

The terms and conditions set forth below and in the Service Order, the Terms and Conditions of Business Services (“T&Cs”) and applicable rates, tariffs and/or price/service guides posted on First Communications’ website [www.firstcomm.com](http://www.firstcomm.com) from time to time apply to the Data Center Service provided pursuant to the Agreement (“Services”). Defined and/or capitalized terms used herein and not otherwise defined shall have the meanings given to them in the T&Cs.

**1. TERM**

Customer has 24 hours to test and accept Service once it is made available to Customer. If Customer has not contacted First Communications within 48 hours regarding non-acceptance of the Service specifying in detail the testing failure, the Term and billing for Service hereunder and/or under any applicable Service Order will begin effective as of the date any Service hereunder or thereunder was first made available to Customer. Subject to applicable state law, a Service Order for Data Center Service will automatically renew for a like Term at the end of the applicable initial or renewal Term 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. In the event of termination of Service prior to expiration of the Term including any renewal Term, ETF for the Service is calculated as follows: the average of the last 3 months usage (if any), plus MRC times the number of months remaining in the current Term, plus any waived installation, promotional or non-recurring fees or charges.

**2. DATA CENTER SERVICE**

2.1 Data Center Service includes equipment, cabinet space, electric power, and/or air conditioning as set forth in the Service Order. Any other Services provided for use with the Data Center Service, including, without limitation, any Professional Services, will be subject to the T&Cs and any applicable Service Terms for those Services. Customer may elect to use the optional Remote Hands/Eyes Feature with respect to the Services if Customer desires a third party designated by First Communications or at First Communications’ option, First Communications itself, to perform work in or around Customer’s Cabinet(s) on Customer’s behalf should Customer not have staff available to do so. All Professional Services, including such technical support, shall be invoiced at the Company’s then current hourly rates for such services. All Professional Services will require a four-hour minimum charge at the Company’s then current hourly rates with each additional time period billed in one-hour increments, and further subject to the following conditions. Customer may schedule Professional Services during normal business hours of 8 a.m. to 5 p.m. Monday thru Friday (“Normal Business Hours”), excluding holidays. If Professional Services are required or extend beyond Normal Business Hours, Customer will be charged the Company’s then current After Hours Rate for any time period beyond Normal Business Hours. Company’s then current Expedited Hourly Rate may apply in the event services are required on less than 48 hours notice.

2.2 Subject to the terms of the Agreement, Customer shall have the limited right to use the premises designated by First Communications to install and maintain certain telecommunications equipment for collocation of Customer’s Facilities within the Cabinet(s) identified in the Service Order (“Premises”). Customer’s “Facilities” shall mean Customer’s equipment and/or cable installed at the premises subject to First Communications’ approval in the selected Cabinet and power allocations identified in the Service Order.

2.3 Title to and risk of loss for Customer’s Facilities shall remain with Customer, and First Communications shall have no rights to or interest in Customer’s Facilities except as specifically set forth in the Agreement.

2.4 No use of the Premises by Customer or payment of any Charges required under the Agreement shall create or vest in Customer any license, easement rights or other ownership or property rights of any nature. Neither Customer nor anything set forth in the Agreement shall limit First Communications’ right to access, maintain and operate its facilities and/or premises in such a manner as will best enable First Communications to fulfill its own service and premise requirements.

2.5 Customer shall obtain and maintain, at its sole cost and expense, all necessary permits or licenses required by any federal, state or local authority for the installation, maintenance, operation and repair of Customer’s Facilities. Each Party will observe and comply with all laws, ordinances and regulations applicable to such Party that in any manner affect the rights and obligations of the Parties under the Agreement.

2.6 Notwithstanding anything set forth herein, it is the express intent of the Parties that in no event shall Customer have any rights in, to or under any portion of First Communications’ legal and equitable rights, if any, under any of First Communications’ underlying agreements. Customer’s right to use the Premises is in all respects subject and subordinate to limitations contained in all such underlying agreements and Customer agrees to comply with such rules, regulations and limitations with respect to the Premises and its Facilities.

**3. CHARGES; CREDIT**

Customer shall make timely payments to First Communications of all Charges invoiced to Customer during the Term. First Communications reserves the option to adjust pricing after the first anniversary of the applicable Service Order upon not less than 30 days written notice. Provision by First Communications of Service may be subject to a Customer credit check, and Customer agrees that it must complete First Communications’ Credit Application to commence the required credit check and failure to do so will be deemed to be a breach of the Agreement. Customer authorizes First Communications to obtain any credit information and/or any customer proprietary information necessary to provision or deliver Services and to establish Customer’s account, and hereby authorizes the release of such information by third parties to First Communications.

**4. CUSTOMER FACILITIES**

4.1 Customer shall, at its own expense, during the Term, install and maintain Customer's Facilities in a safe condition acceptable to First Communications so as not to conflict or interfere with the facilities of First Communications or others. Customer's Facilities shall at all times be placed and maintained in accordance with First Communications' requirements and specifications.

4.2 Customer shall have unescorted access 24 hours per day, 7 days per week for routine maintenance of Customer's Facilities, provided Customer complies with the requirements of the Agreement. Prior to entering the Premises at any time, Customer's technicians or contractors must call First Communications' Network Management Center ("NMC") at 855-497-1105 and must also call the NMC upon leaving the Premises. In the event Customer elects to have an independent contractor perform any of the installation work, First Communications shall have the right to approve such independent contractor prior to commencing any such work, which approval shall not be unreasonably withheld or delayed. Customer shall be fully and solely responsible for all actions of any such independent contractor regardless of any approval by First Communications.

4.3 Customer shall notify First Communications 14 days prior to any installation, repair or maintenance of Customer's Facilities. First Communications' authorized employee, agent or contractor shall have the authority, without subjecting First Communications to any liability, to suspend Customer's work operations in and around the Premises, if, in the sole discretion of said employee, agent or contractor, any hazardous conditions arise or any unsafe practices (including unsafe practices that may threaten the integrity of a Party's or third party facilities) are being followed by Customer's employees, agents or contractors. The presence of First Communications' authorized employee, agent or contractor shall not relieve Customer of its responsibility to conduct all of its work operations at the Premises in a safe and workmanlike manner, nor shall it subject First Communications, nor any of its employees, agents, or contractors to responsibility or liability for Customer's installation, repair or maintenance.

4.4 In the event of a First Communications emergency, First Communications' work shall take precedence over all operations of Customer in the Premises and First Communications may rearrange Customer's Facilities without any liability to First Communications. In the event of a Customer emergency, Customer shall immediately notify First Communications at 855-497-1105 prior to performing any repair or maintenance that may be necessary to correct the emergency situation. If notification is not feasible due to a potentially unsafe situation, Customer shall notify First Communications as soon as possible during or after completing the necessary repair or maintenance.

4.5 If any part of Customer's Facilities are not placed and maintained in accordance with the terms and conditions set forth in the Agreement and Customer has not corrected the violation within 10 days from receipt of notice thereof from First Communications then First Communications may, in its sole discretion, terminate the Agreement and/or any Service Order and/or correct said condition at Customer's sole cost and expense. However, in the event such conditions pose an immediate threat to the safety of First Communications' employees or the public, interfere with the performance of First Communications' service or premise obligations, or pose an immediate threat to the physical integrity of First Communications' or third party facilities, First Communications may perform such work and/or take such action that it deems necessary without first giving notice of the violation to Customer and without subjecting itself to any liability for damage to Customer's Facilities or for any interruption or degradation of Services. As soon as practicable thereafter, First Communications shall advise Customer in writing of the work performed or the action taken. Customer shall be responsible for all reasonable expenses incurred by First Communications associated with any work or action performed by First Communications pursuant hereto and shall reimburse First Communications within 30 days of receipt of First Communications' invoice therefor.

4.6 First Communications reserves the right to make periodic inspections of Customer's Facilities. Where practicable, First Communications shall give Customer advance notice of such inspections and Customer shall have the right to have one or more of its employees or representatives present. The making of periodic inspections or the failure to do so shall not impose any liability upon First Communications nor relieve Customer of any responsibility, obligations or liability for its Facilities or otherwise assumed under the Agreement.

4.7 First Communications shall have the right to require Customer to relocate or remove Customer's Facilities from the Premises within 90 days of notice of First Communications' need for relocation to accommodate First Communications' networking requirements. First Communications will use good faith efforts to provide an alternate location within the same Premises for such relocation. Any relocation of Customer's Facilities at First Communications' sole discretion pursuant to this paragraph shall be at First Communications' sole cost and expense. Any costs incurred as a result of relocating Customer's Facilities at the direction or requirement of a third party (e.g., utility property owner or governmental body) shall be allocated to Customer on a pro rata basis based upon the percentage of floor space it occupies compared to the total amount of floor space occupied in the Premises at the time of such relocation.

4.8 First Communications is not responsible for the installation, operation, maintenance, compatibility or performance of any Customer premise equipment. If Customer connects incompatible equipment to the Service, First Communications makes no commitments regarding the delivery or performance of the Service. If third party hardware, software or facilities impair operation of the Service, Customer remains liable for payment of all Charges for the Service, and, if third party equipment is likely to cause a hazard or service interruption or obstruction, Customer will eliminate such likelihood immediately upon First Communications' request.

4.9 Upon termination or expiration of the Agreement and/or Service, Customer shall immediately remove Customer's Facilities and shall complete such removal within 30 days following the date of termination or expiration. Customer also agrees to restore the Premises to the same condition as at the start of the Term, ordinary wear and tear excepted during such removal period. If Customer fails to remove Customer's Facilities and/or restore the Premises within 30 days after the date of termination or expiration, then First Communications, in its sole and absolute discretion,

may choose to either remove Customer's Facilities and restore the Premises at Customer's sole cost and expense, or continue to invoice Customer at two times the then current prevailing MRC retroactive to the date of termination or expiration and continue to invoice such amount until Customer removes its Facilities from the Premises and restores such Premises.

## **5. INSURANCE**

5.1 Throughout the Term of the Agreement, Customer shall maintain the following minimum levels of insurance:

- 5.1.1 Worker's Compensation and related insurance as prescribed by the law of the State in which the work is performed;
- 5.1.2 Employer's liability insurance with limits of at least \$1,000,000 per occurrence;
- 5.1.3 Comprehensive general liability insurance (including products or service liability insurance) with limits of \$2,000,000 aggregate. If the use of automobiles is required, automobile liability insurance, each with a combined single limit of \$1,000,000, bodily injury and property damage; and
- 5.1.4 Excess liability insurance with a limit of \$5,000,000 aggregate.

5.2 Such policies shall be primary and non-contributory by First Communications. Upon reasonable request from First Communications, Customer will furnish to First Communications certificates of such insurance naming First Communications as additional insured. The certificates shall provide that 30 days prior written notice of cancellation or material change of the insurance to which the certificates relate shall be given to First Communications. The fulfillment of the obligations hereunder in no way modifies any obligations of Customer to indemnify First Communications or its Representatives.

5.3 Customer hereby waives and releases First Communications from all claims that may arise from any injuries to persons or damage to property, whether by negligence or any other cause, that Customer is required to insure against under this Section 5 or that is covered by any other insurance actually carried by Customer, and Customer shall look solely to its own insurance for recovery with respect to any such claims. All such policies required hereunder shall provide a waiver of subrogation effective as to First Communications, its owners, directors, employees or agents. Customer shall require each contractor and/or subcontractor performing work in connection with the Agreement to obtain and maintain at all times insurance equivalent to that which is required of Customer, and shall cause each such contractor and subcontractor to execute a waiver and release of First Communications as set forth in the preceding sentences of this Section 5.

## **6. GENERAL PROVISIONS**

6.1 Customer has no power, authority or right to create, and shall not permit, any lien or encumbrance with respect to the Premises or any equipment located within the Premises, including, without limitation, tax liens and mechanics' liens, with respect to work performed or equipment furnished, or in connection with the installation, repair, maintenance or operation of Customer's Facilities installed within the Premises. Notwithstanding the foregoing, if any such lien is filed at any time against the Premises, or any part thereof, Customer shall cause such lien to be discharged of record within 30 days of Customer's receipt of notice of the lien, except that if Customer desires to contest such lien, it will furnish First Communications, within such 30 day period, security reasonably satisfactory to First Communications in the amount of the claim or, Customer shall provide a bond issued by a surety in good standing in the relevant State in the amount of such lien. If Customer fails to discharge the lien and/or provide the security set forth above within the time period required, First Communications may, at its option, pay such charge and related costs and interest, and the amount so paid, together with reasonable attorneys' fees incurred in connection with such lien, will be immediately due from Customer to First Communications.

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

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