at <http://www.firstcomm.com/?s=international>.
- xxxv. "SIP" (also called Concurrent Call Paths) means Session Initiation Protocol.
- xxxvi. "Special Construction Costs" apply to our Ethernet and our MPLS Services, which are each subject to the availability and operational limitations of carrier systems, facilities, materials and equipment. If such systems, facilities, materials and equipment (such as outside plant, cable, repeater, conduit, structures and/or electronics) are not available, "Special Construction Costs" associated with delivery of the Ethernet or MPLS Service will apply, which costs include, but are not limited to, recovery of direct costs associated with the length, type, and/or size of facility and/or cable deployment required, equipment deployment required, and Term of Service.
- xxxvii. "TSP" means Telecommunications Service Priority for eligible national security and emergency preparedness organizations.

## II. FIRST COMMUNICATIONS SERVICE

**A. Rates.** Information concerning your Service and Charges are described in your applicable Agreement including as set forth in any Service Order. To obtain a copy of your Agreement, see Notices Section below for Company contact information. We provide the initial Agreement at no charge, but may charge for copying, handling and postage charges if you request additional copies. First Communications' public reference document is available for inspection at our headquarters located at 3340 West Market Street, Akron, OH 44333. If you misrepresent your eligibility for any Services, you agree to pay us the additional amount you would have been charged under the most favorable rates or Charges for which you are eligible. We may change the prices or add new products with prices, or we may delete products or prices, including without limitation, termination of any special promotion or discount upon notice, in accordance with state law.

The appropriate Charges for your purchase will be billed to you on your bill. To the extent applicable, "Usage Charges" for Service are based upon the total time that you use our Services, subject to applicable billing increments and any additional Charges that may apply. Such 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. Further, Usage Charges and overages relating to your data plan may apply to data transmissions, alerts and/or other information sent through the network and associated with the Service, including in connection with 4G LTE Failover, and you agree to pay for such usage and related overages. We determine rates and billing increments for Usage Charges with respect to applicable Services. Calls or data usage that involves a fraction of a billing increment will be rounded up to the next whole billing increment. In addition, if the computed call or Usage Charges include any fraction of a cent then the fractional cents will be rounded up to the next whole cent. You acknowledge that certain pricing set forth in the Agreement may be based on underlying facilities or services being available to us, including facilities being available as unbundled network elements (UNEs) where your pricing does not include special access service charges. We may cancel or refuse to provide Service for any or all location(s) under the Agreement for which we are unable to secure or maintain underlying facilities or services at quoted pricing. In such event, we will notify you of the affected Service(s) or location(s), and if applicable the additional Charges required in order for Company to provide Services. If the Parties are unable to agree on any required modifications to the Agreement, including but not limited to such increased Charges, within 10 days (or such other timeframe as required by applicable regulatory law) after notice by us, then we will not be required to provide Services for such affected Services and/or location(s). Notwithstanding anything to the contrary in the Agreement, in the event that any regulatory agency, legislative body, court or incumbent or Representative modifies or creates regulations or laws that result in, or changes, charges and/or fees to Company in a manner that increases the costs to provide Services, we reserve the right to pass such increased costs to you.

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**B. Parameters.** You will adhere to the following call parameters/thresholds, including without limitation with respect to Unlimited Services and/or Unlimited LTE, or applicable surcharges will be applied. You acknowledge and agree that we provision Services to you not to exceed 10 calls per second ("CPS") per DS3 or SIP equivalent. You agree that you will not intentionally use the Services for Short Duration Call traffic, and in any event, will not have Short Duration Call traffic equal to 10% or greater of your total aggregate call traffic within any 7-day period ("Short Duration Call Threshold"). You further agree that your Incomplete Call Ratio will not exceed 55% ("ICR Threshold"). If you violate the Short Duration Call Threshold and/or ICR Threshold, in addition to any and all applicable per minute or usage rates or other Charges, Company may in its sole discretion impose a surcharge for any applicable billing period equal to: (1) \$0.03 per Short Duration Call made at the 10% or greater Short Duration Call Threshold level; and (2) \$0.03 per incomplete call in excess of the ICR Threshold. We will endeavor, but are not obligated, to notify you (which for this purpose includes notice by email) of a Customer Short Duration Call traffic pattern change or ICR issue, in which event in either case, you shall take appropriate curative action within 24 hours to comply with the applicable thresholds. We reserve the right to modify the ICR Threshold or Short Duration Call Threshold upon notice at any time in the event industry or Representative call standards change.

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

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. Unlimited Services may not be used for conference calling (other than for conference services provided by us for typical internal commercial use), call forwarding, monitoring or transcription services, data transmissions, transmission of broadcasts, transmission of recorded material, auto, constant or iterative dialing, other connections that do not consist of substantially uninterrupted live dialog between individuals, or any other activity that would be inconsistent with normal and reasonable small business usage. Our Unlimited Services are for reasonable commercial internal use consistent with the types and levels of usage by our typical customers. "Typical" refers to the calling or other use patterns and/or average volume of at least 95% of our business customers using such Service for internal commercial use and does not represent typical usage by unique organizations such as call centers, resellers, fax messaging services, telemarketers, or for use without live dialog such as transcription services, intercom or monitoring services. You agree that you will not employ methods or use devices to take advantage of any Unlimited Services by using Service in an abusive manner, in violation of the terms herein or for means not intended by us. Use of Unlimited Services beyond typical use shall be deemed abusive and is prohibited. You agree that Company in its sole discretion will determine if use of any Unlimited Services is abusive, and in such case, you agree to pay a per minute or other applicable overage fee for use in excess of typical levels at the applicable current rate established by us. In addition, we shall be afforded all other rights and remedies set forth below with respect to abusive or prohibited use.

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

For all unlimited LTE offerings ("Unlimited LTE"), unlimited service applies only to owned and operated wireless network coverage area within the United States. Unlimited LTE Services may not be used for streaming video or audio, web hosting and/or public or guest Wi-Fi. Data restrictions apply for Unlimited LTE and after Customer has exceeded its data usage threshold on a line in any given month, we may slow the data on that line during periods of network congestion for the remainder of that cycle. Service may not be used with any device other than Company-approved LTE enabled routers.

If any LTE traffic to and from a particular autonomous system number ("ASN") exceeds 10% of Customer's monthly committed data rate, then we make no guaranty of performance towards packet loss and/or latency to and from that ASN. This is applicable to "transit" autonomous systems that are used to reach end user destinations. Further, you understand and agree that all LTE Service is offered and provided by us and our Representatives as is, as available, and without SLA or other representation or warranty of any kind.

Services provided by Company, including Unlimited Services or Unlimited LTE, are intended for your own normal internal commercial use and not for wholesale use, use with automated dialing equipment, for fax/voice blasts, for online streaming, web hosting, public or guest Wi-Fi, or for resale. We presume that certain usage, dialing, or calling patterns indicate that you are not using the Service for your own reasonable internal commercial use. We reserve the right to suspend, terminate or restrict any Services, including Unlimited Services or Unlimited LTE, immediately in the event we reasonably believe that you are engaging in prohibited or abusive activity hereunder. If you believe that we are in error as to our determination of your prohibited or abusive use, you may contact our Customer Service, and depending on the circumstances, we may reactivate Service; provided, however, if the usage, dialing or calling patterns that we deem to indicate

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prohibited or abusive use continue, we reserve the right to again suspend, terminate or restrict any Services immediately with no ability of Customer to reactivate such Service.

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

**C. Use of Service.** You agree not to use any Service in any way for an unlawful, fraudulent or abusive purpose, for purposes or in ways that infringe upon others' intellectual property rights including any Representatives' rights, in any way that damages our property or interferes with or disrupts our system or other users' or Representatives' property or systems, that violates trade or economic sanctions and prohibitions as promulgated by the departments of Commerce, Treasury or any other government agency, that constitutes high volume or excessive use and/or exceeds your permitted access to our Service, or that interferes with the network's ability to fairly allocate capacity among users or that otherwise degrades Service quality for other users. Examples of prohibited use include, but are not limited to: (i) accessing, altering, circumventing or interfering with, or attempting or assisting to access, alter, circumvent or interfere with, our facilities and/or our information or facilities or information of others by rearranging, tampering or making an unauthorized connection with any equipment, facilities or system using any scheme, false representation or false credit devices or by or through any other fraudulent means or devices whatsoever, whether within or outside of our service area (including, without limitation, Cloning Fraud and the alteration, modification or other change to equipment which would be viewed by us as a provision of two pieces of equipment through one number, or subscription fraud); (ii) 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 (iii) below) or otherwise denigrate network capacity or functionality; (iii) "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; (iv) generating "spam," junk faxes or unsolicited commercial or bulk messages, pre-recorded messaging, email or transmissions (or activities that facilitate or have the effect of facilitating the dissemination of such messages, email or transmissions); (v) any activity that adversely affects the ability of other users or systems to use either our services or the Internet based resources of others, including the generation or dissemination of viruses, malware or "denial of service" attacks; (vi) accessing or attempting to access without authority the services, information, accounts or devices of Company or others, or penetrating or attempting to penetrate Company's or another entity's network, security or systems; (vii) running software or other devices that maintain continuous active Internet connections when a computer's connection would otherwise be idle, or "keep alive" functions; (viii) outpulsing digits from Customer premises equipment ("CPE") in violation of rules and regulations governing such outpulsing; (ix) altering your voice CPE in such a manner that interferes with our ability to provide emergency service, such as but not limited to, moving IP phones to other locations, or using voice services provided to a single location to other locations over a private network; (x) using Services, hardware, software, circuits, technology, documentation or other materials outside the United States and/or in violation of the export prohibitions set forth herein; or (xi) conveying information deemed to be unlawful, harmful or offensive, including but not limited to, foul, profane, obscene, salacious or prurient language, or impersonating another person or entity 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, court or administrative orders and regulations while using the Services and you must not transmit any communication that would violate any laws, court or administrative orders, or regulations, or would likely be offensive or injurious to the recipient. You must also comply with all authorized use policies, terms and conditions of any Representative as applicable. You are responsible for all content you transmit while using the Services. Resale or transfer, in whole or in part, of any Service is strictly prohibited. You may not take any action or install any amplifiers, enhancers, repeaters or other devices or software or service that, in our sole discretion, modifies, disrupts, circumvents or interferes in any way with the facilities, wires or radio frequencies utilized by us to provide service or to control access to service. Some services may not be available or may operate differently in selected markets or jurisdictions. We may add or delete coverage without providing notice to you.

We further reserve the right to take measures to protect our network and other users or service providers from harm, compromised security or capacity or degradation in performance. These measures may impact your 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 violation of these Use of Service restrictions or otherwise in a manner that adversely impacts our network or other users or service providers, compromises network security, service levels, capacity or data flows. We may monitor your compliance, or other subscribers' compliance with these T&Cs, but we will not monitor the content of your communications except as otherwise expressly permitted or required by law.

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**D. Numbers.** Company 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 or proprietary rights and you may not: (i) modify the telephone number(s) assigned to you, or programmed into any device; (ii) transfer or duplicate any assigned telephone number(s) other than as authorized by us; or (iii) transfer the telephone number(s) to any other individual or entity without our permission. We understand that, per Federal Communications Commission ("FCC") regulations, you have the right to take your telephone number(s) to another service provider at any time; however, an Early Termination Fee may apply as described below. We do not guarantee that transfers to or from us will be successful. However, we will make reasonable efforts to resolve porting issues. We reserve the right in our discretion to recover any telephone number(s) due to a breach of the Agreement including your violation of the Use of Service or Authorized Usage provisions.

**E. Authorized Usage.** You are responsible for all usage on your account. We will not be responsible for any fraud, abuse or misuse of Services by any party. Further, we will not be responsible for any usage on lost, stolen or misplaced devices, equipment, software or facilities. You acknowledge that it is your responsibility to properly secure all equipment, devices, software or facilities to prevent it or them from being compromised and to prevent fraudulent usage, access or calls from being incurred. Further, you are responsible for establishing, maintaining and securing any passwords in conjunction with the Services and/or equipment, devices, software or facilities including for voicemail, portals, databases, computers, software, programs, or otherwise. You agree that you shall not use passwords consisting of default passwords or passwords consisting of names or repeating or consecutive numbers or letters in conjunction with any Service or equipment, devices, software or facilities. In addition, you agree that you are responsible for any encryption, security or confidentiality of data, media, information, program or content and that Company does not provide encryption of any such materials. In any event, you are solely liable and responsible for, and shall indemnify, defend and hold harmless Company with respect to, all security, fraud, abuse or related issues with respect to the Services.

You must immediately notify us and provide us with the documentation and information we request (including affidavits and police reports) if your Service or related accounts or equipment are used or accessed. Once you notify us of such fraudulent use or access, 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 or recurring fraudulent usage. In addition to rights and remedies set forth herein and available at law or equity, Company 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 in our discretion is deemed to be fraudulent or illegal. We will endeavor to notify you of activity in violation of the Agreement prior to termination, suspension, interruption or restriction of Service.

**F. 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 systems, facilities, equipment, materials, software or services being available from other carriers and/or Representatives. We may have to do things such as change the code, telephone number(s), and/or IP address(es) 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 or replace equipment or facilities, 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. If any Service is interrupted and fails to meet Company service level objectives, the terms and conditions of your applicable SLA, if any, will apply with respect to any credit that may be available with respect to such eligible interruption. Company SLAs for specific Services can be found on our website at [www.firstcomm.com](http://www.firstcomm.com) and are incorporated by reference as if fully set forth herein to the extent you have subscribed for such Service. If no SLA is available for your Service, at Company's discretion if the interruption is unrelated in any way to an act or omission of Customer or third party or a force majeure event, you may be eligible to receive a credit to your account for Charges for the affected Service during the qualifying interruption period. Nonetheless, we do reserve the right to suspend, interrupt, restrict or terminate Service when, in our opinion, it is necessary for the integrity, safety or maintenance of our network or when we must comply with laws or regulations, or if we believe you are using Service in violation of any provisions of the Agreement or applicable law or regulations. 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 or the affected Service if, in our sole discretion, we are experiencing excessive billing, collection or fraud problems with calls to those numbers. 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. Notwithstanding anything in the Agreement, no credit shall exceed the amount of Charges for the affected Service applicable to the period of time during which Service was interrupted and such interruption is eligible for credit as set forth herein, including pursuant to any applicable SLA. You agree that Service credit shall be the sole and exclusive remedy with respect to any Service interruption or performance issue including outage, regardless of whether there is an SLA available for your Service.



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

You are aware that the Services and/or any telecommunications equipment requires continuous electrical power at the applicable Customer, Company and Representative locations. We are 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. **You are aware that the Services and equipment, including, without limitation, any business continuity or Failover Services or equipment, are not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Services or equipment could lead to death or severe injury to business, persons, or environment. These high-risk activities may include, without limitation, vital business or personal communications, or activities in which accurate and/or secure data or information is required.**

**G. Customer Service.** If you are experiencing an interruption of Service, have a billing or other question, or for Service issues or change requests, you may contact our Business Customer Service Department toll-free at (800) 860-2934. We will use reasonable efforts to resolve your problem or inquiry in accordance with the terms of your Agreement. We may charge for labor, maintenance, repair, installation, dispatch, trip costs, testing, verification and/or other third party costs required to respond to Service requests or issues. Applicable charges may include, but not be limited to, charges if no trouble or service issue is found or if site dispatch or service request is deemed to have been unnecessary; charges for inside wiring, communications systems, cabling, equipment or any other factor or condition at your site premises; charges relating to wiring, equipment, communications systems, cabling or other service provided by a third party; or charges relating to or resulting from acts or omissions by you, including any misuse or negligence. All third party Representative costs incurred by us in connection with any dispatch, repair or service to you will be invoiced and passed through to you. Although we provide Internet Service, we do not provide support for LAN, desktop PC or end users.

**H. Site/Location/Facility Access and Limitations.** You will, at no cost to Company or its Representatives, timely provide necessary, appropriate or desired access, including but not limited to physical access to your building, premises, other space, facilities, equipment, personnel or third parties, and/or authorization, required to provide, modify, maintain, repair and/or cease providing any Services. If we are denied or delayed such access or authorization, there will be delays in Service installation, repair or training. If access or authorization is required for an installation, repair or any Services and such is not made available to us or our Representative during the appointment window or designated timeframe, your account will be assessed a trip charge and your Service may be adversely affected, delayed or impaired. For POTS lines, a trip charge may be assessed for installation cross connects (tie downs) or Service/repair issues. If a repair issue requires a Representative to go to your place of business and LineProtect or any other protection plan, if any, has not been purchased, then a trip charge will be assessed in accordance with our terms of Customer Service.

For certain Services, you understand that such Services are subject to availability and operational limitations of your site, location, facilities, equipment, materials or systems, and in such case based on initial site, location and/or facility assessment, one-time construction costs, which may include Special Construction Costs or Customer Installation costs, will apply and be charged to you which at our discretion may be required to be paid in advance of provisioning, procurement or installation, or charged to your invoice.

We are not responsible for any Customer-related availability or authorization delays. In order for us to implement any Service by any requested ready for Service date, you must ensure that the following requirements are satisfied without delay: (i) Each site or location at which Services and/or Service equipment will be located must be prepared in compliance with Company standards and good telecommunications industry and engineering practices; and (ii) Such additional requirements that may be applicable to the Service, as notified by us in writing, including provision of any materials, supplies, systems, facilities and equipment required of you, are met. You are responsible for the prompt provision of all relevant and accurate systems and other facilities, equipment, materials, supplies or services not provided by Company. You will provide responses to questions, issues and information requests by us and our Representatives without delay. All Service timelines including requested ready for Service dates are estimates and conditional upon your timely response, performance and cooperation throughout the process. Customer agrees that it will complete any voice Services or TDM DIA Services no later than 45 days from the circuit delivery date, or from the date the dial tone is active at the demarcation point for POTS; if such Services

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are not completed by day 46, then all Service work will be disconnected, the Agreement terminated and you will be charged the Early Termination Fee. You further agree that you shall be responsible for any delays and related costs in connection with your facilities, equipment, materials or systems not being prepared for provisioning or installation.

I. **Technology Evolution.** Telecommunications is a rapidly changing industry and your Services are an ever-changing technology, and as such, you acknowledge that we shall not be liable to you if changes in any facilities, operations, equipment, materials, procedures or Services render obsolete any equipment, Service, software, and/or applications provided or used in conjunction with provision or use of the Service. Company updates and upgrades its networks, products and Services in the normal course of technology evolution and enhancement and is not obligated to maintain any particular technology and may reduce, modify or terminate network technologies at any time in its discretion. These efforts may result in the need to ultimately replace or discontinue certain offerings or technologies. In such event, Company reserves the right, after providing the notice set forth below, to migrate you to a replacement technology, or to discontinue any product or Service without either Party being in breach of the Agreement or incurring ETF or other liability relating to the discontinuance of the affected product or Service. If Company takes any such action, we will provide advance notice reasonably 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 (including via email or bill insert, bill message or otherwise) to any address associated with the account, billing on the account, or as set forth in the Agreement. You agree that such notice is reasonable and sufficient notice of our pending action.

### III. FIRST COMMUNICATIONS CHARGES, PAYMENT AND DEFAULT

A. **Charges.** You are responsible for paying all Charges to your account, including but not limited to: minutes of use, airtime, access, features, data usage, long distance, directory and operator or directory assistance charges, MRCs, NRCs, travel, labor, material or equipment charges, construction costs, Special Construction or Custom Installation costs, 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, including taxes on leased or provided equipment, and any Early Termination Fee. You understand that Charges such as one-time construction costs, Special Construction Costs, Custom Installation costs, porting or non-recurring charges, based on availability and operational limitations, may be imposed based on an initial site/location/facility assessment performed by us and/or our Representatives in connection with Service provisioning or installation. Changes to Services may result in the use of additional resources, time, materials, costs and other Charges including any third party cancellation charges if any underlying order must be canceled due to the nature of the change. Company may charge on a time and materials basis at its then current hourly rates, or at the rate charged to Company by its Representative, for any services or product requested or provided outside the scope of subscribed Services described in the Agreement.

B. **Credit, Deposits and Overpayments.** You authorize us to ask commercial reporting agencies, trade references or banking institutions to furnish us with employment and/or credit information. You also consent to our periodic rechecking of this information and to our reporting personal and/or business payment and credit history to the appropriate agencies. If you believe that we have reported inaccurate information about your account to a consumer reporting agency, you may send us a written notice describing the specific inaccuracy. We may require that you make an initial deposit or we may set a Service limit before we establish or maintain Service for you. An example of this would be selecting a package that contains a limited portion of services we provide instead of all services and products available. The deposit will be held as a partial guarantee of payment and cannot be used by you to pay your bill or delay payment. Unless otherwise required by law, deposits may be mixed with other funds and will not earn interest. We may require you to increase your deposit at any time and from time to time to reflect your estimated monthly Charges and we will base that increase on your actual use of the Service or on our reevaluation of your ability to pay. You may ask us to reevaluate your deposit on an annual basis, which may result in a partial or total refund of the deposit to you or a credit to your account, at our 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 us, you must submit your dispute in writing within 60 days after the claimed overpayment; otherwise the invoice is deemed correct. In connection with any credits to you under the Agreement, at our sole discretion, based on administrative costs and charges, no credit shall be due and issued to you for any reason if the amount of such credit would not exceed the de minimis amount of \$25.

C. **Billing; Payment.** Except as otherwise set forth herein or in the Agreement, billing will begin the date Services are first made available, and specifically for POTS service, will begin the day dial tone is active at the demarcation point. For a circuit with integrated or dynamic services, billing will begin once at least either the data or voice portion of the Service is 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, we will prorate MRCs for any partial month on a 30-day basis. MRCs and all Service Charges will be billed and earned in full in advance as of the billing date for the applicable month, with any other Charges being billed in arrears; on your first invoice, you will be billed MRCs for the initial month (or fraction thereof) and the following month. For any equipment or materials delivered by or through Company or construction costs, Special Construction or Custom Installation costs, you will remit payments as invoiced, which may be prior to our procurement, provisioning or installation. You agree to execute and deliver any reasonable documentation required by Company or any Representative in connection



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with procurement, delivery or installation of such materials, equipment or construction costs, including Special Construction or Custom Installation costs. 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 us 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 termination, when a billing cycle covers less than or more than a full month, we may make reasonable adjustments and proration. Usage Charges may be back billed in 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.

**D. Paperless Invoice Option.** You will receive a monthly paper invoice from us unless you sign up for our paperless billing option. You are eligible to enroll in our convenient paperless billing to reduce your environmental impact and related paper billing Charges. If you complete the Paperless Invoice Authorization Form, you will not receive the \$10.00 monthly Charge related to paper invoicing. Please submit your Paperless Invoice Authorization Form, specifying customer name, account number, telephone, and billing email address, with your MSA and/or Service Order. Thereafter, an email will be sent to your billing email address with a temporary username and password so that you may log onto <http://customers.firstcomm.com> to view your invoice, payment information and call detail. When your monthly invoice is ready for viewing, you will receive an email notification. You may also sign up for our automatic payment feature for further simplification of your payments. During your enrollment in paperless billing, you will no longer receive a paper invoice or the monthly Charge relating thereto.

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

**F. 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 (or as otherwise due), you agree to pay us a late payment fee of 1.5% per month or the highest amount allowed by law for the period(s) after the Due Date until such time as the Charges are paid. Even if we accept late or partial payments (even if marked "Paid in Full"), we do not waive any of our rights to collect the full amount of Charges due under the Agreement. You have 60 days from the date of the invoice to give written notice of a dispute, otherwise the invoice is deemed correct. If you dispute any portion of an invoice, you must pay the undisputed portion of the invoice and submit a written claim, including all documentation substantiating your claim, in accordance with the Notice provisions of these T&Cs. The Parties shall negotiate in good faith to resolve the dispute. We will attempt to respond to any dispute within 30 days of receipt of valid written notice and will inform you 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 Company, 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, we will refund the over billed or over charged amount by issuing your account a credit in accordance with applicable law. Notwithstanding anything set forth herein, Company 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.

**G. 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 or any Service Order 30 days after the Due Date. If we suspend Service and you miss another payment during the 12 months after we resume such Service, we may then suspend any Services and/or terminate the Agreement or any Service Order 15 days after non-payment notification is sent. If you breach any representation to us, otherwise violate the Agreement, become subject to any proceeding or take any action under federal or state bankruptcy, reorganization, liquidation or insolvency laws, or otherwise make any assignment for the benefit of creditors or admit in writing your inability to pay debts as they become due, you will be in default and we may, without notice to you, suspend Service and/or terminate the Agreement or any Service Order, in addition to all other remedies available to us. We may require reactivation Charges to reinstate or resume any Service after termination or suspension.

## IV. TERM, DISCONNECT/TERMINATION AND FEES

**A. Term.** The term of the Agreement for each Service is set forth in the applicable Service Order you enter into with us. Unless otherwise expressly specified as a different renewal period in these T&Cs, applicable Service Terms or any written amendment to the Agreement, the term of your Service will automatically renew for continuous one year periods at the end of the applicable initial term or any renewal term, unless Company receives a written request for non-renewal or termination/disconnect from you at least 60 days prior to

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the end of the then current Service term. The term and billing will begin on the date the Service is made available to you, and specifically for POTS Service will begin the day dial tone is active at the demarcation point. At the end of your term and/or after delivery by you of any disconnect or termination notice, if you continue to receive Services, such Services will be subject to the terms of the Agreement as long as you continue to receive Service and may be provided at Company's then-prevailing monthly rates. You may receive promotions or discounts on other services and products offered by Company or its affiliates in connection with the purchase of certain Services. These promotions or discounts may terminate upon termination or expiration of the Agreement or suspension, discontinuance, termination or modification of any Service. Moreover, notwithstanding anything to the contrary, Company reserves the right at any time to terminate any promotion or discount upon notice to you in accordance with applicable law.

**B. Required Notice for Disconnect or Termination (Including Non-Renewal).** When requesting a disconnection or termination of Service, other than POTS, and/or the Agreement, you must notify Company in writing at least 60 days in advance of the date you wish Service to cease, and the Early Termination Fee may apply. All past due balances, MRCs and outstanding fees, Charges and any other fees associated with the Agreement shall be immediately due and payable upon the effectiveness of Service disconnection/termination. If you continue to receive Service after the effective date of any prior disconnect or termination notice, you will be deemed to have waived and/or abandoned that request and will continue to be responsible for all Service unless and until you submit a new disconnect or termination notice thereafter in accordance with the timeframes and other requirements set forth herein. If you choose to move its local POTS Service to another service provider, we will stop billing for local POTS Services on the date contained in the loss notification. Often, we receive this notification from the other service provider and not directly from you. Early Termination Fee may apply as discussed below. However, upon loss notification for POTS bundled packages, if the Service contains stand-alone voice mail or Internet products, these products will also be disconnected upon loss notification.

**You shall be responsible for any Charges that continue to be incurred as a result of your failure to provide formal written notice in accordance with the Notices From You section of these T&Cs, of any disconnect or termination, including, without limitation, in the case of your non-renewal, moving Service(s) to another service provider, abandoning Service(s) or vacating any Service location(s).**

**C. Early Termination Fee ("Early Termination Fee" or "ETF").** You agree to purchase Service for the full term of the applicable Agreement including any renewal term(s). Any termination or disconnect prior to expiration of the then-current term (including if you terminate/disconnect Service after we make the Service available to you or if you cancel or terminate a Service Order and do not install the Service as detailed in your Agreement) will result in your being in breach of the Agreement and being charged an Early Termination Fee. In addition, you may not be eligible for new Services and/or promotions in the future. The formula used for calculating the Early Termination Fee for Service is the sum of the following: (i) the MRC times the number of months remaining in the then-current term, (ii) the average of the last 3 months usage (if applicable), (iii) any waived installation fees/charges or non-recurring charges, including Special Construction or Custom Installation Costs, (iv) any charges we incur to fulfill or provision your Service including any waived promotional incentives or credits, (v) any termination or other disconnect, cancellation or similar third party charges we incur to underlying providers associated with such termination or disconnect, and (vi) any applicable taxes, surcharges or other regulatory fees relating to any of the foregoing. You agree our damages may be difficult to determine due to variable usage and other costs of providing Service and agree to pay us the ETF as a reasonable estimate of our damages (not as a penalty) and in addition to all other amounts you owe as of the date of termination/disconnect plus any and all other costs and charges that we reasonably incur in connection with such termination or disconnect.

**D. Service Upgrades.** You may upgrade Service under your Agreement to a higher bandwidth and/or increased services level without incurring ETF provided the following conditions are satisfied: (i) you execute a new Service Order for the requested bandwidth and/or new services at our then quoted rates and current terms and conditions; (ii) the term of the new agreement is equal to or longer than the remaining Term of the Agreement/Service Order being upgraded; (iii) there is sufficient capacity in existing access facilities or other service availability to accommodate the requested bandwidth capacity or new services; (iv) we do not incur any third party termination charges; (v) more than 30 days have passed since the effective date of your last upgrade; and (vi) all of your accounts with us are in good standing, and you are not currently, nor have been regularly, past due in payments to us or otherwise in breach under any Agreement with us.

**E. Final Bills.** Final Bills shall include all amounts and Charges that you owe under the Agreement, including any applicable Early Termination Fee and/or the Charges owed for any minimum usage commitments. You acknowledge that you are responsible for any Charges incurred between your written disconnect/termination notice and 90 days thereafter. Furthermore, you agree that in connection with administrative costs and charges relating thereto, you will not receive a credit or refund for any unused minutes of usage for that monthly billing cycle or any MRC that has been billed and earned in full as set forth herein. Notwithstanding any such final bill, we reserve the right to charge and/or backbill thereafter for taxes, fees, surcharges, assessments or other charges imposed, whether during or after your Service Term, by regulatory authorities with respect to your Services during the Term.

## V. EQUIPMENT, TRAINING AND PROFESSIONAL SERVICES

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**A. Equipment.** We are not responsible for the installation, operation, maintenance, compatibility or performance of any CPE. Equipment provided by us or our Representatives and delivered to you is only to be used in conjunction with the Services, and you are not authorized to use the equipment for any other purpose. We may tax equipment that we provide, lease or license to you in connection with the Services. We are not the manufacturer of any equipment provided by or through us, and unless otherwise indicated herein, the only warranties on any equipment provided and/or sold by us are limited warranties, if any, extended by the manufacturers of such equipment to third party end users. Neither Company nor our Representatives warrant or guarantee that any equipment installed or provided by us will secure your network, connectivity, electronic environment or information. You may not install or use any equipment, facilities, material or supplies that disrupt or interfere with the Services. If you connect or use incompatible equipment, facilities, materials, supplies with the Service, we do not guarantee the performance of the Service. If third-party hardware or software impairs operation of the Services, you remain liable for payment of all Charges for the Service, and, if this third-party equipment or software is likely to cause hazard or Service interruption or obstruction, you will eliminate such likelihood at our request. We are not liable to you if changes in any of Company's or its Representatives' facilities, operations, equipment, procedures or Services render obsolete any equipment, Service, software, and/or applications provided in conjunction with your use of the Service. We are not responsible or liable for equipment, facilities, materials or supplies, or the use thereof by you, that are Customer or Representative supplied or owned. We do not provide support or troubleshooting services for any equipment that is not owned, licensed or leased by us, except as specifically identified as Customer Router Management Services.

All equipment, including telephone or wireless devices, SIM cards or Managed Security Services, SD-WAN or Fixed Wireless equipment, provided by us or our Representatives in connection with Service is leased or licensed to Customer for use and location only within the United States with no ownership or other proprietary rights or interests, and at all times remains our property, including upon any termination, cancellation or disconnection of Service or the Agreement. You are responsible for safeguarding any of our equipment located at your premises and/or within your control and in the event of damage, loss or theft, you are responsible for any replacement, repair, installation or other fees relating thereto. At all times, you must return, and/or allow access for removal, service, maintenance or otherwise to, any Company or Representative provided equipment promptly upon our request.

Unless otherwise specifically set forth in the Agreement as materials and equipment being paid for by us, you are responsible, at your own cost, for purchasing, installing and maintaining all equipment, facilities, materials and supplies that we identify as being necessary for us to perform or you to receive the Services, including, without limitation, the purchase, installation and maintenance of hardware or software upgrades, updates, maintenance or support at your cost. For any Company-provided equipment owned by us, we manage the configuration of the equipment, including any updates, and, if applicable, the repair or replacement of hardware should a failure occur. Repair or replacement shall be Customer's sole and exclusive remedy with respect to any Services equipment provided and owned by us in connection with the Services, subject to compliance with the criteria set forth below for return of damaged Services equipment owned by us. Any such equipment must not be moved from the original set up location and/or address or the equipment and Service may not function properly, may incur higher usage Charges or may result in other adverse consequences. All such equipment owned and provided by Company to you remains our property and must be returned in proper working order, normal wear and tear accepted, to us at the termination or expiration of the Service or Agreement, or as otherwise requested by us. Customer assumes responsibility and risk of loss for any equipment or materials upon procurement. If the Services equipment is damaged beyond normal wear and tear, lost, or not returned, Customer shall be responsible and will be charged the replacement cost of such Services equipment, in addition to any other unpaid Charges, ETF and/or other fees.

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

**B. Damaged Services Equipment.** To return damaged Services equipment, all of the following criteria must be met: (i) Services equipment is either new equipment that exhibits immediate failure, defect, or damage out of the box, or is equipment that fails within 30 calendar days of Service activation as verified by us; (ii) any MRS equipment package is complete (no broken components, except where the breakage occurred during or prior to shipping) and in "like new" condition in an original box or packaging (no markings, writing or

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stickers) except UPC label must be present on the box or package when returned; (iii) Services equipment has no missing or broken components; (iv) Services equipment has not been subjected to damage that resulted from: (a) improper operation, storage, misuse or abuse, accident, neglect or omission, such as physical damage (cracks, scratches, etc.) to the surface or interior of the product resulting from misuse; (b) contact with liquid, water, rain, extreme humidity or heavy perspiration, sand, dirt or the like, extreme heat, or food or like elements; or (c) abnormal usage or conditions; or (v) in cases where the Services equipment is returned for a failure and the equipment has a verified failure that can be duplicated.

**C. Professional Services; Training.** Training in connection with equipment, features, portals or Services is not included as standard in any of our Services and thus is a Professional Service as described herein. Professional Services provided by us or our Representatives may be set forth in a Service Order, which shall include planned Professional Services and estimated Charges. Charges for unanticipated Professional Services or Professional Services otherwise not ordered in advance under a Service Order shall be invoiced to you upon performance and/or supply by us or our Representatives, and you agree that you will be responsible for the invoiced amounts for any such Professional Services provided, including for any labor, materials or other service relating thereto. Unless otherwise set forth in a Service Order, we will charge for training on a time and materials basis at our then current rates and costs, and on-site training of any nature is not included in pricing. You understand and agree the actual Charges for Professional Services may vary substantially from the estimates set forth in any Service Order or other estimate. You acknowledge that Professional Services, including without limitation, consulting, technical, remediation, and engineering work, are highly dependent on Customer-specific configurations and other Customer issues, constraints, limitations, requirements and needs that have not yet been identified by the Parties. Charges set forth in any Service Order do not include applicable taxes, which you agree to pay. The Professional Services shall be performed at our or our Representatives' facilities or locations, your facilities or locations within the United States, or other location(s) within the United States as deemed necessary by us in our reasonable discretion for provision of the Professional Services. Travel and expense costs related to any Professional Services will be charged and passed through to you or may be required in advance of procurement to be paid by you, including with respect to materials, equipment, software or supplies that we identify as being necessary to perform the Professional Services. All Professional Services work is deemed delivered as it is performed. All timelines relating thereto are estimates and conditional upon your timely response and cooperation throughout such process. Changes to Professional Services may result in the use of additional resources, time, materials and costs. All data and information associated with Professional Services, including any training services, and all rights relating thereto are our property, and no such materials shall be deemed "works made for hire." Any Customer specific business information furnished by you in connection with Professional Services shall remain your property; provided, however, that no work or product created, developed or first reduced to practice by us or our Representatives, alone or with others including yourself, in connection with providing the Services shall be deemed to be your property or information. Upon any termination, expiration or suspension of the Agreement or any Service Order or Service, each Party shall promptly return all applicable information and data of the other Party (and all copies thereof), in addition to equipment, materials or supplies, used or received in connection with Professional Services with respect thereto and shall have no further right or license to use any such materials, supplies or equipment.

With respect to Professional Services, you agree, at your own expense and according to good telecommunications industry and engineering practices and our specifications, if any, promptly to complete all preparations necessary for us to deliver the Professional Services. You shall, at no cost to us or our Representatives, timely provide all necessary or appropriate access, including but not limited to physical access to your buildings, premises or other space or facilities required to provide, modify, maintain, repair and/or cease providing the Professional Services. Further, you understand and agree that you are responsible for the prompt provision of all relevant and accurate system and other information to us necessary for provision of the Professional Services and for the use and compatibility of all facilities, equipment, material, software, upgrades or services not provided by us. You agree to provide responses to questions, issues and information requests without delay. All Professional Services are performed subject to your cooperating with us or our Representatives as we indicate for our performance of such Professional Services. If access is required for any Professional Service and we are unable to gain access during the appointment window or otherwise designated timeframe, your account will be assessed a trip charge. All Professional Services are performed by our Representatives and/or us as is and as available.

## VI. INTERNET SERVICE AND USE

**A. Internet Services and/or Internet Use.** This section applies to Internet Services, including access to or use of any Internet website or portal operated, owned or used by Company, its Representatives or Customer in connection with Services hereunder, in addition to any Service that combines with, relies upon or uses the Internet including the worldwide web. To the extent required by applicable law, we may tax certain components of such Services that we provide, lease or license to you in connection with the Internet Services. Generally, any conduct that constitutes high volume, excessive use and/or exceeds your permitted access to the Service, violates a law or regulation, the accepted norm of the Internet community, or that may damage our reputation, whether or not expressly set forth in the Agreement or company policy, is prohibited. Our written permission is required prior to posting any link to First Communications' Internet website(s). We maintain a strict policy regarding network abuse, and reserve the right in our sole discretion to make a determination of what constitutes abuse. If you abuse any Service to send bulk e-mail (spam), unsolicited commercial messages, harass, defraud, hack or otherwise attempt

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to gain unauthorized access to any systems, or engage in any other unlawful, harmful or inappropriate conduct, we may suspend and/or terminate your account, any 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 YOU COULD BE SUBJECT TO A VARIETY OF SECURITY BREACHES, INCLUDING BUT NOT LIMITED TO, EAVESDROPPING OR HACKERS GAINING ACCESS TO YOUR COMPUTER, EQUIPMENT OR INFORMATION, REGARDLESS OF ANY SERVICES CONTRACTED OR PROVIDED UNDER THE AGREEMENT. THIS MEANS THAT OTHER PEOPLE MAY BE ABLE TO ACCESS, MONITOR AND/OR ALTER YOUR FILES, DATA OR OTHER ITEMS SENT, RECEIVED OR RETRIEVED USING THE SERVICES AND/OR NEGATIVELY AFFECT YOUR ABILITY TO USE THE SERVICES NOTWITHSTANDING THE NATURE OF ANY SERVICES CONTRACTED OR PROVIDED UNDER THE AGREEMENT. ANY INFORMATION SENT, RECEIVED OR RETRIEVED BY YOU OVER INTERNET SERVICE IS TRANSMITTED AT YOUR SOLE RISK, AND NEITHER COMPANY NOR ITS REPRESENTATIVES SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTION, DAMAGES, SUITS OR PROCEEDINGS ARISING OUT OF OR OTHERWISE RELATING TO YOUR USE OF ANY INTERNET SERVICE. NEITHER COMPANY NOR ANY REPRESENTATIVE ACCEPTS ANY RESPONSIBILITY OR LIABILITY FOR THE SECURITY OR CONTINUITY OF YOUR ELECTRONIC ENVIRONMENT, NETWORK, DATA OR INFORMATION, WHETHER OR NOT COMPANY OR ITS REPRESENTATIVE HAS PROVIDED OR INSTALLED ANY SECURITY, BUSINESS CONTINUITY OR FAILOVER EQUIPMENT, SERVICE OR DEVICE.

**B. IP Address.** We 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 us 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, we require you to return all assigned IP addresses.

**C. Business Internet Service.** In the event of custom installation and related charges ("Custom Installation") required for Business Internet Service, we will endeavor to notify you of such Custom Installation charges, which notice may be provided via email. In such case, if you do not notify us in writing via email or otherwise within two business days thereafter of your intent to accept or decline the applicable location(s) for such Custom Installation, then we may terminate your order for Services, in whole or in part, or elect to provide you with the Custom Installation Services, or similar services under separate agreement. Regardless of any such notification by us and notwithstanding anything to the contrary, you understand and agree that Custom Installation Charges may apply. Further, you understand and agree that you will pay all additional Charges relating to any Custom Installation provisioned pursuant hereto. If you effectively decline any Custom Installation within two business days as required, at our sole discretion, all other Services under the Agreement shall remain in full force and effect. If all or part of a Service is deemed unserviceable due to site, location or facility limitations or requirements, then we may terminate the Service in whole or part without penalty upon notice to you. You understand that Business Internet Service is available only to non-governmental entities, and you represent and warrant that you are not a governmental entity to the extent applicable hereto. Further, you understand and agree that all Business Internet Service is offered and provided by us and our Representatives as is, as available, and without SLA or other representation or warranty of any kind. Resale, transfer, distribution or use of the Service by or to any other party is strictly prohibited by us and our Representatives.

**D. Wireless Internet Access.** We offer wireless access to the Internet in a limited geographic area. Unless expressly stated in writing by Company, all equipment provided to you by us remains our property and must be returned in proper working order, normal wear and tear accepted, to us at the termination of the Service or Agreement. See Equipment, Training and Professional Services. For Wireless Internet Access, you are responsible for providing electrical power (110 VAC) and network connection (RJ45) within six feet of the CPE location. You are also responsible for network and workstation configuration according to specifications for protocol provided by Company. We will demonstrate proper setup of one Workstation (network client). Additional wiring and configuration will be at your own expense.

### VII. 911/E911 SERVICES, INCLUDING TTY SERVICE FOR VOICE SERVICE

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

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

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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.

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.**

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

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

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

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

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

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

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

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

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SERVICE PROVIDER.

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

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

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

YOU AGREE THAT YOU HAVE READ, UNDERSTAND, AND ACCEPT THE LIMITATIONS ASSOCIATED WITH THE 911 AND E-911 EMERGENCY SERVICES AVAILABLE THROUGH THE COMPANY 911 SERVICE.

### VIII. ADDITIONAL ONLINE SERVICE TERMS AND SLAs; CERTAIN OTHER SERVICES

**A. Online Service Terms and SLAs.** See [www.firstcomm.com](http://www.firstcomm.com) for additional online Service Terms and SLAs that are applicable to the following Services and incorporated herein by reference as if fully set forth herein:

- Data Center Service Terms
- Cloud IP PBX Service Terms
- MPLS Service Terms and Service Level Agreement
- Ethernet Service Terms and DIA Service Level Agreement
- CloudConnection Service Level Agreement
- Dedicated Internet Access (DIA) T1 Service Level Agreement
- Essential T1 Service Level Agreement
- FirstConnect T1 Service Level Agreement

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

You must comply with all reasonable technical specifications and policies for use of the CloudConnection Service, as we may specify from time to time. You are responsible for securing your own third party agreements to exchange frames and agree to indemnify and hold harmless Company and its Representatives from any liability, costs and damages arising from claims relating to your agreements, arrangements or relationship with such third parties. You agree that you will not: (i) conduct any illegal activities through the CloudConnection Service; (ii)



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conduct any activity that interferes with or impairs the equipment or connectivity of Company or any of its customers; (iii) obtain or attempt to obtain unauthorized access to CloudConnection Service, or circumvent or attempt to circumvent any applicable security features; (iv) connect any equipment that is owned or controlled by a third party; or (v) reverse assemble, reverse compile or reverse engineer the CloudConnection Service, or otherwise attempt to discover any CloudConnection Service source code or underlying proprietary information. If you violate our terms of service, we may take reasonable action to correct and/or prevent any problem such violation may cause, including suspending or terminating your use of the CloudConnection Service and/or invoicing you for Charges relating to or arising from such violation.

**C. Fixed Wireless.** Fixed Wireless Service will not be available in all areas at all times. Many factors can affect the availability and quality of your Fixed Wireless Service, including, but not limited to, capacity limitations such as spectrum or tower availability, network capacity, terrain, buildings, foliage and weather. This may mean that Fixed Wireless identified as available at the time of ordering may not prove to be available at the time scheduled for installation. You may not use Fixed Wireless at any address other than your Service address or move any of the equipment to another address. Fixed Wireless Service may be interrupted, delayed or otherwise limited for a variety of reasons, including environmental conditions, unavailability of spectrum frequency, system capacity, network management, coordination with other systems, equipment modifications and repairs, and problems with Representative interconnecting facilities. Fixed Wireless Service is also subject to the following service and/or capacity limitations: proximity of antennae or devices, power, tower or site outages, maintenance work, damage to antennae, cables or facilities, simultaneous use capacity overload, blockage of signal between service premises and tower or improper installation or tampering with antennae or devices.

**D. Telecommunications Service Priority.** TSP is an FCC program that authorizes national security and emergency preparedness (NS/EP) organizations for eligibility to receive priority treatment for provisioning and/or restoration of vital telecommunications services. TSP Service is provided for a charge at the priority level assigned to you via your TSP authorization code or as a pass through from our Representative. Further, TSP Service, including implementation, adding/deleting, and/or priority work needed to provision or restore the applicable Service may incur NRCs. You understand and agree that you are solely responsible for completing a federal TSP authorization code request, obtaining such TSP authorization code and all other authorizations or approvals, including code re-validation, required under applicable law, and retaining all records regarding such code. No TSP Service, regardless of whether requested and/or contracted for hereunder, will be provided unless you deliver to us a TSP authorization code for each telecommunications Service you receive and maintain such code in accordance with applicable law. You are solely responsible for providing us with your TSP authorization code and for notifying us of any election or change with respect thereto. You agree that TSP Service will be revoked as directed by the federal TSP program office and is otherwise subject to termination by us in accordance with the Agreement. TSP Service is provided as is, as available, and subject to all third party licensor, supplier and/or Representative terms, conditions, limitations and restrictions. Notwithstanding anything to the contrary, we do not guaranty the quality or priority of any TSP Service, and you are solely liable and responsible for, and shall indemnify, defend and hold harmless Company and/or its applicable Representatives with respect to, use or performance of TSP Service.

## IX. MANAGED SERVICES

Managed Services will be performed at Company or Representative facilities or locations, Customer facilities or locations within the United States, or other location(s) within the United States as deemed necessary at our discretion for provision of such Services. You acknowledge and agree that all Managed Services are offered and provided without SLA. In addition to the other terms and conditions set forth in these T&Cs, the following provisions shall apply with respect to Managed Services:

**A. Managed Router Solution.** The Managed Router Solution ("MRS") consists of network management services for either Internet or WAN connectivity solutions within the domestic United States. MRS is monitored via the Company and provides a web portal from the Performance Management Portal platform, which is available and co-terminus with MPLS, DIA, and/or P2P Services. For MRS, you are responsible for providing electrical power (110 VAC) and network connection (RJ45) within six feet of the CPE location. You are responsible for network and workstation configuration according to specifications for protocol provided by Company. We will demonstrate proper setup of one Workstation (network client). Additional wiring and configuration will be at your expense.

**B. Customer Router Management Services.** Customer Router Management Services consist of network management services for routers within the United States that are not owned or provided by us. For Customer Router Management Services, we do not provide any materials, equipment or supplies for your use unless equipment is expressly identified as being purchased through us. You understand and agree that you are responsible, at your own cost, for purchasing, installing and maintaining any and all equipment, materials and supplies that we identify as being necessary for us to perform the Customer Router Management Services, including, without limitation, the purchase, installation and maintenance of hardware or software upgrades, updates, maintenance or support at your cost, regardless of whether any such equipment is purchased by or through us. We are not the manufacturer of any routers or other related equipment provided by us, and you acknowledge and agree that the only warranties, if any, on such equipment provided are limited warranties extended by the original manufacturers to third party end users. For any equipment, materials or supplies delivered or supplied by a third

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party Representative to or through us, you will remit payments as invoiced, which may be prior to our receipt or procurement. You agree to execute and deliver any reasonable documentation required by Company or any Representative in connection with procurement, delivery or installation of such third party materials, equipment or supplies. In no event will we be responsible or liable for replacement or repair costs of router related equipment, materials or supplies including but not limited to routers, hardware, or software, or the use thereof by you, that are Customer or third party supplied and/or manufactured. Further, in no event will we be responsible or liable for any acts or omissions attributable to a third party in connection with, underlying or related to the Services. You may not install or use any equipment, materials or supplies that disrupt or interfere with the Services.

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

**C. SD-WAN Service.** SD-WAN service (also called Edge service) is software-defined wide area networking service using Company provided hardware and/or software that is licensed or leased by us within the United States in conjunction with remote configuration capability by us or our Representative. You understand that the SD-WAN Service requires Internet service, but does not include Internet service. Such Internet service may be purchased by you from us or from a third party. You understand and agree that the quality and success of the Services may be affected by your choice of Internet service, and we are not responsible for any third party Internet service or the effects thereof. You acknowledge that we may use third party vendors, providers and/or Representatives for provision of the SD-WAN Services and such Services are subject to all third party licensor, supplier and/or Representative terms, conditions, limitations and restrictions. We are not responsible for any failures attributable to third parties and do not guarantee or warrant the continued availability of such underlying services. You acknowledge that the Services, including without limitation, technical and engineering work, are highly dependent on Customer-specific configurations and other Customer issues, constraints, limitations, requirements and needs that must be identified by you to Company and which may affect the productivity and success of the Services. Such Customer-specific requirements and any changes thereto may result in the use of additional resources, time, materials and costs that will be passed through to you, including any necessary travel. You understand and agree that in the event you exercise any control over the SD-WAN Orchestrator, including, without limitation, any changes or modifications to configurations or specifications or other technical or engineering work, neither Company nor any applicable Representative shall have any liability or responsibility with respect to the Orchestrator, such Customer acts or omissions relating thereto, and/or quality and success of the SD-WAN Service. You shall not provide or otherwise allow any access or use by third parties of the SD-WAN Orchestrator, shall be fully responsible and liable for any such access or use, whether or not authorized, and shall immediately notify us of any unauthorized activity. With respect to any Customer control over the SD-WAN Orchestrator or access provided by or through Customer, any adverse effect to Company, its Representatives, network, equipment or customers may result in labor, costs, damages and losses that may be passed through to you as Charges, including any additional Company and/or Representative resources, time, materials, engineering and other labor, and costs incurred in connection therewith. Where applicable, you must separately accept any Representative terms and conditions as required by us or our applicable Representative in order to be eligible for SD-WAN Service. Notwithstanding anything in the Agreement, you expressly agree that the terms of your Agreement with us for SD-WAN Service, including but not limited to these T&Cs, are applicable for, and intended to inure to the benefit of, any Representative(s) including any underlying third party provider with respect to the SD-WAN Service, and you acknowledge and agree that such Representative(s) and/or underlying providers shall be third party beneficiaries hereof.

**D. Cloud IP PBX Service.** Cloud IP PBX Service is a managed hosted VoIP service offering within the domestic United States that provides you with access via Representative software to a Web-based administrative portal to configure your telephony features and capabilities. Cloud IP PBX Service may require your download, installation or access of third party or Representative software and/or licensing in connection with certain Service provisioning, including your acceptance of Representative or third party terms and conditions applicable thereto. You agree 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. Notwithstanding anything to the contrary, we do not guaranty the voice quality for Cloud IP PBX Service or any SLA for Services that are supported by Customer provided equipment or access facilities, including Internet services not purchased through us, and disclaim any responsibility for issues or liabilities relating thereto. All equipment including telephone devices provided by us in connection with Cloud IP PBX Service are leased or licensed to you, at all times remain our property, including upon any termination, expiration or disconnection of Service, a Service Order or the Agreement, and are otherwise subject to the terms of the Equipment section set forth above. You are responsible for establishing, maintaining and securing any passwords in conjunction with the Cloud IP PBX Service and/or equipment. You agree to change any password once Service has been made available to you and agree that all passwords shall conform to guidelines, if any, provided by Company and/or its Representative. Further, you agree that you shall not use passwords consisting of default passwords or passwords consisting of names or repeating or consecutive numbers or letters in conjunction with any Managed Service or any

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equipment including with Cloud IP PBX Service, and in any event, you are solely liable and responsible for, and shall indemnify, defend and hold harmless Company and/or its applicable 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.

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

We will configure your accounts for use of the applicable features or functionality, provided, however, all such features, functionality and capacity, including without limitation, any advanced, premium or enhanced features or functionality, are provided as is, as available, and subject to all third party licensor, supplier and/or Representative terms, conditions, limitations and restrictions. You acknowledge that certain features, functionality or capacity of the Cloud IP PBX Service will vary based on the product level or package of Service for which you subscribe, including, without limitation, availability of desktop/mobile application, meeting collaboration service or call recording. To the extent Cloud IP PBX equipment is provided with integrated Wi-Fi capability, any such equipment, feature and functionality is provided as is, as available, and subject to removal and/or deactivation at any time. For any Cloud IP PBX Service, where additional cabling or other special or additional installation work/service is required in order to provision/install such Service, we reserve the right to charge you for labor, materials and other service relating to such cabling and/or additional work or service, and you shall be responsible for payment of additional Charges invoiced by us in connection therewith. You agree that you shall be responsible for any delays and related costs in connection with your facilities, equipment or systems not being prepared for provisioning or installation. We make no guaranty or warranty regarding features or capacity of your account, including without limitation any advanced, enhanced or premium features or capacity, and accept no liability for any loss or damage relating thereto including the loss of any third party provided feature or capacity. Training in connection with equipment, features, portals or other Service is not included, and you agree that you may be charged and will be responsible for any training provided by us or our Representatives, including for any labor, materials or other service relating to such training. You acknowledge and agree that Cloud IP PBX Service does not include phone system training or any Customer site training, but you may contact us at any time if you desire training or Professional Services at our then current Charge. Such training may include: phone utilization, outbound calling and inbound call retrieval, hard and soft key functionality, conferencing, call transfer, phone directory, call history and voicemail set up and retrieval. Where applicable, you must separately accept any such Representative terms and conditions as required by us or our Representative in order to be eligible for use of any component or application of or relating to the feature or application. You agree that you will not, and will not allow any third party to, sublicense, resell, rent, lease, distribute or otherwise transfer or assign rights or usage to any equipment, software, copyrighted material or other proprietary rights for any purpose. You agree to indemnify, defend and hold harmless Company and/or its Representatives from any breach of such terms and conditions. We are not responsible for any hardware, software, application, feature or any maintenance, support, updates or upgrades of any of the foregoing, and you agree to assume responsibility for any such requirements including any loss of functionality or use relating thereto or arising therefrom.

See [www.firstcomm.com](http://www.firstcomm.com) for additional Cloud IP PBX Service Terms, including for Cloud IP PBX Service features such as Call Recording, Contact Center and Call Center Features, that are applicable to your Cloud IP PBX Service and are incorporated herein by reference as if fully set forth herein.

**E. Managed Security.** Managed Security Service is: (i) a managed, stateful packet filtering Firewall using Company provided hardware and software that we own, license or lease from third parties; and/or (ii) Firewall Network Traffic Monitoring performed by our Representative or us, in each case within the United States. You acknowledge and agree that Managed Security Service does not guarantee full protection from all security, vulnerability and/or compliance risks or threats. Neither Company nor any Representative accepts any responsibility or liability for the security of your electronic environment, network, data or information, regardless of whether Company or its Representative has provided, managed or installed any security equipment, software, service or device. Subject to applicable state law, Managed Security Service will automatically renew for a like Term at the end of the applicable initial or renewal Term period unless either Party delivers written notice of non-renewal to the other Party at least 60 days prior to the end of the applicable Term. You have 24 hours to test and accept Managed Security Service once it is made available to you. If you have not contacted us within 24 hours regarding non-acceptance of the Service and specifying the testing failure, the Term and billing for the Managed Security Service under the applicable Service Order will begin effective as of the date Service was first made available to you.

Managed Security Service standard features of the Firewall feature are: 24x7 stateful packet filtering; 90 days of log retention; configuration; configuration backup and restoration; device monitoring (excluding security event monitoring) and 24x7 telephone support; firmware and signature updates as determined by us; standard reporting depending on the selected configuration; maximum of two configured security zones; up to three VLANs; four configuration updates per month, ten policy changes per update; changes are performed within one

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business day after receipt of change request; and problem resolution on Firewall issues. All Managed Security Service equipment provided by us or our Representatives is leased or licensed to you for use and location only within the United States with no ownership or other proprietary rights or interests, and at all times remains our property, including upon any termination, cancellation or disconnection of Service or the Agreement. You are responsible for safeguarding any of our equipment located at your premises and/or within your control and in the event of damage, loss or theft, you are responsible for any replacement, repair, installation or other fees relating thereto. At all times, you must return, and/or allow access for removal, service, maintenance or otherwise to, any Company or Representative provided equipment promptly upon our request.

The following optional or advanced Firewall features may be available for an additional charge: antivirus; Intrusion detection and prevention; application control; automated and customer defined site blocking; active directory integration for user-based or group-based security policies; site-to-site VPN (up to ten); log retention beyond 90 days; expanded reporting; or Professional Services. The provision of Managed Security that is Firewall Network Traffic Monitoring is also subject to the terms and conditions of Professional Services. All such Service, features and capacity, including without limitation any advanced, enhanced or premium features or capacity, are provided as is, as available, and subject to all third party licensor, supplier and/or Representative terms, conditions, limitations and restrictions. Custom Managed Security Services beyond the standard Service offering are not included in the Managed Security Service pricing and will require a Service Order specifying any such customization. Standard configuration changes are policy changes determined by us in our sole discretion to be common low-risk changes that do not result in material modifications of the basic configuration design. Non-standard and complex configuration changes must be approved by us and, if approved, are subject to our change control management procedure and will be provided at our then prevailing hourly rates. Certain changes may be expedited for an additional fee as we determine. Any configuration changes may be made only by us apart from any standard functionality provided via your customer portal. You agree that you are responsible for security and performance issues following Customer change requests that enable your access to the Firewall, that deviate from our recommended design and/or that are not authorized by us, and you shall indemnify, defend and hold us harmless in connection with any such security or performance issues.

You must provide sufficient information to First Communications to complete a Security Data Collection Document ("SDCD"). The SDCC provides us with the information needed to design, establish and manage the Managed Security Service Firewall feature, including, without limitation: access bandwidth, number of users, security policies and requirements and contact information for individuals authorized to approve Managed Security Service changes and to be notified in the event of a security incident. You must ensure that a listed contact is available 24x7. You will be responsible for all information provided to us, and we shall bear no liability in connection with information that you provide. In the event you do not complete the SDCC, configuration of the Managed Security Service Firewall will be delayed, and you shall be responsible and liable for any such delays and all costs relating thereto.

Virtual Private Network ("VPN") Service is a technology that enables users to more securely access a private network and share data remotely through public networks. VPN Service is subject in all cases to the operational capabilities and limitations of any device or equipment required to provision such Service, and you agree not to deploy, configure or use any such device or equipment beyond such capabilities and limitations. If you order VPN Services a la carte with the Managed Security Service, the following provisions shall apply, and you agree to indemnify, defend and hold us harmless in connection with any breach of such provisions: (i) you shall procure an Internet connection at your own expense, either from us under a separate Service Order or from another provider; (ii) you understand and agree that the actual quality characteristics of the VPN Service bandwidth will be affected by your choice of Internet service, and you agree to hold us harmless for any bandwidth deficiencies or negative quality characteristics arising out of or relating to your Internet service; (iii) you understand and agree that we are not be responsible for any outages or service interruptions of the VPN Service caused by or in any way arising out of or relating to your third party Internet service provider; (iv) you agree to comply with all laws and regulations governing the use of the Internet and the VPN Service and represent to us that you will not use the Internet or VPN Service for any fraudulent or illegal purpose; and (v) you understand and agree that we are not responsible for providing support to you in the installation or maintenance of the VPN client software on users' computer(s), and if you cannot install VPN client software successfully, we may cancel Charges associated with the VPN client software.

**F. Managed Information Security.** Managed Information Security Service is a licensed and managed software application and related equipment and features provided by Company or its Representatives within the United States that augments your information technology staff's own monitoring, identification, analysis, and assessment of security incidents, events, threats and vulnerabilities within your information systems and network traffic and/or Professional Services to assist in your monitoring, identifying, analyzing, and assessing such matters. Managed Information Security Service may consist of one or more of the following Service features as set forth on your applicable Service Order(s): Security Incident and Event Monitoring ("SIEM"); Behavioral Monitoring; Intrusion Detection; Asset Discovery; Incident Detection/Notification; Cybersecurity or other Risk Assessment; Vulnerability Scan, Assessment or Detection; Penetration Testing; Phishing Testing; and/or USM Activity Reporting. Standard log retention is 90 days, and to the extent available, any retention beyond 90 days will incur additional charges. We will configure your accounts for use of the applicable features, provided, however, all such Services, features and capacity, including without limitation any advanced, enhanced or premium features or capacity, are provided as is, as available, and subject to all third party licensor, supplier and/or Representative terms, conditions, limitations and restrictions. You have

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three calendar days to test any Managed Information Security Service once it is made available, and thereafter such Service and/or related deliverable will be deemed accepted unless written notice of material nonconformance specifying in detail such nonconformity is delivered within the testing timeframe; if no notice is delivered within three calendar days of availability, then the Term and billing for such Service will begin effective as of the date the Service was first made available to you. You acknowledge and agree that Managed Security Information Service does not guarantee full protection from all security, vulnerability and/or compliance risks or threats. Neither Company nor any Representative accepts any responsibility or liability for the security or compliance of your electronic environment, network, data or information, regardless of whether Company or its Representative has provided, managed or installed any security or compliance equipment, software, monitoring, professional or other service, or device. Where applicable, you must separately accept any such Representative terms and conditions as required by us or our Representative in order to be eligible for use of the Service and/or any feature or application of or relating to the Service. We make no guaranty or warranty regarding features or capacity of your Service, including without limitation any advanced, enhanced or premium features or capacity, and accept no liability for any loss or damage relating thereto including the loss of any third party provided feature or capacity. Service is provided as is, as available, without warranty or guaranty and is subject to availability and operational limitations of your premises, systems, facilities, materials and equipment. For any Managed Information Security Service, your premises, systems, facilities and operations must meet our and our Representatives' required premise, technical and operating specifications, including, without limitation, hardware, software, security, infrastructure, network, server, premise environment, and power capabilities. You shall be fully responsible for compliance with and conformance to all such premise, technical and operating specifications, and we reserve the right to require you to take all action, construction, site preparation, access permission, and/or installation necessary to meet specified criteria prior to and in connection with provisioning of the Managed Information Security Service. Further, where hosting or additional sensors or appliances, storage or loggers, ports or network tapes, reporting, cabling or other special or additional installation work/service, equipment or materials is required in order to provision/install such Service, if we elect to perform or caused to be performed such work or service, we reserve the right to charge you for labor, materials and other service costs and charges relating to such additional work or service, and you shall be responsible for payment of additional Charges invoiced by us in connection therewith. All site preparation, consulting, remediation, solution proposals, training or response work by us in connection with Managed Information Security Service, including, without limitation, intrusion or vulnerability report work, will be billed at our standard rates on a time and materials basis separate from the Managed Information Security Service. In no event shall we be obligated to incur any responsibility, liability or cost for any premise access or operations of customer or its third party provider necessary in order to provision Service, and in all cases, you agree to defend, indemnify and hold us and our Representatives harmless from any responsibility or liability relating thereto.

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

Any termination, expiration, cancellation, disconnection or suspension of your Service will result in deactivation or deletion of your Server Application Monitoring or Server Application Monitoring Plus account and/or access to your account, and the forfeiture and relinquishment by you of all content in your account. We have no obligation to retain, maintain or deliver historical data or information relating to the Service. We make no guaranty or warranty regarding loss or deletion of or failure to store data, features or capacity of your account, including without limitation any advanced, enhanced or premium features or capacity, and accept no liability for any such loss. You are responsible for maintaining the confidentiality of your account information (including account name and password) and other sensitive information, as we cannot guaranty its security. No method of electronic storage or transmission over the Internet is fail-safe or fully secure. You are responsible for all activities that occur within your account and you agree to notify us immediately of any unauthorized account use. We are in no way responsible for any loss or damage to you or to any third party incurred as a result of any unauthorized access and/or use of your account.

For Server Application Monitoring or Server Application Monitoring Plus, you are responsible for obtaining, installing, configuring and maintaining all equipment, including, but not limited to, computer(s), power sources, communications services, software, firewalls and antivirus protections. Specifically, you are solely responsible for: (a) configuring and maintaining the operating systems for the Services as

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required by Company and/or its Representatives; (b) installation and/or patching of any applications for the Services; (c) obtaining and maintaining all licenses required for the operating systems installed on the Services; (d) performing downloads of your data; (e) providing Company with its IP address information in order to establish the private connection between your private network and our network; (f) the security, including the encryption of data to nationally recognized standards; (g) its compliance with all laws in connection with the Services; (h) loss of stored data; (i) the integrity of its data; (j) any host-based antivirus malware or spyware; and (k) the on and/or off boarding of your data onto the Services.

**H. Customer Relationship Management (“CRM”).** CRM provides you with access to Representative software for your download, installation or access via the worldwide web, or other electronic method at our discretion, to provide means through which you can improve the ways in which your business interacts with customers. CRM Services use certain Representative software that must be installed or used on your equipment within the United States to provide you with the right to use such software in accordance with the terms of the Agreement. You agree that your use of CRM and any such software shall at all times be in compliance with all applicable laws and any applicable third party software license agreement, as the same may be modified at any time, which Mondago Go Integrator End-User License Agreement shall be incorporated by reference herein. You will indemnify, defend and hold harmless Company and its Representatives including Mondago from and against all damages, fines, penalties and claims and all related costs and expenses arising out of or relating to your use of the applicable software and/or any noncompliance by you with the license terms.

**I. Nonstandard Add-On Features, Including SIP Signaling Encryption, Session Border Controller and 4G LTE Failover.** We will configure your accounts for use of any applicable nonstandard add-on feature(s) only to the extent expressly agreed in writing between the Parties, provided, however, all such features, performance and capacity are provided within the United States, as is, as available, and subject to all third party licensor, supplier and/or Representative terms, conditions, limitations and restrictions. We make no guaranty or warranty regarding features, performance or capacity of nonstandard add-on features and accept no liability for any loss or damage relating thereto including the loss of any third party provided feature or capacity. Further, we expressly disclaim any warranty with respect thereto including any warranty of merchantability or fitness for a particular purpose. You agree that no Representative shall be liable for losses, claims or damages, including any interruption of Services, and you shall not be deemed a third party beneficiary of any Representative agreement. Training in connection with equipment, features, portals or other Service is not included, and you agree that you may be charged and will be responsible for any training provided by us or our Representatives, including for any labor, materials or other service relating to such training. Where applicable, you must separately accept any such Representative terms and conditions as required by our Representatives or us in order to be eligible for use of any component or application of or relating to a feature. We are not responsible for any hardware, software, application, feature or any maintenance, support, updates or upgrades of any of the foregoing to the extent applicable, and you agree to assume responsibility for any such requirements including any loss of functionality or use or information or data relating thereto or arising therefrom. Provision of any such add-on feature is not a stand-alone service or product, and as such, you shall lose functionality or use of the feature if you fail to maintain the underlying Service with us.

SIP Signaling Encryption is provided on a limited basis by Company as a nonstandard add-on feature for SIP Trunks or SIP over VoIP and does not apply to any other service or product, whether offered or provided by any third party or us. We employ standardized encryption protocols for encryption of signaling traffic only at Customer's PBX box and Company-owned network. You acknowledge and agree that SIP Signaling Encryption does not encrypt data, media, information, program or content transmitted, stored or accessed at either point, and does not provide encryption of such materials or of signaling at any other transmission or transfer point other than Customer's PBX box and the Company-owned network. As such, we cannot provide or guaranty any encryption of data, media, information, program or content or the security of such materials, and you are responsible for any such encryption, security or confidentiality.

Session Border Controller (“SBC”) is provided on a limited basis as a nonstandard add-on feature for SIP Trunks or SIP over VoIP and does not apply to any other service or product, whether offered or provided by any third party or us. SBC is a device provided by Company or its Representative to assist you in your monitoring, managing and controlling of the flow of communications between your own network borders. You acknowledge and agree that SBC does not guarantee connectivity, quality of service, routing, signaling or filtering accuracy, media availability, or full protection from all security risks.

4G LTE Failover is a nonstandard add-on feature for MRS provided by us and/or our Representatives in certain service areas in connection with MPLS or other Internet or WAN connectivity failover. 4G LTE Failover may also be offered in certain cases on a stand-alone basis but shall still be subject to these non-standard add-on feature terms and conditions. You must provide us with your place of primary use, which must be your business street address within the United States and be within an eligible wireless service area. The failover feature is offered solely in connection with the transmission of your pre-defined critical business data in specified Internet protocol address ranges, and you may not offer, resell or otherwise make 4G LTE Failover available to third parties. You may not use 4G LTE Failover for remote medical monitoring unless otherwise expressly agreed in a written amendment hereto executed by us. To ensure that your Service operates properly in a failover situation, you must contact us immediately once you are aware that your primary connection has lost service even if we are the primary provider, manage your data traffic when in failover mode (e.g., throttling non-mission critical applications like video or Wi-Fi) and provide for a safe and appropriate environment for the equipment, You acknowledge that 4G LTE Failover is a metered service

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that may vary based on location. Usage Charges and overages relating to your data plan may apply to data transmissions, alerts and/or other information in connection with 4G LTE Failover, and you agree to pay for such usage and related overages. If terminated equipment continues to attempt to register after any termination of applicable Service, we will continue to invoice you for such Service including applicable surcharges for such post-termination activity regardless of inability to register. We are not the manufacturer of any equipment provided in connection with such Services.

No method of electronic storage or transmission over the Internet is fail-safe or fully secure regardless of Services provided hereunder. You acknowledge that these Managed Services, including without limitation, technical and engineering work, are highly dependent on Customer-specific configurations and other Customer issues, constraints, limitations, requirements, capabilities and needs that must be identified by you to us and which may affect the productivity and success of the Managed Service. Neither Company nor its Representative accepts any responsibility or any liability for the security or reliability of your electronic environment, network, data or information, whether or not Company or its Representative has provided or installed any add-on feature, encryption, SBC, security equipment, service or device.

**J. Software.** With respect to any software comprising all or any part of a Service under the Agreement, in addition to provisions applicable to software set forth throughout these T&Cs, such software is provided only within the United States on a revocable, personal and non-transferable right to use basis for a limited term and single instance in connection with the Service and the Agreement. No software relating to any Service provided by us nor any copy thereof is sold to you as part of the Service. You may download, install and use any such software solely for the purpose of accessing and using the Service subscribed for under the Agreement as directed by Company or its applicable Representative and in accordance with these T&Cs and any applicable Representative end user license agreement or terms. In addition to our terms and conditions, you must comply with all requirements and restrictions on software that we have licensed from third parties or Representatives. You agree to provide us or our designated Representative with access to your Facilities as necessary or desirable for auditing or measuring use of any software, licenses or related equipment in connection with your Service. We may, but are not obligated to, update, upgrade or change the software and related settings on your computer from time to time, and you agree to cooperate with such activities. Any program downloaded to your computer when software is installed may perform automatic updates and may collect information necessary to do so. No license or right is granted in any source code, and you agree not to modify, adapt, decompile, disassemble, reverse assemble or engineer, or otherwise attempt to derive source code or any other aspect of the software. You further agree that you will not use any software provided under the Agreement to develop or in any way assist in the development of any product or service that has the same functions, in whole or part, as the software or Service provided hereunder. You agree that you will not vary, delete, obscure or remove any notices of proprietary rights or any product, trademark or copyright identification or restrictions on or in any software. Company or as applicable its Representative retains all title and ownership in all copies of the software, and you agree and acknowledge that you do not obtain title to, or ownership of, any intellectual property rights in the software or any copies thereof. We reserve all rights not expressly granted hereunder on behalf of us and/or any Representative and may terminate any right to use in connection with the software at any time. All rights of Customer with respect to any software or use or access thereto shall terminate immediately upon termination of any Service for which such software comprises a component thereof, and you agree that you shall, and Company or its Representative may, delete all software and copies thereof from any Customer device or equipment or restrict access and use thereto upon any such termination. You agree to defend, indemnify and hold us and our Representatives harmless from any claim, including any third party claim, arising from your breach with respect to any such software and/or misuse of the software or Services.

### **X. REGULATORY COMPLIANCE AND YOUR RESPONSIBILITIES**

The following regulatory provisions and Customer responsibilities shall apply to all Services:

**A. Services Compliance.** You understand and acknowledge that you are solely responsible for: determining if any Services and any applications, features, data or third party service related thereto or that you run in the Company-provided environment and any use thereof comply with all laws, standards, regulations and policies relating or applicable generally and/or to your own business or industry, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), the Payment Card Industry Data Security Standard, the Telephone Consumer Protection Act, or the Telemarketing and Consumer Fraud Abuse Prevention Act; and, ensuring compliance with all such applicable laws, standards, regulations and policies. Notwithstanding anything set forth in the Agreement, we make no representation or warranty regarding compliance with such laws, standards, regulations and policies relating to your own business or industry. You agree that we have no way of analyzing your data, services, applications or features deployed in the Services environment. You agree that you will not store, transmit, monitor, process or provide access to any Personal Health Information ("PHI") or credit card information, related data or other information protected by such laws and regulations. We do not intend to access confidential health related information of your clients/business that constitutes PHI in performance of the Services. Any exposure to PHI shall be random, infrequent and incidental to our provision of Service and is not meant for the purpose of accessing, managing, creating or manipulating PHI. If you are a Covered Entity or Health Care Provider under the HIPAA rules or support the health care industry, you agree that we are not a "Business Associate" or "Covered Entity" under the HIPAA rules for purposes of this Agreement. Unless expressly agreed in writing as specified in the Agreement, you acknowledge that the Services are not intended for call center environments, and you shall not use any Services for telemarketing or telephone solicitation sales or otherwise within such an environment. Regardless of Services provided hereunder, you understand and acknowledge that you are solely responsible for ensuring all compliance, privacy, and/or security



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with respect to local, state and federal privacy, security, and telemarketing laws, including without limitation, HIPAA, the Payment Card Industry Data Security Standard, the Telephone Consumer Protection Act, the Telemarketing and Consumer Fraud Abuse Prevention Act and all licensing and regulation relating to privacy, security, telemarketing, call recording, auto dialers, predictive dialers, robo-calls, junk faxes, bulk email, spam, phishing, pharming, unsolicited commercial messages, pre-recorded messaging and do not call registries. You agree that you will fully defend, indemnify and hold harmless Company and our Representatives from any breach of the Services Compliance obligations set forth in this section, including, but not limited to all third party claims relating thereto, without regard to any limitations of liability set forth herein or in any Agreement. You agree to notify us immediately in the event of any breach of these Services Compliance provisions or other impermissible PHI or credit card data storage, access or disclosure.

**B. 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 to the extent, if any, directed by the FCC in connection with CPNI. You are solely responsible for any password or other administrator changes that you make through any website or customer portal established by us for your own administrative access and control with respect to Services. We may assume that any person able to provide your password is authorized by you to receive call detail or other information. If you are receiving Service on a business service plan through your employer, you authorize us to share your account information with your employer. Whenever you provide us account information, you agree to provide true, current, accurate and complete information, and you also agree to keep this information current. If you provide information that is, or we have reasonable grounds to suspect is, untrue, not current, inaccurate or incomplete, we may suspend or terminate your Service.

If you use our website or any customer access or portal provided by or through us, 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 us immediately of any unauthorized use or other breach of security. Neither Company nor its Representatives will be liable for any loss or damage to you and/or any third party arising from your failure to comply with this section.

**C. CPNI.** We maintain privacy policies relating to CPNI and use telecommunications provider industry-accepted technologies to safeguard such information. Your CPNI includes information that relates to the quantity, technical configuration, type, destination, location, and usage of regulated telecommunication services that you subscribe to from Company. We do collect various anonymous information, such as the number of lines you have, the features you use, your monthly minutes of use, systems service and/or performance metrics, etc. This generic information allows us to keep up to date with offerings and helps us to provide and/or improve the Service we provide to you. Under federal law, you have the right, and we have the duty, to protect your CPNI. We may use certain information regarding your account and Services we provide in order to develop and alert you to offers of additional Company services, products or offers that may be of benefit to you. Company 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. We 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 us 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 your signature on 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 us 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.

**D. 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 Company or its affiliates, including, without limitation, via email, cellphone 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 our assets or business, 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.

**E. 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 and/or pre-recorded messaging to contact you. If you have provided an email or cell phone number that is necessary

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for provision of the Service, you expressly consent to our contact by cell phone, text, SMS and/or email alerts as part of receiving such Service or receiving additional, new and/or enhanced products, technology, and service offerings from us or our affiliates. 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.

**F. Export Restrictions and Prohibitions.** Notwithstanding anything to the contrary, you understand and acknowledge that we provide all services, hardware, software, circuits, technology, documentation or other materials solely within the United States (or if specified herein for a specific Service within the domestic United States). Such Services and/or materials may be subject to United States export controls administered by the Department of Commerce, Department of Treasury office of Foreign Assets Control and/or other governmental authorities. You acknowledge and agree that the Services and materials may not be used in, and none of the underlying information, software, hardware, circuits, technology or other materials may be transferred or otherwise exported or re-exported, to any foreign country or location, including, without limitation, those to which the United States maintains an embargo or to any national or resident thereof, or to any person or entity on the Department of Treasury's List of Specially Designated Nationals or the Department of Commerce's Table of Denial Orders Notwithstanding the foregoing prohibitions, if you, directly or indirectly, use or are responsible for use of any Services, information, documentation, software, hardware, circuits, technology or other materials outside the United States, you are solely responsible for compliance with all applicable laws, including without limitation export laws and regulations, import laws and regulations of other countries, regulatory and licensing requirements of such jurisdictions and tax and use costs, expenses or duties in any way related to use of Services or location of materials outside the United States (including any sales, use, VAT, excise, export or other charge of any kind or nature levied or imposed by any governmental authority on you or us or our Representatives relating to transfer, delivery, possession, use or license outside the United States). You agree to indemnify, defend and hold us harmless in connection with any such liability and/or breach of these export prohibitions. In the event of any conflicting or contrary terms or provisions otherwise set forth in this Agreement, these export prohibitions shall control and take precedence.

### **XI. LEGAL TERMS**

The following legal provisions shall apply to all Services:

**A. Confidentiality of Information.** You will not disclose the terms or pricing associated with the Agreement to anyone without our prior written approval. During the term of the Agreement and for a period of two years thereafter, you will not disclose any confidential or proprietary information of Company or its Representatives or use the same for any other purpose. Company and/or its Representatives will retain all ownership rights, including intellectual property rights, in their respective confidential and proprietary information, and you agree to return all copies of such information to us upon our request at any time, provided if return is impossible as to any portion of the information then you will promptly certify to us that all such information has been destroyed. While we use telecommunications provider industry-accepted technologies to safeguard your information, you are responsible for the security of your confidential or proprietary information, as we cannot guarantee its security regardless of the Services contracted and provided hereunder. No method of electronic storage or transmission over the Internet is fail-safe or fully secure.

**B. Copyright, Trademark, Website Access; Customer Reviews and Testimonials.** All content included on our website or other material presented or made available to you as part of the Services, such as text, graphics, logos, button icons, and images, digital downloads, data compilations, training materials or information, and software are the property of Company or its content supplier or Representative and are protected under applicable law. You may not use, copy or reproduce any Company trademarks, tradenames or logos without our express written permission in advance. We grant you a limited non-exclusive right to access and make personal use of our website and not to download (other than page caching) or modify it or any portion of it except with our express written consent. With respect to other material presented to you as part of the Services, you are only permitted to use the content as expressly authorized by us and/or our Representatives in connection with the Services. You may not copy, reproduce, distribute or create derivative works from the content included on our website or other materials presented or made available to you as part of the Services whether by Company or any Representative. Any such material provided by Company or its Representative shall be returned to us immediately in the event of termination, expiration or disconnect of the Service or the Agreement or otherwise upon our request. If you submit any user-generated content (i.e., reviews or testimonials) to our website, then you agree that such content is our property. Moreover, if you submit or approve any review or testimonial with respect to us, then you agree that we may publish your testimonial, together with your name, company name, location and any logo that you provide to us or include as part of any such review or testimonial, for our marketing purposes, whether online or otherwise as we may determine in our sole discretion. You further agree that we may edit the testimonial or review and publish edited or partial versions of the testimonial or review. However, we will never edit a testimonial or review in such a way as to create a misleading impression of your views. You may terminate this consent/license with respect to your review and/or testimonial content and identifying information by giving to us 30 day written notice of termination.

**C. Limitation of Liability. WE INTEND FOR THE FOLLOWING LIMITATIONS AND EXCLUSIONS OF OUR LIABILITY TO APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.** If our or our Representative's gross negligence or willful misconduct causes damage to a person or property, neither we nor our Representative will be liable for more than the lesser of the amount of all Charges that

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you paid under the Agreement or applicable Service Order, excluding Managed Services, or the amount of direct damages to the person or property. For any other claim, neither we nor our Representative will be liable for more than the amount for all Charges paid by you for the Services, excluding Managed Services, during the affected period. With respect to any claim relating to or involving Managed Services, neither we nor our Representative will be liable for more than an amount equal to one month recurring charge that you paid for the applicable Managed Service. In addition, for any claim whatsoever, neither Company nor any of its Representatives will be liable for indirect or consequential damages, including but not limited to, lost profits or revenue or increased costs of operation or any health-related claims allegedly arising from the use of services, devices, equipment or accessories used in connection with services, computer failure or malfunction, computer security breach, computer virus infection, loss or damage of information or data, files or software contained in, stored on, transmitted or recorded by, or integrated with any service that we provide. You are advised to back up all data, files and software prior to installation of any Service and at regular intervals thereafter, and in no event shall Company or its Representatives be liable for any loss or damage to stored, transmitted or recorded data, files or software. Further, at no time will Company or any of its Representatives be liable for punitive, exemplary, reliance or special damages of any type. These limitations apply even if the damages were foreseeable or if we were told they were possible, and the limitations apply whether the claim is based on contract, tort, statute, fraud, misrepresentation, or any other legal or equitable theory. Neither Company nor its Representatives are liable for any damages if Services are interrupted, including without limitation, with respect to TSP Service, and you understand and agree that credits applied by us to your account under any SLA or otherwise at our discretion pursuant to these T&Cs shall be your sole and exclusive remedy with respect to any Service interruption, performance issue and/or outage, regardless of whether an SLA is available for your Service. We are not an operator service provider and as such do not handle emergency calls. We are not liable in any way for any call to any emergency provider or the failure to connect to such provider or any action that occurs or fails to occur as a result. You acknowledge and agree that neither we nor our Representatives are liable for any Service outage and/or inability to dial 911 using your Service or to access emergency service personnel or be located by such personnel due to Company's 911 characteristics and limitations as set forth herein. Further, you acknowledge and agree that we use certain Representatives including underlying third party service providers in connection with the Services, and that we shall not be liable for any failure and/or delay in Services to the extent caused or contributed to, whether directly or indirectly, any failure of equipment, materials, services, facilities and/or software provided by any third party including any such equipment, materials, services, facilities or software provided, leased or licensed by us. You also agree that no Representative including any third party service provider shall be liable to you in connection with or relating to any Services provided hereunder, and you hereby expressly release any such Representative to the fullest extent permissible under applicable law and agree that any such Representative's liability shall be limited to the fullest extent permissible by law. This paragraph will survive termination or expiration of the Agreement.

**D. Indemnification.** You agree to defend, indemnify, and hold us, our affiliates, agents and Representatives and anyone else providing services to you on our behalf, harmless from claims, losses or damages relating to any use of the Services or equipment or facilities relating thereto by you or others, or to your breach of the Agreement or your promises or statements made in it. It is your responsibility to conform to all applicable laws or regulations and you will indemnify Company and its Representatives from claims, losses or damages arising from any such breach and/or use whether lawful or not, including those related to 911 dialing. You acknowledge and agree to Company's 911 characteristics and limitations set forth in the Agreement, and no such characteristics and/or limitations shall be deemed to constitute negligence, gross negligence or willful misconduct on our part. This paragraph will survive termination or expiration of the Agreement.

**E. No Warranties. WE MAKE NO EXPRESS WARRANTY REGARDING THE SERVICE OR RELATED EQUIPMENT, FACILITIES OR MATERIALS AND DISCLAIM ANY IMPLIED WARRANTY, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.** Notwithstanding anything set forth in the Agreement, we make no representation or warranty regarding the design, condition, quality, capacity or other aspect of any materials, equipment, services, or any component thereof, including but not limited to, systems, software, personnel, programming assistance or consultation provided as part of the Services, that the Services will be uninterrupted, error free or free of harmful components, or that any content, including your content, will be accurate, secure or not lost or damaged. The Services and equipment, facilities and materials, including, without limitation, any business continuity or Failover feature, are not fail-safe and are not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Services or equipment, facilities or materials could lead to death or severe injury to business, persons, property or environment. These high-risk activities may include, without limitation, vital business or personal communications or activities in which accurate or secure data, performance or information is required. We do not authorize anyone to make any warranty on our behalf, we make no representation or warranty on behalf of any Representative as such Representatives make no representation or warranty to you, and in each case, you should not rely on any such statement. We are not the manufacturer of equipment or designer of any software and any statement regarding such equipment or software should not be interpreted as a warranty. Company does not guarantee that any Service or product will detect, obstruct and/or prevent any viruses, trojans, worms or unauthorized access to your network and/or computer system. The only warranty applicable to the equipment used in connection with the Services is that provided by an equipment manufacturer, if any, to third party end users of Company. We do not warrant that time is of the essence with respect to any Services. Notwithstanding anything to the contrary, any Services provided by us and/or our

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Representatives as Proof of Concept or POC service are provided on an as is, as available basis without any representation, warranty or SLA whatsoever and may be terminated at any time by us. This paragraph will survive termination or expiration of the Agreement.

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

**G. Resolution of Disputes; Arbitration. 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.** 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 set forth above. If the Dispute cannot be resolved pursuant to this pre-arbitration process within 60 days of receipt of such notice, either Party may initiate arbitration of the Dispute as follows. 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.

**H. Choice of Law/Forum; Fees.** Where our Service and applicable terms and conditions are regulated by a state agency or the 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 Service and/or Agreement is not subject to FCC or state utility regulation, 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 Dispute that may arise between the Parties, including any collections suit initiated by us 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.** 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.

**I. Liens and Encumbrances.** You have no power, authority or right to create, and shall not permit, any lien or encumbrance with respect to our premises or any equipment or materials of Company or its Representatives located within our or your premises or otherwise regardless of location, including, without limitation, tax liens and mechanics' liens, with respect to work performed or equipment or materials furnished, or in connection with the installation, repair, maintenance or operation of your facilities installed within our premises or elsewhere. Notwithstanding the foregoing, if any such lien is filed at any time against our premises and/or Company's or its Representatives' property, or any part thereof, you shall cause such lien to be discharged of record within 30 days of your receipt of notice of the lien, except that if you desire to contest such lien, you will furnish us, within such 30 day period, security reasonably satisfactory to us in the amount of the claim or, you shall provide a bond issued by a surety in good standing in the relevant State in the amount of such lien. If you fail to discharge the lien and/or provide the security set forth above within the time period set forth above, we may, at our option, pay such charge and related costs and interest, and the amount so paid, together with reasonable attorneys' fees and costs incurred in connection with such lien, will be immediately due from you to us.

**J. Eminent Domain/Condemnation.** If any building in which our Service premises is located is damaged by fire or other casualty, or is otherwise taken by a public or quasi-public governmental authority, we will give you prompt notice thereof. If a landlord or Company exercises an option to terminate an agreement applicable to a particular location due to damage, destruction, or taking of the premises subject to such agreement, or landlord or Company decides not to rebuild such building or portion thereof in which the premises is located

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or relocate the same, the Agreement or Service Order with respect to that particular premises shall terminate as of the date of such exercise or decision as to the affected premises and the recurring fees paid by you shall be modified accordingly. If neither the landlord of the affected premises nor Company exercises the right to terminate, we shall repair the particular premises to substantially the same condition it was in prior to the damage or taking (or relocate your facilities) completing the same with reasonable diligence. In the event that we fail to complete the repair or relocation within 90 days, you shall thereupon have the option to terminate the Agreement or Service Order with respect to the affected premises which option shall be the sole remedy available to you against us relating to such failure. If any portion of the premises is rendered uninhabitable by reason of such damage or taking, the Parties will agree upon a proportional abatement of the Charges for your affected facilities, for the period from the date of the damage or taking to the date of the repairs or relocation.

**K. Changes to the Agreement.** We may change Charges and/or terms for the Services from time to time, including these T&Cs. We may decrease Charges without providing advance notice. According to applicable state law, we will notify you of increases in Charges by bill insert, bill message or other notice. With respect to other changes to the Agreement, we will notify you, by a posting on our website at [www.firstcomm.com](http://www.firstcomm.com), recorded announcement, bill insert, bill message, newspaper ad, postcard, letter, facsimile, call to your billed/account number, call to any phone number (including any cell number) associated with the account, e-mail to an address provided by you or other appropriate form of notice, and you consent to be contacted by such form(s) of communication and/or notice. Choice of notification methods will remain in our discretion and as directed by state law. Notwithstanding the above, Company 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. For Customers who do not agree to a material change(s) made by us to the Agreement, not applicable for taxes, surcharges or other recoveries noted above, you may terminate the Agreement without Early Termination Fee by giving us notice as described below within 30 days of the effective date of a material change ("Customer's Material Change Termination Notice"). Furthermore, Service that is not terminated or migrated to another service provider within 30 days of the Customer's Material Change Termination Notice date will be deemed to be your agreement to the material change. Customers terminating or migrating Services outside of the 30-day period following such Customer's Material Change Termination Notice date will incur an Early Termination Fee. You have the option to change your Service or features at any time by notifying us, and you may take advantage of our promotions for which you qualify, provided that you comply with any requirements of the change or the promotion, including, where applicable, but not limited to, change Charges and changes to your contractual obligations. If we allow you to suspend your account for a temporary period, we may extend the term of your Agreement by the length of the temporary suspension.

**L. Notices From You.** All notices (including your notice of disconnect or termination), requests or other communications shall be in writing and delivered as follows, except as otherwise permitted herein:

- All matters, except notice of disconnect or termination, may be submitted via electronic mail to [businesscare@firstcomm.com](mailto:businesscare@firstcomm.com);
- Otherwise for disconnects or terminations, send via electronic mail to [businesscustomercancellations@firstcomm.com](mailto:businesscustomercancellations@firstcomm.com), with confirmed receipt and subject line beginning with "NOTICE OF DISCONNECT/TERMINATION-LEGAL" or via overnight courier, certified or registered mail, postage prepaid and return receipt requested to First Communications, LLC, 3340 West Market Street, Akron, OH 44333, Attn: Notices-Legal.

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

**M. Notices 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 the Changes to the Agreement section above. Except for notice as otherwise permitted herein, written notification to you will be deemed delivered three days after the notice was deposited in the United States mail, one day after receipt via overnight courier, or immediately if delivered electronically such as e-mail, facsimile, text or short messaging service. Any such notices will be sent to the address, e-mail, facsimile, phone or mobile phone or device of record on your account with us. You are responsible for notifying us of any change in your address, email address or other account contact information.

**N. Assignment.** We may assign all or part of the Agreement and/or a Service Order without notice and without such assignment being considered a change to the Agreement. We are then released from all liability. You may not assign the Agreement without our prior written consent.

**O. Not Legal/Regulatory Advice.** You understand and agree that we do not provide legal or regulatory advice or services of any kind or nature whatsoever. Service shall not be deemed, construed, interpreted, relied upon or constitute legal or regulatory advice even if such Service discusses or relates to any such issues, and you agree that you are responsible for retaining your own legal/regulatory counsel and advisors to provide any legal or regulatory advice or services. Further, any work, service and/or deliverables provided by us

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in connection with any Service shall not be deemed to be legal or regulatory opinions and may not and should not be relied upon as advice, proof, evidence, guaranty or assurance as to your legal or regulatory compliance.

**P. Headings; Severability; Survival.** Section headings are for descriptive purposes only and are not intended to be used to interpret the Agreement. The provisions of the Agreement are severable, and if any provision is held unenforceable or invalid because of scope of activity, duration, or other reason, such provision shall be adjusted to cure such invalidity or unenforceability to the minimum extent necessary. Such unenforceability or invalidity will not affect any other provision, and the remaining terms of the Agreement will remain in full force and effect. The provisions of the Agreement that are contemplated to be enforceable after the termination or expiration of the Agreement or a Service Order survive termination or expiration of the Agreement or applicable Service Order.

**Q. Entire Agreement; Waiver.** The Agreement represents the entire agreement between the Parties relating to the subject matter of the Agreement, which may only be amended or modified as described in the Agreement. The Agreement supersedes any prior written or oral understanding, agreement, representation or promise between the Parties relating to the subject matter of the Agreement. Notwithstanding anything set forth in the Agreement, all quotes, proposals, statements of work, samples, diagrams, descriptive materials, specifications, marketing and advertising including email communications issued or used by Company and any descriptions or illustrations contained in Company guides, websites, catalogues, brochures, reports or manuals are for general informational purposes only and shall in no event form part of the Agreement. If we do not enforce a claim or right, this does not amount to a waiver of our rights to enforce such a claim or right.

**R. Execution.** The Agreement may be executed by the Parties in separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same Agreement. Facsimile and electronic signatures, including any click through ordering portal or DocuSign confirmation, shall be deemed and will be treated as an original signed Agreement or counterpart, as applicable.