

**VILLAGE OF DOWNERS GROVE**  
**Report for the Village Council Meeting**  
**11/15/2016**

<b>SUBJECT:</b>	<b>SUBMITTED BY:</b>
First Communications Telecommunications Agreement	Dave Kenny Director, Information Technology

**SYNOPSIS**

Resolutions have been prepared approving two telecommunication contracts with First Communications of Lombard, Illinois for a period of 36 months for 801 Burlington Avenue and 5101 Walnut Avenue in the amount of \$17,577.36

**STRATEGIC PLAN ALIGNMENT**

The goals for 2015-2017 include *Steward of Financial, Environmental and Neighborhood Sustainability*.

**FISCAL IMPACT**

The annual cost for both contracts is \$5,859.12. The FY16 budget includes \$15,600 in the General Fund for this contract.

**RECOMMENDATION**

Approval on the November 15, 2016 consent agenda.

**BACKGROUND**

Primary Rate Interface (PRI) is a telecommunications interface standard used on an Integrated Services Digital Network (ISDN) for carrying multiple voice and data transmissions. PRI circuits are known as “trunks” or “trunking circuits” in telephony jargon. A trunk is a communications line or link designed to carry multiple signals simultaneously to provide network access between two points. The Village’s current Voice over Internet Protocol (VoIP) telephone systems use two PRI circuits to handle its telephone traffic.

Through the use of a telecom carrier broker, First Communications quoted lower pricing when compared to the Village’s current carrier, Call One. First Communications is a technology solutions provider offering data networking, voice, and managed services throughout the Midwest. First Communications currently has over 35,000 customers.

Additionally, the Village’s VoIP system will be upgraded next year. The new upgrade allows the system to take advantage of newer trunking technologies, such as Session Initiation Protocol (SIP). SIP is a communications protocol for signaling and controlling voice and multimedia communication sessions over Internet Protocol (IP). PRI uses circuit switching (traditional telephone technology) and SIP uses packet switching (internet technology). SIP is generally lower in cost.

When looking at telecom providers, the Village had two preferences:

- The need to take advantage of 36 months term pricing.
- The need for flexibility after 12 months to upgrade from the PRI platform to SIP services without financial penalties due to canceling an existing contract.

First Communications has agreed to both conditions and was the lowest cost. Other carriers were unwilling to provide the needed amendments.

#### **ATTACHMENTS**

Resolutions

Contract Documents

**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION AUTHORIZING EXECUTION OF AN ISDN-PRI  
SERVICE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE  
AND FIRST COMMUNICATIONS, LLC  
FOR 801 BURLINGTON AVENUE**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Agreement (the "Agreement") and Amendment (the "Amendment"), between the Village of Downers Grove ("Customer") and First Communications, LLC ("Company"), for ISDN-PRI telecommunication services at 801 Burlington Avenue, as set forth in the form of the Agreement and Amendment submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement and Amendment, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement and Amendment.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

\_\_\_\_\_  
Mayor

Passed:

Attest:

\_\_\_\_\_  
Village Clerk



First Communications, LLC  
 3340 W Market St, Akron, OH 44333  
 phone (312) 895-8818  
 service (800) 589-1531 www.firstcomm.com

# Service Order Form First Connect

## Customer Information

Company Name: Village of Downers Grove		Tax ID:	Term: <input type="radio"/> 1 Year <input type="radio"/> 2 Year <input checked="" type="radio"/> 3 Year	
Installation Address: 801 BURLINGTON AV		City: DOWNRS GRV	State: IL	Zip: 60515
Installation Contact:	Contact Email:	Contact Phone:		

## Circuit Information

<b>QTY</b>	<b>Circuit Type*</b>	*Both circuit types include unlimited local calling. Any additional feature options must be checked below.	<b>VPN Service*</b>	* Operational ICB Needed
1	FirstConnect ISDN PRI		<input type="checkbox"/> Data VPN	
0	FirstConnect Local T1 (Analog)		<input type="checkbox"/> Voice VPN	

LD Usage Rate: \$0.0290

**Voice Mail** **QTY**

**Toll Free Number Quantity:** 0

**FirstConnect ISDN PRI**  
 Quantity of Blocks of 20 DID: 2

**FirstConnect Local T1 Analog**  
 0-24 unlimited local voice lines  
 23 Number of Lines on Local T1

### LD Minute Bundles

All minutes are to anywhere in the continental United States

- 1,500 LD Minutes, Overage Rate: \$0.029
- 10,000 LD Minutes, Overage Rate: \$0.029
- 100,000 LD Minutes, Overage Rate: \$0.029
- 150,000 LD Minutes, Overage Rate: \$0.029
- 20,000 LD Minutes, Overage Rate: \$0.023
- 20,000 LD Minutes, Overage Rate: \$0.029
- 200,000 LD Minutes, Overage Rate: \$0.029
- 5,000 LD Minutes, Overage Rate: \$0.029
- 50,000 LD Minutes, Overage Rate: \$0.029

### FirstConnect ISDN PRI Optional Features

- Acct Codes (100 Block)
- Caller ID w/Name
- Failsafe
- Multi-Exchange Add'l TN
- Add'l Acct Codes(per 100)
- DID Outpulse
- Multi-Exchange

- Anony. Call Reject
- Call Blocking
- Call Forward NA
- Call Hold
- Call Transfer
- Call Waiting
- Caller ID Name
- Hunting
- Non-Publish Nmb
- Repeat Dialing
- Speed Dialing
- Auto Callback
- Call Forward Busy
- Call Forward Var
- Call Park
- Call Wait w/ Caller ID
- Caller ID Blk pr call
- Caller ID Nbr
- Non-Listed Nmb
- RACF
- Select Call Reject
- Three-Way Call

DIA	QTY
T-1 (1.5 Mb)	0
Two Bonded T-1 (3.0 Mb)	0
Three Bonded T-1 (4.5 Mb)	0
Four Bonded T-1 (6.0 Mb)	0
DS3	

## Product Details (exclusive of taxes, surcharges and regulatory fees)

Product	Qty	MRC Per Unit	NRC Per Unit
FirstConnect T1 v4- ISDN PRI	1	\$155.4	\$0
FC T1 20 D I D Blk up to 2	2	\$0	\$0
FC T1 Toll Min 1,500 Addl	1	\$15.53	\$0
EUCL	1	\$26.95	\$0
Carrier Line Charge	1	\$21.25	\$0
Federal ARA	1	\$25	\$0
FC T1v2 Addl Line / Chan	23	\$0	\$0
:			
Total MRC	\$244.13		
Total NRC	\$0		

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

By executing this Agreement, Customer is ordering the Services set forth herein and on related documentation. Customer agrees to pay for all Services ordered or otherwise used, including taxes, surcharges and fees charged by **First Communications, LLC ("Company")**, including, but not limited to, applicable federal, state, local use, excise, sales, or privilege taxes, duties or similar liabilities, as further set forth in the First Communications, LLC Terms and Conditions (the "T&Cs"). Customer agrees to the T&Cs and all items incorporated therein including those in the applicable tariff and rate guide which can be found on [www.firstcomm.com](http://www.firstcomm.com). Customer also authorizes Company to obtain any credit information and/or any customer proprietary network information necessary to provision Services and to establish Customer's account, and hereby authorizes the release of such information by any and all third parties to Company. Customer understands that number assignments are not guaranteed and cannot be relied on before Service is activated. Customer has provided Company with a valid Letter of Agency for all applicable services ordered. The undersigned represents that he/she is authorized to enter into this Agreement on behalf of Customer. Any changes in the products ordered (adding/deleting lines, increasing bandwidth, etc) will alter the prices quoted above and can change within ten percent of the value signed for by the customer. Customer is responsible for the identification and payment of any termination fees to any 3rd party that may apply when switching to Company services.

The term for Service that requires installation of a circuit will begin the date that the service is made available to you. However, for a circuit with integrated or dynamic services, billing will begin once at least either the data or voice portion of the service is available. Furthermore, Parties agree that all services ordered will be completed no later than forty-five (45) days from the circuit delivery date. If all services are not complete by day forty-six (46), all service work will be disconnected, the Agreement terminated, and you will be charged Early Termination Fee along with any Charges Company incurred on your behalf to fulfill your order.

All services are individually contracted under this agreement. Cancellation of services prior to the end of the contract may result in Cancellation Charges or Early Termination Fees for that service.

**Order Cancellation**

Cancellation by the customer after the signature date and before the service available date will result in an Order Cancellation Fee to be paid by the customer as described in T&Cs, tariff(s) and price guide(s), according to state law.

**Termination**

Company may terminate this Agreement and the Services for Customer's non-payment in accordance with its rights under its general T&Cs and its tariffs and rate guides. Upon termination of this Agreement by Company for non-payment the Customer shall be liable for the payment of all Services provided through the date of termination, plus any applicable Termination Fees. Company may terminate this Agreement without liability if Company determines that it is no longer able to offer a product or service or the product or service is no longer offered in a Company tariff and rate guide, in which case the Customer will not be liable for any Termination Fees. If Customer terminates the agreement prior to the expiration of its initial term or renewal term, or if Company terminates the agreement due to non-payment, Customer will owe Company the following Termination Fees: the average of the previous 3 months usage plus any monthly recurring charges, multiplied by the number of months remaining in the term of the contract as well as any waived NRC fees. For Ohio end users: Inclusion of early termination liability by the company in its tariff or contract does not constitute a determination by the Public Utilities Commission of Ohio (PUCO) that the termination liability imposed by the company is approved or sanctioned by the PUCO. Customers shall be free to pursue whatever legal remedies they may have, should a dispute arise.

At least eighty percent (80%) of the Customer's monthly domestic United States minutes shall originate and/or terminate in a Regional Bell Operating Company ("RBOC") territory. Company shall have the right to apply a one-half cent (\$0.005) per minute surcharge on all non-RBOC originated and or terminated traffic where such non-RBOC terminated traffic exceeds twenty percent (20%) of Customer's total monthly service for domestic United States Traffic.

BY PLACING CUSTOMER'S SIGNATURE IN THE SPACE PROVIDED, CUSTOMER HEREBY ACKNOWLEDGS ITS REVIEW AND RECEIPT OF THE T&Cs AND HEREBY ACKNOWLEDGES ITS AGREEMENT TO BE BOUND BY SAID TERMS, INCLUDING ALL TERMS INCORPORATED THEREIN BY REFERENCE, INCLUDING, BUT NOT LIMITED TO, ALL APPLICABLE TARIFFS AND RATE GUIDES AND ALL TERMS SET FORTH AT [WWW.FIRSTCOMM.COM](http://WWW.FIRSTCOMM.COM) WHICH MAY BE AMENDED FROM TIME TO TIME.

Customer Printed Name	Title	Signature	Date
First Communications Printed Name	Title	Signature	Date



As a First Communications customer, you are eligible to sign up for our Paperless Billing option. By signing below, you are agreeing to no longer receive a Paper Invoice.

- Yes!** I want to **save \$10 a month** by receiving a Paperless Invoice
- No, I would like to receive a Paper Invoice.

---

Billing Contact Email Address

---

Customer Signature

---

Date

---

**How it works:**

- \* An email will be sent to your billing email address with a Temporary Username and Password
- \* You can now log on to <http://customers.firstcomm.com> to view your invoice, payment information, call detail and more
- \* When your invoice is ready for viewing, you will receive an email notification.
- \* Make payments even simpler by signing up for First Communications Automatic Payment Feature



## Customer Contact Info

Company Name: Village of Downers Grove

## Contacts

Name	Email Address	Telephone #	Preferred Login
Permissions: <input type="checkbox"/> Administrator <input type="checkbox"/> View/Pay Bill(s) <input type="checkbox"/> View/Submit/Update Repair Tickets PMP:			
Permissions: <input type="checkbox"/> Administrator <input type="checkbox"/> View/Pay Bill(s) <input type="checkbox"/> View/Submit/Update Repair Tickets			
PMP: <input type="checkbox"/> Basic View <input type="checkbox"/> Advanced EVPL/VPLS View <input type="checkbox"/> Advanced IP VPN/Internet Management view			
Permissions: <input type="checkbox"/> Administrator <input type="checkbox"/> View/Pay Bill(s) <input type="checkbox"/> View/Submit/Update Repair Tickets			
PMP: <input type="checkbox"/> Basic View <input type="checkbox"/> Advanced EVPL/VPLS View <input type="checkbox"/> Advanced IP VPN/Internet Management view			



## Letter of Authorization

**Customer Information**

<b>Customer Name</b>	Village of Downers Grove	<b>State</b>	IL
<b>Address</b>	801 BURLINGTON AV	<b>Zip Code</b>	60515
<b>City</b>	DOWNRS GRV	<b>Phone</b>	

**Section 1: Authorization:** By signing below I am authorizing First Communications, LLC to become my provider for the telephone numbers indicated and the services checked below:

Coverage:
<input type="checkbox"/> Local Dial Tone <input type="checkbox"/> Local Toll <input type="checkbox"/> Long Distance <input type="checkbox"/> International
Telephone Number: PHONE NUMBER OR DID RANGE
New Install

I authorize First Communications to act as my agent to make this change occur. I also understand that First Communications may have different calling areas, rates and charges than my current provider, and that by signing below I indicate that I understand those differences (if any) and am willing to be billed accordingly. I certify that I have read and understand this Letter of Authorization. I further certify that I am at least eighteen (18) years of age and am authorized to change the service provider for the telephone numbers listed. I understand that I may select only one InterLata (long distance)/International long distance and only one IntraLata (local toll) carrier for each telephone number. I also authorize First Communications to access my customer proprietary network information (Customer Service Record) to facilitate this transaction.

**Signature** \_\_\_\_\_  
**Printed Name** \_\_\_\_\_

**Date** \_\_\_\_\_





# FirstConnect T1 Service Service Level Agreement

This Service Level Agreement ("SLA") is subject to the terms and conditions of the applicable service agreement between First Communications and Customer regarding FirstConnect T1 Services, including Company's applicable website terms and conditions.

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

**2. Network Goals.** The following service level goals ("Goals") apply to FirstConnect T1 Service TDM Service purchased from Company.

**Network Availability**

Total amount of Service "downtime" (in minutes) from all trouble tickets relative to Network Outage Time (per individual service) rounded up to the nearest hour.

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

**Time to Firm Order Commitment (FOC)**

Total count of business days, beginning at Day One from Provisioning Order Acceptance and Assignment notification to the day First Communication provides the initial Firm Order Commitment (FOC) notification for installation of new circuit local access connectivity. Credit is issued on a one time basis per Service Order for new circuit installations only.

**Mean Time to Repair (MTTR)**

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

Applicable Components	Goal	Service Credits**
*Network Availability	First Connect: 99.9% availability	1 day credit = 1/30 of the monthly fees for the applicable location(s) per each hour of downtime (e.g., downtime between 1 to 60 minutes = 1 day credit eligible) in a given billing period.
***Time to FOC	10 business days	1 day credit = 1/30 of the monthly fee(s) for the applicable service(s) for each day that exceeds the initial 10 days
****Mean Time to Repair (MTTR)	4 hours (monthly average)	1 day credit = 1/30 of the monthly fee(s) for the applicable affected service(s) for each hour that exceeds the initial 4 hour MTTR in a given calendar month.

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

**\*\*NOTE:** See Section 4 requirements and exceptions.

**\*\*\*NOTE:** Day One equals the Provisioning Order Acceptance Date + 1 business day for assignment (Ex: Provisioning Order Acceptance Notice is sent on Monday at 3:00pm. Day One is Tuesday). Time to FOC objective excludes orders that require Special Access, involve facility and/or special construction or changes to existing circuits which do not include installation of a new circuit. The Firm Order Commitment (FOC) represents the date the ILEC estimates local access will be installed which does not equate to service activation. This SLA does not guarantee the initial FOC date will be met by the ILEC.

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



# FirstConnect T1 Service Service Level Agreement

## 3. Maintenance.

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

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

## 4. General.

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

**4.2 Service Credit Exceptions.** Network Outage Time is measured from the time a Trouble Ticket is opened with Customer Care, at the toll free number 1-888-426-6340, as a result of your inability to send and receive phone calls, and ends when phone calls are able to be sent and received at the demarcation point. Service credits will not be issued where the SLA is not met as a result of:

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

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



## Amendment

This is an amendment (“Amendment”) to the new Service Order Forms (“Agreements”) dated \_\_\_\_\_, 2016 by and between **First Communications, LLC** (“Company”) and **Village of Downers Grove** (“Customer”) at the following locations:

DOE No.	Location	Service Description
339373	5101 Walnut Ave., Downers Grove, IL 60515	FirstConnect T1 v4 ISDN PRI
339394	801 Burlington Ave., Downers Grove, IL 60515	FirstConnect T1 v4 ISDN PRI

The effective date of this Amendment shall be the later of the dates signed by Customer and Company below.

This Amendment is in addition to the Agreements and all terms incorporated in this Amendment are as defined in the Agreements. For good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties, the parties agree to amend the Agreements as follows:

### **Technology Upgrade and Regroom Waiver**

At any time during the initial term of the Agreements, Customer may upgrade the FirstConnect T1 v4 ISDN PRI Service to a greater technology product(s) offered by Company at either location. In the event that Customer would upgrade their Service, Customer shall receive a one-time waiver of the Regroom Fee for the upgrade and enter into a new agreement(s) for the upgraded service with a term at least as long as or longer than the remaining term of the applicable Agreement(s).

Further, upon installation of the upgraded service, the affected Agreement(s) shall terminate without incurring Early Termination Fees. If for any reason Customer does not install the upgraded service, then the affected Agreement(s) and the Services provided thereunder shall remain in full force and effect.

### **Early Termination Fee**

For any termination other than as set forth in the Technology Upgrade and Regroom Waiver provision contained herein, parties agree that the Early Termination Fee, for either or both locations, shall be calculated as the average of the last 3 months usage, plus the ETF Rate of MRC for the FirstConnect T1 v4 ISDN PR Services, as set forth below, times the number of months remaining in the applicable current term(s), plus any waived installation fees and/or promotional credits. Customer must provide a 60 day Disconnect Notice as outlined in the applicable terms and conditions found at [www.firstcomm.com](http://www.firstcomm.com).

<u>Months</u>	<u>ETF Rate of MRC</u>
0 to 12	100%
13 to 25	75%
26 to 36	50%

### **Patriot Act Compliance**

The Company represents and warrants to Customer that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. The Company further warrants to Customer that the Company and its principals, shareholders, members, partners, or affiliates, as applicable are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by either Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person.



## Amendment

### **Non-discrimination**

Company shall, as a party to the Agreements:

- (a) Refrain from unlawful discrimination in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination;
- (b) Certify that it is an "equal opportunity employer" as defined by Section 2000(e) of Chapter 21, Title 42, U.S. Code Annotated and Executive Orders #11246 and #11375, which are incorporated herein by reference. The Equal Opportunity clause, Section 6.1 of the Rules and Regulations of the Department of Human Rights of the State of Illinois, is a material part of the Agreements.

It is unlawful to discriminate on the basis of race, color, sex, national origin, ancestry, age, marital status, physical or mental handicap or unfavorable discharge for military service. Company shall comply with standards set forth in Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000 et seq., The Human Rights Act of the State of Illinois, 775 ILCS 5/1-101et. seq., and The Americans With Disabilities Act, 42 U.S.C. Sec. 12101 et. seq.

### **Sexual Harassment Policy**

The Company, as a party to the Agreements, represents that it has a written sexual harassment policy.

### **Drug Free Work Place**

Company, as a party to the Agreements, certifies and agrees that it will provide a drug free workplace and that it has a policy addressing same.

### **Cooperation with FOIA Compliance**

The Company acknowledges that the Freedom of Information Act may apply to public records in possession of the Company that relate solely to the Agreements between the parties. The Company shall cooperate with Customer in its efforts to comply with the Freedom of Information Act, solely in regard to the Agreements. 5 ILCS 140/1 et.seq.

### **Service Order Form Changes – Terms and Conditions of Service**

Replace the 2<sup>nd</sup> Sentence of the 1<sup>st</sup> Paragraph, in its entirety, with the following: “Customer agrees to pay for all Services ordered or otherwise used, including taxes, surcharges and fees charged by First Communications, LLC (“Company”), including, but not limited to, applicable federal, state, local use excise sales, or privilege taxes, duties or similar liabilities, as further set forth in the First Communications, LLC Terms and Conditions of Business Service (the “T&Cs”) unless exempted by applicable tax law.”

Replace the 4<sup>th</sup> Sentence of the 2<sup>nd</sup> Paragraph, in its entirety, with the following: “If all services are not complete by day forty-six (46), due to the fault of Customer, all service work will be disconnected, the Agreement terminated, and you will be charged Early Termination fee along with any Charges Company incurred on your behalf to fulfill your order.”

### **Terms and Conditions of Business Service (“T&Cs”) Changes**

#### Term; Early Termination Fee

In the 1<sup>st</sup> Paragraph, 9<sup>th</sup> Sentence, after “day 46” insert “due to the fault of the Customer”.



# Amendment

First Communications Charges, Payment and Default

In the 1<sup>st</sup> Paragraph under this Section, add the word “if applicable” after the word “taxes”.

Payment

Replace the 2<sup>nd</sup> Sentence of this Section in its entirety with the following: “Payment of all Charges is due to First Communications within 60 days of the date of your invoice (“Due Date”).”

Confidentiality of Information; Compliance

At the end of the 1<sup>st</sup> and 2<sup>nd</sup> Sentences of the 1<sup>st</sup> Paragraph add “unless required by law”.

Choice of Law Forum

Replace this Section in its entirety with the following: “Where our Service terms and conditions are regulated by a state agency or the Federal Communications Commission (“FCC”), the regulations are available for your inspection. If there is any inconsistency between the Agreement and those regulations, those regulations shall govern and the Agreement shall survive and be deemed amended as necessary to conform to such regulations. To the extent the Agreement is not subject to FCC or state regulations, you agree that the laws of the State of Illinois govern the Agreement and the relationship between First Communications and you, without regard to conflict of laws principles. Notwithstanding anything set forth herein, each Party irrevocably waives any right to trial by jury in connection with any claim.”

Notices

In the 1<sup>st</sup> bullet point under this Section, replace the word “registered” with “certified”.

Entire Agreement

The 1<sup>st</sup> Sentence of this Section shall be replaced in its entirety as follows: “The Agreement, together with this Amendment, represents the entire agreement between you and us relating to the subject matter of the Agreement, which may only be amended as described in the Agreement.”

If there is any conflict between the terms and provisions of this Amendment and the terms and provisions of the Agreements or any prior addenda and amendments thereto, the terms and provisions of this Amendment shall govern. Except as specifically set forth herein, all other provisions of the Agreements and any prior addenda and amendments thereto shall remain in full force and effect and be binding upon the parties in accordance with their terms.

The undersigned hereby represent and warrant that they are duly authorized to execute this Amendment and have fully read and understand the terms and conditions.

**First Communications, LLC**

**Village of Downers Grove**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Business Conditions of Use

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

**CONTRACT INFORMATION**

These Terms & Conditions ("T&Cs") set forth the legal contractual obligations governing the provision to you of intrastate, interstate and international long distance, dedicated and local telecommunications and other services ("Service" or "Services") by First Communications, LLC ("First Communications"). **PLEASE READ THESE T&Cs CAREFULLY.** In conjunction with certain other documents (as set forth below), these T&Cs form the Agreement between you and First Communications and explain the respective legal rights concerning all aspects of the business relationship between you and First Communications.

**By subscribing to or making use of our Services, you are agreeing to abide by the terms of the Agreement, including the T&Cs.**

**Definitions**

As used in these T&Cs, the following words have these respective meanings:

- a. **"Agreement"** means the legal contract for Services between you and First Communications, and consists of these T&Cs, the Service Order Agreement and/or any other executed agreement between the Parties, the Letter of Agency ("LOA") if any, any Service Plan under which you take Services from First Communications and any related agreement referenced herein or therein. Notwithstanding any language to the contrary, these T&Cs take precedence over any conflicting language in any LOA or Service Plan.
  - b. **"BaaS/RaaS Service"** means BaaS or backup as a service that is intended to provide you with storage space to backup files, and if applicable upon Customer's election to include RaaS; RaaS means recovery as a service to enhance the BaaS service which is intended to provide management for data restoration capability based on target recovery objectives.
  - c. **"Charges"** means any billed item or group of items on your account. This includes but is not limited to minutes of use, airtime, access, features, texting, data usage, long distance, directory and operator or directory assistance charges, equipment, material, labor, travel, monthly recurring charges ("MRCs"), non-recurring charges ("NRCs"), mobility charges; 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; and Early Termination Fees or other amounts payable under the Agreement.
  - d. **"Cloud IP PBX Service"** is a managed hosted voice over IP ("VoIP") service with certain optional features offered as is, as available, that requires internet service, but does not include internet service. Cloud IP PBX Service is offered pursuant to a Product Contract subject to First Communications Terms and Conditions of Cloud IP PBX Service applicable thereto, which are separate and in addition to these T&Cs. Internet and/or other telecommunication services may be purchased in conjunction with or in addition to the Cloud IP PBX Service through First Communications.
  - e. **"Customer"** or **"you"** means the person subscribing to our Services and with whom we have entered into the Agreement. This includes a person we reasonably believe is acting with the authority or knowledge of the person whose name is on the account.
  - f. **"Firewall"** means a device for the detection, obstruction, destruction and/or prevention (as applicable) of computer viruses, trojans, worms, unauthorized access or use and/or any similar act or thing which may affect a computer system, or network.
  - g. **"First Communications"** means First Communications, LLC and its successors and assigns. "First Communications" is also referred to in these T&Cs as "us," "our" and "we".
  - h. **"Managed Services"** means the provision by us of services for Managed Router Solution, Customer Router Management Services, Managed Security Service, Cloud IP PBX Service, Server Application Monitoring or Server Application Monitoring Plus, and/or BaaS/RaaS Service, and any management, monitoring and/or other services performed or features provided by or through First Communications directly related thereto.
  - i. **"Managed Security Service"** means the provision by us of management and monitoring of your Firewall, as described in these T&Cs, and any applicable Agreement(s) and/or Service Level Agreements.
  - j. **"Parties"** means First Communications and you.
  - k. **"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,
  - l. **"Server Application Monitoring Plus"** is Server Application Monitoring service that may require administrative access to your application servers by First Communications intended to provide additional monitoring capabilities to you for application specific servers.
- "Service"** or **"Services"** means any and all telecommunication services and technical, engineering, configuration or training labor or other services: intrastate, interstate or international long distance voice and data transmission service, local voice and data transmission service, mobility service and internet service we provide to you, and other services that we may offer now or in the future, including, without limitation, Managed Services to the extent (if any) provided alone, in conjunction with or in

## Business Conditions of Use

addition to such telecommunication 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. In states where rates are regulated through filings with the state public utility commissions, the Agreement will apply to the extent permitted by law.

- m. **"Service Level Agreement"** or **"SLA"** means the Service Level Agreement relating to a specific and applicable Service which describes the service levels to be met by us. In the event that Managed Services are not provided in conjunction with or in addition to telecommunications services provided by First Communications for any location, then the terms of any SLA for First Communications Services shall not apply for such location(s).
- n. **"Service Plan"** means any service plan, service agreement, rate plan, or written service price list or description, describing the Services and their rates, fees and Charges, as the same may be amended from time to time and at any time.
- o. **"Representative(s)"** means First Communications' employees, agents, contractors, subcontractors, representatives, suppliers, vendors, carriers, hosting partners, providers, licensors, or anyone providing Services under the Agreement.
- p. **"Subscribe"** means the point at which any First Communications Service is available for your use.

## FIRST COMMUNICATIONS SERVICE

### Rates

Information concerning your Service rates and other Charges and conditions are described in your Service Plan, which is incorporated herein by reference as if fully written herein and are part of the Agreement. Where required by applicable law, Service Plan information is maintained at <http://www.firstcomm.com>. Rates for Alaska, Hawaii and International countries can be found online at <http://www.firstcomm.com/?s=international>. First Communications' public reference document is available for inspection at First Communications' headquarters located at 3340 West Market St., Akron, OH 44333. To obtain a copy of the Agreement, First Communications' T&Cs, or any Service Plan information see Notices Section below for contact information. First Communications provides the initial T&Cs at no charge. We may, however, charge you for copying, handling and postage charges we incur if additional copies are requested. If you misrepresent your eligibility for any Service Plan, you agree to pay us the additional amount you would have been charged under the most favorable Service Plan for which you are eligible. We may change the prices or add new products with prices, or we may delete products or prices, in accordance with state law. The appropriate Charges for your purchase will be billed to you on your bill. Usage Charges for Service are based upon the total time that you use First Communications Services, subject to applicable billing increments and any additional Charges that may apply. Usage begins when the called party picks up the receiver, as determined by hardware answer supervision. Chargeable time ends when either party hangs up, thereby releasing the connection. The Service Plan you select determines billing increments, and detailed information is available with your Service Plan. Calls that involve a fraction of a billing increment will be rounded up to the next whole billing increment. In addition, if the computed call Charges include any fraction of a cent then the fractional cents will be rounded up to the next whole cent unless otherwise expressly stated in the Service Plan.

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. See also Confidentiality of Information; Compliance below for additional applicable terms.

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

### Use of Service

You agree not to use any Service in any way for an unlawful, fraudulent or abusive purpose, for purposes that infringe upon others' intellectual property rights, in any way that damages our property or interferes with or disrupts our system or other users' property or systems, that violates trade or economic sanctions and prohibitions as promulgated by the departments of Commerce, Treasury or any other U.S. government agency, or that interferes with the network's ability to fairly allocate capacity among users or that otherwise degrades Service quality for other users. Examples of prohibited use include, but are not limited to: (1) accessing, altering, or interfering with, or attempting or assisting to access, alter, or interfere with, our facilities and/or our information or facilities or information of others by rearranging, tampering or making an unauthorized connection with any equipment, facilities or system using any scheme, false representation or false credit devices or by or through any other fraudulent means or devices whatsoever, whether within or outside of our service area (including, without limitation, Cloning Fraud and the alteration, modification or other change to equipment which would be viewed by us as a provision of two pieces of equipment through one number, or subscription fraud); (2) server devices or host computer applications that are broadcast to multiple servers or recipients such that they could enable "bots" or similar routines (as set



## Business Conditions of Use

forth in more detail in (3) below) or otherwise denigrate network capacity or functionality; (3) "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; (4) generating "spam" or unsolicited commercial or bulk email (or activities that facilitate the dissemination of such email); (5) any activity that adversely affects the ability of other users or systems to use either First Communications' services or the Internet based resources of others, including the generation or dissemination of viruses, malware or "denial of service" attacks; (6) accessing or attempting to access without authority the information, accounts or devices of others, or penetrating or attempting to penetrate First Communications' or another entity's network or systems; (7) running software or other devices that maintain continuous active Internet connections when a computer's connection would otherwise be idle, or "keep alive" functions; (8) outputting digits from CPE in violation of rules and regulations governing such outputting; (9) 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; or (10) conveying information deemed to be unlawful or offensive, including but not limited to, foul, profane, obscene, salacious or prurient language, or impersonating another person with fraudulent or malicious intent or for any purpose in violation of law or regulation or in such a manner as to interfere unreasonably with the use of services by us.

You must comply with all laws and regulations while using the Services and you must not transmit any communication that would violate any laws, court orders, or regulations, or would likely be offensive or injurious to the recipient. You are responsible for all content you transmit while using the Services. Resale of Service is prohibited without our prior written consent and your attainment of any required regulatory approvals. You may not install any amplifiers, enhancers, repeaters or other devices that, in our sole discretion, modify, disrupt or interfere in any way with the facilities, wires or radio frequencies utilized by us to provide service. Some services may not be available or may operate differently in selected markets or jurisdictions. We may add or delete coverage without providing notice to you.

We further reserve the right to take measures to protect our network and other users or service providers from harm, compromised security or capacity or degradation in performance. These measures may impact Customer's Service, and we reserve the right to deny, modify, suspend or terminate Service, with or without notice, to anyone we believe is using the Service in a manner that adversely impacts our network or other users or service providers. We may monitor Customer's compliance, or other subscribers' compliance, with these T&Cs, but we will not monitor the content of Customers' communications except as otherwise expressly permitted or required by law.

### Number

First Communications will provide telephone number(s) for your use of our Services. Prior to activation, reserved telephone number(s) for new Service or telephone number(s) changes may be altered without notice to you, however we will inform you of any change shortly after activation. We may change active telephone number(s) by providing notice, such as an area code change. You have no ownership rights and you may not: (1) modify the telephone number(s) assigned to you, or programmed into any mobility device if First Mobility Service; (2) transfer or duplicate any assigned telephone number(s) other than as authorized by us; or (3) transfer the telephone number(s) to any other individual or entity without our permission. First Communications understands that, per FCC regulations, you have the right to take your telephone number(s) to another service provider at any time; however, Early Termination Fees may apply. First Communications reserves the right to recover any telephone number(s) due to a violation of Customer's use of First Communications' Services, as determined in First Communications' sole discretion. See also Mobility Porting; MDN/SIM; Third Party Rights below for additional applicable terms.

### Authorized Usage

You are responsible for all usage on your account. First Communications will not be responsible for any fraud or misuse of Services, including but not limited to, calling card misuse or fraud. If your Service is fraudulently used, you must immediately notify us and provide us with the documentation and information we request (including affidavits and police reports). Once you notify us of fraudulent use, it may be necessary for us to interrupt your Service. You agree to cooperate with us in any fraud investigation and to use any fraud prevention measures we reasonably request. Failure to provide reasonable cooperation may result in your liability for any additional fraudulent usage. In addition to rights and remedies set forth herein and available at law or equity, First Communications also reserves the right to suspend, interrupt or restrict Service in accordance with state law, without notice to you, if we suspect any use of Service, whether by you or any other party, that is in First Communications' sole opinion deemed to be fraudulent or illegal. First Communications will endeavor to notify Customer of activity in violation of the Agreement prior to termination, suspension, interruption or restriction of Service.

Unlimited long distance and local Services provided by First Communications are intended for normal commercial use and not for wholesale use, use with automated dialing equipment or for resale. First Communications presumes that certain usage, dialing, or calling patterns indicate that Customer is not using the Service for Customer's own commercial use. First Communications reserves the right to suspend, terminate or restrict Services immediately in the event First Communications reasonably believes that Customer is engaging in prohibited activity hereunder. If Customer believes that First Communications is in error as to its determination of non-



## Business Conditions of Use

commercial use by Customer, Customer may contact customer service, and depending on the circumstances, First Communications may reactivate Service; provided, however, if the usage, dialing or calling patterns that First Communications deems to indicate non-commercial use continue, First Communications reserves the right to again suspend, terminate or restrict the Services immediately with no ability of Customer to reactive the Service.

### Availability, Modification and Interruption

We do not warrant or represent that the Services will operate without interruption or continuously. Services we offer are subject to necessary facilities, equipment, materials, software and/or services being available from other carriers and/or Representatives. We may have to do things such as change the code or telephone number(s) assigned to or used by you or the technical specifications of the Service, interrupt Service in order to perform tests and inspections, for operational or emergency reasons, to install equipment, or to provide information we think is necessary for health or safety or concerning the quality of Services we provide. If we must interrupt your Service for any of these reasons, we will endeavor, using reasonable means, to restore it as quickly as the underlying matter is resolved without any promise as to when we will be able to restore Service; however, we do reserve the right to suspend, interrupt, restrict or terminate Service when in First Communications' sole opinion it is necessary for the integrity, safety or maintenance of First Communications' network or when we must comply with laws or regulations, or if you are using Service in violation of any provisions of the Agreement or applicable law or regulations in our sole discretion. Service is subject to transmission limitation or interruption caused by weather, terrain, obstructions such as trees or buildings, atmospheric and other conditions. Services may be limited in some areas where coverage is not available or may be temporarily limited or interrupted due to system capacity limitations and system repairs or modifications or to combat potential fraud. Interruption may also result from nonpayment of Charges by you. We may choose to block calls to certain numbers if, in our sole discretion, we are experiencing excessive billing, collection or fraud problems with calls to those numbers. If any Service (other than Managed Services) is interrupted for at least 24 hours and neither you nor someone you authorized to use the affected Service helped cause the interruption, a credit not to exceed the amount of our Service Charges during the affected period may be made to your account for the time Service was interrupted, in accordance with state law. If based on our records and your documentation we determine that you are entitled to a credit, the credit will be provided by us on a subsequent bill.

Customer is aware that some phone or other telecommunications equipment requires continuous electrical power at the Customer location. First Communications is not liable to any person or entity for any direct or indirect, incidental or consequential damages that result from failure or no availability of Services due to loss or interruption of electrical power at the Customer's premise.

Customer is aware that the Services and equipment are not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Services or equipment could lead to severe injury to business, persons, or environment. These high risk activities may include, without limitation, vital business or personal communications, or activities in which absolutely accurate and/or secure data or information is required.

### Customer Service

If you are experiencing an interruption of Service or have a billing question, you may contact First Communications' Business Customer Service Department toll-free:

**Commercial Customers: (800) 860-2934**  
**First Mobility Customers: (866) 429-9450**  
**Managed Services Customers: (800) 497-1105**

We will use reasonable efforts to resolve your problem or inquiry, see Late Payments and Dispute Section below. First Communications reserves the right to charge the Customer for labor and dispatch costs required to resolve any issues related to Services as a result of Customer's misuse or negligence. Although First Communications provides Internet Service, we do not provide support for LAN, desktop PC or end users.

### Site/Location Access

Customer will, at no cost to First Communications or its Representatives, timely provide First Communications and/or its Representatives with all necessary or appropriate access, including but not limited to physical access to Customer building, premises or other space or facilities required to provide, modify, maintain, repair and/or cease providing the Services. If First Communications is denied or delayed such access, there will be delays in Service installation or repair or training. If access is required for an installation, repair or other service and the Representative is unable to gain access during the appointment window, your account will be assessed a trip charge.

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 has not been purchased, then a trip charge will be assessed if the trouble is inside wiring.

## Business Conditions of Use

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

When a business Customer requests a disconnection or cancellation of Service primarily, but not exclusively, involving a circuit or any other Service that is not POTS, including any Managed Service, you must notify First Communications in writing at least 60 days in advance of the date you wish Service to cease, see Notices Section below, and Early Termination Fees may apply. All past due balances, MRCs and outstanding fees and Charges shall be immediately due and payable upon the effectiveness of Service cancellation/disconnection, see Final Bill Section below. See also Term; Early Termination Fee Section below regarding required notices and Charges. If you continue to receive Service after the effective date of any prior disconnect or cancellation notice, you will be deemed to have waived and/or abandoned that request and will continue to be responsible for all Service unless you submit a new disconnect or cancellation notice thereafter in accordance with the timeframes and other requirements set forth herein.

If Customer chooses to move its local POTS Service to another service provider, First Communications will stop billing for local POTS Services on the date contained in the loss notification. Often, First Communications receives this notification from the other service provider and not directly from the Customer. Early Termination Fees may apply, see Term; Early Termination Fee Section 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. For additional information, see Final Bill Section below.

Customer shall be responsible for any Charges that continue to be incurred as a result of Customer's failure to notify us by formal written notice of any disconnect, cancellation, non-renewal or termination, including in connection with Customer's moving service to another service provider or Customer's abandoning Service(s) or vacating the Service location(s).

### **Term; Early Termination Fee**

The term of the Agreement for each Service depends on the Service feature or promotion you select as it is described in the applicable Service Plan or Agreement. The term of the Agreement for your switched long distance Service begins on the date you Subscribe to the Service. The term for POTS begins the day dial tone is active at the demarcation point. Signing an order requiring a circuit installation signifies that First Communications, in good faith, will begin work on the circuit delivery. The term for Service that requires installation of a circuit will begin the date that the Service is made available to you. However, for a circuit with integrated or dynamic Services, billing will begin once at least either the data or voice portion of the Service is available. For Managed Services, the term of Service will begin on the date the Service is made available to you. The Parties agree that all Services ordered will be completed no later than 45 days from the circuit delivery date. If all Services are not complete by day 46, all Service work will be disconnected, the Agreement terminated, and you will be charged an Early Termination Fee along with any charges First Communications incurred on your behalf to fulfill your order. If you cancel the order prior to completion, the cancellation fee will include, but is not limited to, any charges or costs First Communications incurred on your behalf to fulfill your order.

If you select a Service Plan, Agreement or promotion that requires a fixed initial term such as a one year, two year or three year Service Plan or commitment, you agree to purchase Service for the full term. In accordance with state law, terms of the Agreement will automatically renew for continuous one year periods at the end of the applicable initial or renewal term period unless otherwise expressly specified as a longer or shorter renewal period in your specific Agreement or unless First Communications receives a written request for non-renewal or a written notice of disconnection/cancellation from you at least 60 days prior to the end of the applicable term. Any Charges incurred between Customer's written disconnection/cancellation notice and 90 days thereafter will remain your responsibility. At the end of your term and/or after delivery by you of any disconnect or cancellation notice, if you continue to receive Services, such Services will be subject to the terms and conditions of the Agreement for so long as you continue to receive Service and may be provided at the then-prevailing First Communications' monthly rates. If you continue to receive Service after the effective date of any prior disconnect or cancellation notice, you will be deemed to have waived that request and must submit a new disconnect or cancellation notice thereafter in accordance with the timeframes and terms set forth herein. If you select a Service Plan, Agreement or promotion with a fixed initial term or are in a renewal term and terminate your Service before the end of the initial or renewal term (including any cancellation or disconnect), you will be in material breach of the Agreement. You agree our damages may be difficult to determine due to variable usage and agree to pay us an Early Termination Fee 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 plus any other costs and charges incurred by First Communications in connection with such termination. The formula used for Early Termination Fee for Services other than First Mobility Services is: the average of the last 3 months usage, plus the MRC times the number of months remaining in the current term, plus any waived installation fees. See additional Early Termination information for First Mobility Services below. In addition, you may not be eligible for new Services and/or promotions in the future.

### **FIRST COMMUNICATIONS CHARGES, PAYMENT AND DEFAULT**

You are responsible for paying all Charges to your account, including but not limited to: minutes of use, airtime, access, features, data usage, long distance, directory and operator or directory assistance charges, MRCs, NRCs, travel, labor, material or equipment charges,

## Business Conditions of Use

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 and Early Termination Fees.

### **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 First Communications' discretion. If you default or the Agreement is terminated, we may, without notice to you, apply any deposit toward payment of Charges due. Your deposit will be returned in accordance with applicable law.

Unless otherwise required by state regulatory law, if you believe you have overpaid First Communications, you must submit your dispute in writing within 60 days after the claimed overpayment; otherwise the invoice is deemed correct.

In connection with any credits to Customer under the Agreement, at First Communications' sole discretion, based on administrative costs and charges, no credit shall be due and issued to Customer for any reason if the amount of such credit would not exceed the de minimus amount of \$25.

### **Initial and Final Bills; Billing**

Except as otherwise set forth herein, billing will begin the date Services are first made available. All Services are billed to you on a monthly cycle. For billing purposes, each month is 30 days. If applicable for the initial bill only, First Communications will prorate MRCs for any partial month on a 30-day basis. MRCs and all Service Charges will be billed and earned in 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 First Communications, you will remit payments as invoiced, which may be prior to First Communications' procurement. You agree to execute and deliver any reasonable documentation required by First Communications or any Representative in connection with procurement, delivery or installation of such materials or equipment.

Final Bills shall include all amounts and Charges that Customer owes 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 disconnection/cancellation notice and 90 days thereafter. See also Term; Early Termination Fee Section regarding notice requirements and Charges upon disconnect/cancellation.

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 in your Usage Service Plan for that month's billing cycle or any MRC which has been billed and earned in full as set forth herein.

### **Payment**

We will provide your bill in a format that reasonably identifies the Charges and which may change at any time and from time to time. Payment of all Charges is due to First Communications within 30 days of the date of your invoice ("Due Date"). Billing cycle end dates may change at any time and from time to time. Except in the case of cancellation or termination, when a billing cycle covers less than or more than a full month, we may make reasonable adjustments and proration. Usage may be back billed in a subsequent month(s), to the extent allowed by applicable law, and if so, this usage will be charged as if used in the month billed. We will charge a fee not to exceed that allowed by applicable law for all returned checks.

### **Credit Card**

If available as an option and if you choose to pay by credit card, you agree to the rules governing that payment option, including applicable limits on the amount of Service that may be used 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

## Business Conditions of Use

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.

### Late Payments and Payment Disputes

All Charges must be paid by the Due Date. For amounts unpaid 31 days after the date of the invoice, you agree to pay us a late payment fee of 1.5% per month or the highest amount allowed by law for the period(s) after the Due Date until such time as the Charges are paid. Even if we accept late or partial payments (even if marked "Paid in Full"), we do not waive any of our rights to collect the full amount of Charges due under the Agreement. You have 60 days from the date of the invoice to give 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, see Notices Section below. 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 Customer if an adjustment to the disputed invoice will be made. If the Parties fail to mutually resolve the dispute within 60 days after the dispute was submitted to First Communications, all disputed Charges shall become immediately due and payable to us. If we determine that a billing error resulted in an over billing or over charge, First Communications will refund the over billed or over charged amount by issuing your account a credit in accordance with applicable law. Notwithstanding anything set forth herein, First Communications shall be entitled to pursue a collections suit for any past due Charges in a court of law in accordance with the governing law and jurisdiction provisions set forth herein.

### Suspension, Termination for Non-Payment and Default

In addition to our other rights to suspend or terminate Service described elsewhere in the Agreement, if you miss a payment, we may suspend the Services and/or terminate the Agreement 30 days after the Due Date. If we suspend the Services and you miss another payment during the 12 months after we resume the Services, we may then suspend the Services and/or terminate the Agreement 15 days after non-payment notification is sent. If you breach any representation to us, violate the Agreement, or become subject to any proceeding under the Bankruptcy Act or similar state laws, you will be in default and we may, without notice to you, suspend Service and/or terminate the Agreement, in addition to all other remedies available to us. We may require reactivation Charges to renew Service after termination or suspension.

## ADDITIONAL AGREEMENTS AND SERVICES

### CONFIDENTIALITY OF INFORMATION; COMPLIANCE

Customer will not disclose the terms or pricing associated with this Agreement to anyone without prior written approval from First Communications. During the term of the Agreement and for a period of one year thereafter, Customer will not disclose any confidential or proprietary information of First Communications or its Representatives or use the same for any other purpose. First Communications and/or its Representatives will retain all ownership rights, including intellectual property rights, in their respective confidential and proprietary information, and Customer agrees to return all copies of such information including but not limited to the RaaS Playbook(s) to First Communications promptly upon its request at any time, provided if return is impossible as to any portion of the information then Customer will promptly certify to First Communications 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. No method of electronic storage or transmission over the internet is fail-safe or fully secure. Customer understands and acknowledges that it is solely responsible for determining if any Services and any applications, data or third party service related thereto comply with any laws, standards, regulations and policies relating to Customer's own business or industry, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, as amended, the Payment Card Industry Data Security Standard, the Telephone Consumer Protection Act, or the Telemarketing and Consumer Fraud Abuse Prevention Act. Notwithstanding anything set forth in the Agreement, First Communications makes no representation or warranty regarding compliance with such laws, standards, regulations and policies. Customer agrees that it will not store, transmit, monitor, process or provide access to any Personal Health Information or credit card information, related data or other information protected by such laws and regulations. Unless expressly agreed in writing as specified in the Agreement, Customer acknowledges that the Services are not intended for call center environments, and Customer shall not use any Services for telemarketing or telephone solicitation sales or otherwise within such an environment. Regardless, Customer understands and acknowledges that it is solely responsible for ensuring all compliance, privacy, and/or security with respect to local, state and federal telemarketing laws, including without limitation, the Telephone Consumer Protection Act, the Telemarketing and Consumer Fraud Abuse

## Business Conditions of Use

Prevention Act and all licensing and regulation relating to telemarketing, call recording, auto dialers, predictive dialers, robo-calls, junk faxes, bulk email, spam, and do not call registries. Customer agrees that it will fully defend, indemnify and hold harmless First Communications from any breach of 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.

### CPNI

First Communications maintains privacy policies relating to CPNI and uses telecommunications provider industry-accepted technologies to safeguard information. We do collect various anonymous information, such as the number of lines you have, the features you use, your monthly minutes of use, 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.

The personal information we collect, such as your name, address, date of birth, etc., is only used to conduct business with you, provide the Service you request and keep in communication with you. We may also use this information to inform you of additional or new products and service offerings by First Communications or its affiliates. NO INFORMATION IS EVER SOLD, RENTED OR GIVEN TO AN UNAFFILIATED THIRD PARTY unless required 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); provided, however, if we go through a business transaction involving transfer of First Communications' assets, your personal information will likely be among the assets transferred. In some cases, we may provide Services jointly with selected third parties and/or Representatives who will use your personal information, if at all, to provide the underlying contracted services.

### Account Information

We will use commercially reasonable means to protect the confidentiality of your account information. We will authenticate callers requesting CPNI or changes to your account, including adding new Services. We will establish a password and reminder question for your account as directed by the FCC. You are solely responsible for any password or other administrator changes that you make through any website or customer portal established by First Communications 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, First Communications may suspend or terminate your Service.

If you use First Communications' website or any First Communications provided customer access or portal, you are responsible for maintaining the confidentiality of your account and password and restricting access to your computer, and you agree to accept responsibility for all activities that occur under your account and password. You will ensure that you exit your account at the end of each session. You agree to notify First Communications immediately of any unauthorized use or other breach of security. First Communications will not be liable for any loss or damage to you and/or any third party arising from your failure to comply with this section.

### Internet Service

This section applies to our Internet Services, including access to or use of any Internet website or portal operated or owned by First Communications. Generally, any conduct that violates a law or regulation, the accepted norm of the Internet community, or that may damage First Communications' reputation, whether or not expressly set forth in the Agreement or company policy, is prohibited. Written permission from First Communications is required prior to posting any link to First Communications' Internet website(s).

First Communications maintains a strict policy regarding network abuse, and reserves the right in its sole discretion to make a determination of what constitutes abuse. If the Customer abuses First Communications' Service to send bulk e-mail (spam), harass, defraud, hack or otherwise attempt to gain unauthorized access to any systems, or engages in any other improper or inappropriate conduct, First Communications may suspend and/or cancel Customer's account, any or all Services and/or the Agreement with no advance notice.

THE INTERNET IS A WORLDWIDE-SHARED RESOURCE USED BY MILLIONS OF PEOPLE. BECAUSE OF THIS, THERE IS A RISK THAT THE CUSTOMER COULD BE SUBJECT TO A VARIETY OF SECURITY BREACHES, INCLUDING BUT NOT LIMITED TO, EAVESDROPPING OR HACKERS GAINING ACCESS TO YOUR COMPUTER. THIS MEANS THAT OTHER PEOPLE MAY BE ABLE TO ACCESS, MONITOR AND/OR ALTER YOUR FILES, DATA OR OTHER ITEMS SENT OR RECEIVED USING THE SERVICES AND/OR NEGATIVELY AFFECT YOUR ABILITY TO USE THE SERVICES. ANY INFORMATION SENT BY THE CUSTOMER OVER FIRST COMMUNICATIONS' INTERNET SERVICE IS SENT AT THE CUSTOMER'S SOLE RISK, AND FIRST COMMUNICATIONS

## Business Conditions of Use

SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTION, DAMAGES, SUITS OR PROCEEDINGS ARISING OUT OF OR OTHERWISE RELATING TO CUSTOMER'S USE OF FIRST COMMUNICATIONS' INTERNET SERVICE. FIRST COMMUNICATIONS ACCEPTS NO RESPONSIBILITY OR ANY LIABILITY FOR THE SECURITY OF CUSTOMER'S ELECTRONIC ENVIRONMENT, WHETHER OR NOT FIRST COMMUNICATIONS HAS PROVIDED OR INSTALLED ANY INTERNET SECURITY EQUIPMENT, SERVICE OR DEVICE.

### IP Address

First Communications will provide IP address assignments for use with our Internet Service. We adhere to the American Registry of Internet Numbers (ARIN), and ultimately the Internet Corporation of Assigned Names and Numbers (ICANN), recommended guidelines for assignment/allocation of Internet IP addresses to our customers. IP addresses assigned by First Communications are non-transferable and remain the sole property of First Communications. We reserve the right to recover any IP addresses due to non-use or a violation of the Agreement at our sole discretion. Upon Service or Agreement termination, First Communications requires you to return all assigned IP addresses.

### Data and Other Equipment

First Communications is not responsible for the installation, operation, maintenance, compatibility or performance of any Customer premise equipment. We are not the manufacturer of any equipment provided by or through First Communications, and unless otherwise indicated herein, the only warranties on any equipment provided and/or sold by First Communications are limited warranties, if any, extended by the manufacturers of such equipment to third party end users. If Customer connects incompatible equipment to the Service, First Communications does not guarantee the performance of the Service. If third-party hardware or software impairs operation of the Services, you remain liable for payment of all Charges for the Service, and, if this third-party equipment or software is likely to cause hazard or Service interruption or obstruction, Customer will eliminate such likelihood at First Communications' request.

If Customer has 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 Customer fails to remove such equipment from such area within 10 days after the expiration of the applicable Term or termination of an applicable Service Order, Company may, without notice or demand, take possession of such equipment, without being guilty of trespass. Company 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 its customer's equipment from such areas and store the same, all at Customer's expense. Any equipment removed may be stored in any public warehouse or elsewhere at the cost of and for the account of Customer, and Company shall not be responsible for the care or safekeeping thereof. Customer expressly waives 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 Customer upon payment in full of all storage costs, unpaid Charges and any other related costs. If within 10 days following such equipment removal, Customer has not requested the return of its equipment and paid any sums owed, then Company may exercise all rights of ownership over such equipment including the right to sell same and retain possession of any sale proceeds. Company's exercise of any remedies provided for in this section shall be without prejudice to any other remedies Company may have provided for herein or by applicable law.

### Wireless Internet Access

First Communications offers wireless access to the Internet in a limited geographic area. Unless expressly stated in writing by First Communications, all equipment provided by First Communications to Customer remains the property of First Communications and must be returned in proper working order, normal wear and tear accepted, to First Communications at the termination of the Service or Agreement.

For Wireless Internet Access, Customer is responsible for providing electrical power (110 VAC) and network connection (RJ45) within six feet of the CPE location. Customer is responsible for network and workstation configuration according to specifications for protocol provided by First Communications. First Communications will demonstrate proper setup of one Workstation (network client). Additional wiring and configuration will be at Customer's expense.

### First Mobility

The term for mobility Service is co-terminus with your on-net circuit products, with a two or three year initial commitment. Unless otherwise specified in a written notification delivered 60 days prior to expiration of the then current term, once the initial or any renewal Service term has expired, the Customer's Service Agreement shall automatically renew for an additional 12 month term. This co-terminus policy continues throughout the lifetime of the circuit, regardless of when mobility lines are added or disconnected. Furthermore, the term for additional mobility devices added to an existing account is co-terminus with the existing Mobility Shared Plan Agreement to which they are assigned.

## Business Conditions of Use

### **Mobility Use of Services and Equipment; Availability**

Services are available within the operating range of the network as depicted in our coverage maps. All coverage maps are high-level representations of outdoor coverage and there are gaps in coverage within areas shown as covered on the maps.

Mobility data sessions automatically terminate after 24 hours of activity. Data session is inactive when no data is being transferred. Data session may seem inactive while data is actively being transferred to device, or may seem active when it is actually cached and not transferring data. You **MUST** press or click the **END** or **DISCONNECT** button to ensure that the session disconnects and Charges cease. Third-party applications may automatically reinstate data sessions without you pressing or clicking the **SEND** or **CONNECT** button. You may be able to send or receive voice calls when Customer's data session is inactive. When this occurs, Charges apply simultaneously for voice calls in accordance with Customer's Calling Plan. You are responsible for maintaining virus protection when accessing Service.

### Mobility Porting; MDN/SIM; Third Party Rights

We do not guarantee that transfers to or from us will be successful. However, First Communications will make reasonable efforts to resolve porting issues. You acknowledge that except as required by law, you will not acquire any proprietary interest in the number (MDN) or SIM (Subscriber Identity Module) assigned by First Communications for your use. You further acknowledge that any intellectual property or software in the SIM not provided by you or First Communications is the property of the supplier of Services to First Communications, and such third party Representative may change or update the software or other data in the SIM card or the software in the equipment over the air and utilize any capacity in the SIM card for administrative, network, business and/or commercial purposes. The Representative shall have no liability whatsoever for your losses, claims or damages for any cause whatsoever, including but not limited to any failure or disruption of Services provided, regardless of the form of action, whether in contract, tort or otherwise. You shall not be deemed a third party beneficiary of any contract between First Communications and its third party Representative.

### **Mobility Charges**

Charges for a completed call from or to your telephone number(s) begin when you press the TALK (or similar key) and end when either party terminates the call. You are invoiced for these completed calls from your telephone number(s) from the time shortly before the mobility device starts ringing until shortly after either party terminates the call. Charges for most Services are incurred in one minute increments, with partial minutes of use rounded up to the next highest minute. Except with certain plans, included plan minutes are not good for local or long-distance off network roaming calls. International roaming rates will vary. On a call that crosses time periods, minutes are deducted or charged based on the call start time. First Mobility to First Mobility Calling is only available on calls placed directly between separate First Mobility devices (not through voicemail, Directory Assistance, or other indirect methods) while each are on the First Mobility network. You will not be charged for voice calls that ring and do not pick up, or if you get a busy signal, except in some of the network areas in which an unanswered call that rings for 60 seconds or more will be billed. Your invoice will contain a summary of Charges. Call detail for your account is available on our secured website.

### **Mobility Messaging**

You may incur Charges in accessing, sending or receiving messages on your device. We may impose limits on the number of voicemail, text, email or other messages that can be retained through your account. Indicators of messages on your device, including mailbox icons, may not always provide an up to date indication of new messages and you may at times need to manually reset or clear your mailbox indicator. Legitimate messages may be interrupted by software aimed at prevention of SPAM or similar messages. Data Services will be rated on the actual kilobit usage.

### **Mobility Billing**

Charges for mobility Service will be invoiced, billed and paid as set forth herein with respect to Charges. Although it is our intent to submit timely invoices, we reserve the right to invoice for services under billed or unbilled, for a period of 12 months prior to the date of invoice. However, the 12 month limitation for under billed or unbilled services will not apply in the following scenarios: failure to bill or under billing caused by your acts, failure or refusal to act, errors or omissions, Force Majeure events or failure to bill or under billing caused by Fraudulent Usage or Cloning Fraud.

Mobile call Charges to landlines or mobile lines in other countries will include airtime minutes along with a termination rate per minute based on the termination type. International roaming rates may also apply and will be a pass through Charge to you.

### **Mobility: Termination, Early Termination Fee**

Should you terminate your circuit Service Agreement, the Mobility Agreement will also terminate and Early Termination Fees for the mobility Service will apply. You may reduce or increase the number of devices in your selected Mobility Plan, however if you terminate all devices before the term expires, you will incur an EARLY TERMINATION FEE OF \$200 per mobility device as liquidated damages, and not as a penalty. In either case, you have ownership of the mobility devices once payment is received. If First Communications terminates the Agreement or terminates and/or suspends your circuit Service, then the Mobility Agreement and Service will automatically

## Business Conditions of Use

terminate or suspend, as the case may be, and Early Termination Fees may apply.

### Mobility Roaming

Calls made outside of the network are "roaming" calls. Your mobility device is specifically designed and engineered to work on the network and on other providers' systems only when roaming agreements are in place between our underlying network provider and the other providers. Roaming calls placed "manually" (through an operator or with a credit card) will always incur separate and additional Charges. Depending on your mobility device settings, you may automatically roam if there is a gap or interruption in coverage within the network coverage area and roaming coverage areas. Certain features are not available when roaming. When roaming, you are subject to the limitation of liability provisions and other applicable rules imposed by the roaming service provider on its own subscribers or on roamers. Included minutes apply to calls placed and received on the network. Roaming rates apply to calls placed and received outside the network. Long distance Charges for calls received while roaming are calculated from your home area code to the location where you received the call. Due to delayed reporting between carriers, usage may be billed in a subsequent month and will be charged as if used in the month billed.

**Mobility Interruption of Service.** We may provide you with an airtime credit of one minute for a call that is disconnected because of transmission limitations caused by atmospheric, geographic or topographic conditions and that you redial within one minute of disconnection. You must notify us within 24 hours of the disconnection to obtain credit.

### Wireless Devices and Equipment

Mobility devices and other equipment must be purchased from us under the First Mobility program. We are not the manufacturer of the mobility devices or other equipment and the only warranties on the mobility devices or other equipment provided are limited warranties extended by the manufacturers, if any.

To return a "damaged" wireless device, all of the following criteria must be met:

- 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 First Communications.
- 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 stickers). UPC label must be present on the box or package when returned.
- Equipment has no missing or broken components.
- Equipment has not been subjected to damage that resulted, after the equipment was delivered to the end user, from (a) improper operation, storage, misuse or abuse, accident or neglect, such as physical damage (cracks, scratches, etc.) to the surface 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 (c) abnormal usage or conditions.
- In cases where the equipment is returned for a failure, the equipment has a verified failure that can be duplicated.
- Equipment was purchased within 120 calendar days from the date of the return request.
- There is less than 250 minutes on the non-resettable call timer of the mobility device.
- Data devices, which meet all criteria applicable to a failure as set forth above and that fail after delivery to the end user with a hard failure such as keypad, display or audio issue will be accepted for return. If a data device has a soft failure after delivery to the end user (for example, a software, application, or compatibility issue), it may not be returned to First Communications through the RMA process.
- If the equipment does not meet the applicable criteria above, the entire RMA will be rejected and Customer will be referred to the Original Equipment Manufacturer (OEM) for applicable warranty replacement or repair, if any. First Communications will return mobility device and packaging, along with reason why the RMA is being rejected. Mobility device and packaging will be mailed back to Customer via FedEx, Direct Signature Required. All return shipping and associated costs are the responsibility of the Customer's account.
- All returned equipment should be shipped to the following address: First Communications; C/O Wireless Team; 3340 West Market Street; Akron, Ohio 44333.

### Lost or Stolen Mobility Equipment

If your mobility device is lost or stolen, you must provide notice to us by calling toll-free at 866-429-9450. First Communications does not replace or provide discounts for lost or stolen devices. To continue Service, you will need to purchase a new device. You are responsible for all Charges for Services provided to the telephone number(s) for the lost or stolen equipment before you notify us of the loss or theft. We will deactivate Services to the telephone number(s) upon notification to the toll-free number above of any loss or theft. You may be required to provide evidence of the loss or theft (e.g., a police report or affidavit). If the equipment is later found, we may require that you exchange it for another mobility device or other equipment before we reactivate Services (if we elect to reactivate Services), as well as require you to pay a reactivation fee. We may deactivate Services to any telephone number(s) without prior notice



## Business Conditions of Use

to you if we suspect any unlawful or fraudulent use of the telephone number(s). You agree to reasonably cooperate with us in investigating suspected unlawful or fraudulent use.

### **Mobility Facility Modifications**

You acknowledge that mobility and data service is a rapidly changing industry and technology, and as such we shall not be liable to you if changes in any of the facilities, operations, equipment, procedures or Services render obsolete any equipment, Service, software, and/or applications provided in conjunction with use of the Service.

## **MANAGED SERVICES**

### **Managed Router Solution**

First Communications Managed Router Solution ("MRS") is a First Communications service offering within the domestic United States consisting of network management services for either Internet or WAN connectivity solutions. MRS is monitored via First Communications' Network Management Center ("NMC") and provides a web portal from the Performance Management Portal platform which is available and co-terminus with MPLS, DIA, and/or P2P Services, including any and all renewal terms.

For MRS, Customer is responsible for providing electrical power (110 VAC) and network connection (RJ45) within six feet of the CPE location. Customer is responsible for network and workstation configuration according to specifications for protocol provided by First Communications. First Communications will demonstrate proper setup of one Workstation (network client). Additional wiring and configuration will be at Customer's expense.

### **Customer Router Management Services**

First Communications Customer Router Management Services consist of network management services for routers not owned by First Communications. For Customer Router Management Services, First Communications does not provide any materials, equipment or supplies for Customer use unless equipment is expressly identified as being purchased through First Communications. 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 First Communications identifies 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 through First Communications. First Communications is 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 party Representative to or through First Communications, you will remit payments as invoiced, which may be prior to First Communications' receipt or procurement. You agree to execute and deliver any reasonable documentation required by First Communications 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. See also Data and Other Equipment above for additional applicable terms.

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 First Communications 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 Customer. Travel and expense costs associated with any such Services will be charged and passed through at First Communications' cost.

### **Cloud IP/PBX Service**

Cloud IP/PBX Service is a managed hosted VoIP service offering within the domestic United States that provides Customer with access to a Web-based administrative portal to configure its telephony features and capabilities. Cloud IP/PBX Service is subject to the terms and conditions of the First Communications Product Contract applicable thereto, as the same may be amended from time to time. Notwithstanding anything to the contrary, First Communications does 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 First Communications, and disclaims any responsibility for issues or liabilities relating thereto.

## Business Conditions of Use

Customer agrees that at least 80% of the Customer's 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 Customer's total monthly service for domestic long distance traffic.

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

You are responsible for establishing, maintaining and securing any passwords in conjunction with the Cloud IP PBX Service and/or equipment. 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 First Communications Managed Service or any 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 First Communications with respect to, all security, fraud or related issues in connection with passwords relating to voicemail, portals, databases, computers, other equipment, software or otherwise.

First Communications will configure Customer accounts for use of the applicable features, provided, however, all such features and capacity are provided 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 or capacity of your account and accept no liability for any loss or damage relating thereto including the loss of any third party provided feature or capacity. Where applicable, you must separately accept any such Representative terms and conditions as required by First Communications or its Representative in order to be eligible for use of any component or application of or relating to the feature. Customer agrees that it will not, and will not allow any third party to, sublicense, resell, rent, lease, distribute or otherwise transfer rights or usage to any software, copyrighted material or other proprietary rights for any purpose. You agree to indemnify, defend and hold harmless First Communications from any breach of such terms and conditions. First Communications is 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.

### **Managed Security**

Managed Security Service is a managed, stateful packet filtering Firewall using First Communications provided hardware and software that is owned, licensed or leased by First Communications. Customer acknowledges that the Managed Security Service does not guarantee full protection from all security risks.

### **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. 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 First Communications administrative access to you 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 First Communications' underlying platform will result in loss of Service functionality. You further understand and agree that SMS and/or email alerts will be provided by First Communications as part of the Service, and by contracting for such Managed Service, you expressly consent to be contacted by text or email communication. First Communications does 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. First Communications has 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 and accept no liability for any such loss. You are responsible for maintaining the confidentiality of your account

## Business Conditions of Use

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, Customer is 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, Customer is solely responsible for: (a) configuring and maintaining the operating systems for the Services as required by First Communications 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 Customer's data; (e) providing First Communications with its IP address information in order to establish the private connection between Customer's private network and First Communications' 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 Customer's data onto the Services.

### **BaaS/RaaS Services**

BaaS/RaaS Service provides you with storage space infrastructure that you may use for Customer backups. First Communications and its Representative are in no way responsible for the viability, integrity or state of server backups. In addition, if you elect RaaS as an add on Service to BaaS, we will provide management of data restoration for backups based on target recovery time objectives outlined in a recovery-as-a-service playbook ("RaaS Playbook") maintained by Customer. Customer is solely responsible for working with First Communications and/or its Representative to establish and maintain a RaaS Playbook with all necessary information from Customer to restore Customer's environment. You must use First Communications' BaaS to be eligible for RaaS. In addition, you must use First Communications' network access to be eligible for RaaS, which Services(s) are subject to First Communications' website Terms and Conditions and other agreements applicable to such Service(s). BaaS/RaaS Service is not available for resale and is offered only to non-government commercial end user business Customers.

You agree to use the BaaS/RaaS Service to store, retrieve and serve software applications, data and/or content owned, licensed or lawfully obtained by you. You understand that we will provide you with access to a Web-based administrative portal to manage data backup, and operation of the Service will require your downloading Customer data for storage. You are responsible for maintaining the confidentiality of your account information (including account name and password) and other sensitive information, including but not limited to any encryption of data, 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 or access. 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. You expressly agree that any use of BaaS/RaaS Services, including transmission of data, is at your sole risk.

You understand that the Service is provided on an "as available" basis and that any loss, damage or disruption of First Communications' underlying platform or services will result in loss of Service functionality. BaaS/RaaS Service uses certain Acronis products installed on or used with Customer's virtual machines. Customer's use shall be governed by the terms of an Acronis End User Software License Agreement, as the same may be modified at any time, entered into by Customer as part of the Agreement and incorporated by reference herein. Customer will indemnify, defend and hold harmless First Communications and its Representatives including Acronis from and against any and all damages, fines, penalties and claims and all related costs and expenses arising out of or relating to any noncompliance by Customer with the Acronis terms.

For BaaS/RaaS Service, Customer is solely responsible for: (a) configuring and maintaining the operating systems for the Services as required by First Communications 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 backups of Customer's data; (e) providing First Communications with its IP address information in order to establish the private connection between Customer's private network and First Communications' 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 Customer's data onto the Services. Customer agrees to any execution of the RaaS Playbook, and/or any updates thereto where applicable, via hard copy, electronic system or any other means as required by Company or its Representative.

Any termination, expiration, cancellation, disconnection or suspension of your Service may result in deactivation or deletion of your BaaS/RaaS account and/or access to your account, and the forfeiture and relinquishment by you of all data and content in your account. First Communications has no obligation to retain data for more than 30 calendar days after any termination or expiration of the Service

## Business Conditions of Use

and shall destroy any data that remains after such removal interval. We make no guaranty or warranty regarding loss or deletion of or failure to store data, features or capacity of your account and accept no liability for any such loss.

### Managed Services Support

First Communications will provide the ongoing configuration support and troubleshooting services on the First Communications' MRS or other Managed Services equipment provided by First Communications for as long as the Initial Term or any Renewal Term of the Agreement, subject to the Suspension, Termination for Non-Payment and Default Section of these T&Cs. Customers may contact Customer Support at 1-800-497-1105 for Service issues and change requests. First Communications does not provide support or troubleshooting services for Managed Services equipment that is not owned, licensed or leased by First Communications except as specifically identified as Customer Router Management Services. Managed Services will be performed at First Communications or Representative facilities or locations, Customer facilities or locations, or other location(s) as deemed necessary by First Communications in its sole discretion for provision of such Services.

### Managed Services Billing

Charges for Managed Services will be invoiced, billed and paid as set forth herein with respect to Charges. Changes to Managed Services may result in the use of additional resources, time, materials, costs and other Charges. Any services requested or provided outside the scope of the covered services described in the Agreement for Managed Services shall be charged on a time and materials basis by First Communications at First Communications' then current hourly rates.

### Managed Services Equipment

Managed Services equipment provided by First Communications and delivered to Customer is only to be used in conjunction with the Service, and Customer is not authorized to use the equipment for any other purpose. For any such First Communications provided equipment owned by First Communications, First Communications manages the configuration of the equipment, including any updates, and, if applicable, the repair or replacement of hardware should a failure occur. We are not the manufacturer of the equipment used in conjunction with Managed Services and the only warranties on the equipment provided are limited warranties extended by the manufacturers, if any, to third party end users of First Communications. Repair or replacement shall be Customer's sole and exclusive remedy with respect to any Managed Services equipment provided and owned by First Communications in connection with the Services, subject to compliance with the criteria set forth below for return of "damaged" Managed Services equipment owned by First Communications. All such equipment owned and provided by First Communications to Customer remains the property of First Communications and must be returned in proper working order, normal wear and tear accepted, to First Communications 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 Managed Services equipment is damaged beyond normal wear and tear, lost, or not returned, Customer shall be responsible and will be charged to replace such Managed Services equipment, in addition to any other unpaid Charges, ETFs, and/or other fees.

To return "damaged" Managed Services equipment, all of the following criteria must be met:

- Managed 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 First Communications.
- 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 stickers). UPC label must be present on the box or package when returned. Managed Services equipment is installed by First Communications and generally will not be shipped.
- Managed Services equipment has no missing or broken components.
- Managed Services equipment has not been subjected to damage that resulted from (a) improper operation, storage, misuse or abuse, accident or neglect, such as physical damage (cracks, scratches, etc.) to the surface 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 (c) abnormal usage or conditions.
- In cases where the Managed Services equipment is returned for a failure, the Managed Services equipment has a verified failure that can be duplicated.

Unless otherwise specifically set forth in the Agreement as materials and equipment being paid for by First Communications, you are responsible, at your own cost, for purchasing, installing and maintaining any and all equipment, materials and supplies that First Communications identifies as being necessary for us to perform the Managed Services, including, without limitation, the purchase, installation and maintenance of hardware or software upgrades, updates, maintenance or support at your cost. In no event will we be responsible or liable for equipment, materials or supplies, or the use thereof by you, that are Customer or Representative supplied or owned. You may not install or use any equipment, materials or supplies that disrupt or interfere with the Managed Services. See also Data and Other Equipment for additional applicable terms.

## Business Conditions of Use

### **Managed Services Implementation; Additional Customer Obligations**

First Communications is not responsible for any Customer-related availability delays. In order for First Communications to implement the Service on or prior to any requested ready for Service date, Customer must ensure that the following requirements are satisfied without delay: (a) Each Customer site or location on which Managed Services equipment will be located must be prepared in compliance with First Communications' standards, if any (to be provided to Customer on or prior to the Effective Date or as otherwise required during the term), and good telecommunications industry and engineering practices; and (b) Customer must satisfy such additional requirements that may be applicable to the Service, as notified by First Communications in writing, including provision of any materials, supplies and equipment required of Customer. Customer is responsible for the prompt provision of all relevant and accurate systems and other facilities, equipment, materials, supplies or services not provided by First Communications. Customer will provide responses to questions, issues and information requests by Representatives without delay. Customer shall, at no cost to First Communications and/or its Representatives, timely provide necessary or appropriate access, including but not limited to physical access to Customer buildings, premises, other space or facilities or personnel or third parties, and/or authorization, required to provide, modify, maintain, repair and/or cease providing any Managed Services. If access and/or authorization is required for any Managed Services and such access or authorization is not made available during the appointment window or other designated timeframe, your account will be assessed a trip charge and your Service may be adversely affected, delayed or impaired. All Managed Services timelines including requested ready for Service dates are estimates and conditional upon Customer's timely response, performance and cooperation throughout the process.

### **Managed Services Modifications**

You acknowledge that Managed Services is a rapidly changing industry and technology, and as such we shall not be liable to you if changes in any of the facilities, operations, equipment, procedures or Services render obsolete any equipment, Service, software, and/or applications provided in conjunction with use of the Managed Services.

### **Managed Services Training**

Charges for Managed Services training provided by or on behalf of First Communications will be invoiced, billed and paid as set forth herein with respect to Charges on a time and materials basis at First Communications' then current rates and costs. Travel and expense costs associated with any such training will be charged and passed through at First Communications' cost. All training work is deemed delivered as it is performed. All training timelines are estimates and conditional upon Customer's timely response and cooperation throughout such process. Changes to training services may result in the use of additional resources, time, materials and costs. All data and information associated with any such training services and all rights relating thereto are First Communications property, and no such materials shall be deemed "works made for hire." Any Customer specific business information furnished by Customer in connection with any such training shall remain the property of Customer; provided, however, that no work or product created, developed or first reduced to practice by First Communications, alone or with others including yourself, in connection with providing the Services shall be deemed to be Customer property or information. Upon any termination or expiration of the Agreement, each Party shall promptly return all information and data of the other Party (and all copies thereof) used or received in connection with training services and shall have no further right or license to use any such materials.

### **Third Party Representatives; Software**

You understand that First Communications uses 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 Managed Services, and such Managed Services may be subject to the availability of such third parties and their respective services or products. First Communications is not responsible for any failures attributable to third parties and does 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, 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 rights or usage to any hardware, software, technology, copyrighted material or other proprietary rights for any purpose. You agree to defend, indemnify and hold us harmless from any third party claim arising from your breach of the Agreement and/or misuse of the Managed Services.

You acknowledge that certain pricing set forth in the Agreement may be based on underlying services being available to us, and we may cancel or refuse to provide Services for any Managed Services for which we are unable to secure or maintain such underlying services at quoted pricing. In such event, we will notify you of the affected Managed Services, and if the Parties are unable to agree on any required modifications to the Agreement, including but not limited to pricing, within 10 days after notice by us, then we will not be required to provide such affected Managed Services.

## Business Conditions of Use

### Managed Services Compliance

Customer understands and acknowledges that it is solely responsible for determining if any Services and any applications, data or third party service that Customer runs in the First Communications provided environment must comply with any laws, standards and policies, 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 that the Service, application, data or third party service does comply with all such applicable requirements. Customer agrees that First Communications has no way of analyzing Customer's data, services or applications deployed in the Managed Services environment. Customer agrees that it will not use any Managed Services to 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. Unless expressly agreed in writing as specified in the Agreement, Customer shall not use any Services for telemarketing or telephone solicitation sales, and regardless, Customer understands and acknowledges that it is solely responsible for ensuring all compliance, privacy, and/or security with respect to local, state and federal telemarketing laws, including without limitation, the Telephone Consumer Protection Act, the Telemarketing and Consumer Fraud Abuse Prevention Act and all licensing and regulation relating to telemarketing, call recording, auto dialers, predictive dialers, robo-calls, junk faxes, bulk email, spam and do not call registries. Customer agrees that it will fully defend, indemnify and hold harmless First Communications from any breach of the Managed Service Compliance obligations set forth in this section, including, but not limited to any and all third party claims relating thereto, without regard to any limitations of liability set forth herein or in any Agreement. Customer agrees to notify First Communications immediately in the event of any breach of these Managed Services Compliance provisions or other impermissible PHI or credit card data storage, access or disclosure.

## LEGAL AND REGULATORY

### Limitation of Our Liability

We intend for the following limitations and exclusions of our liability to apply to the fullest extent permitted by law.

IF OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT CAUSES DAMAGE TO A PERSON OR PROPERTY, WE WILL BE LIABLE FOR NO MORE THAN THE LESSER OF THE AMOUNT OF ALL CHARGES PAID BY CUSTOMER UNDER THE AGREEMENT, EXCLUDING MANAGED SERVICES, OR THE AMOUNT OF DIRECT DAMAGES TO THE PERSON OR PROPERTY. FOR ANY OTHER CLAIM, WE WILL NOT BE LIABLE FOR MORE THAN THE AMOUNT FOR ALL CHARGES FOR THE SERVICES, EXCLUDING MANAGED SERVICES, DURING THE AFFECTED PERIOD. WITH RESPECT TO ANY CLAIM RELATING TO OR INVOLVING MANAGED SERVICES, WE WILL NOT BE LIABLE FOR MORE THAN AN AMOUNT EQUAL TO ONE (1) MONTH RECURRING CHARGE PAID BY CUSTOMER FOR THE APPLICABLE MANAGED SERVICE. IN ADDITION, FOR ANY CLAIM WHATSOEVER, WE WILL NOT BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS OR REVENUE OR INCREASED COSTS OF OPERATION OR ANY HEALTH-RELATED CLAIMS ALLEGEDLY ARISING FROM THE USE OF SERVICES, DEVICES, EQUIPMENT OR ACCESSORIES USED IN CONNECTION WITH SERVICES, COMPUTER FAILURE OR MALFUNCTION, COMPUTER SECURITY BREACH, COMPUTER VIRUS INFECTION, LOSS OF INFORMATION OR DATA CONTAINED IN, STORED ON, OR INTEGRATED WITH ANY SERVICE THAT WE PROVIDE. FURTHER, AT NO TIME WILL WE BE LIABLE FOR PUNITIVE, EXEMPLARY, RELIANCE OR SPECIAL DAMAGES OF ANY TYPE. THESE LIMITATIONS APPLY EVEN IF THE DAMAGES WERE FORESEEABLE OR IF WE WERE TOLD THEY WERE POSSIBLE, AND THE LIMITATIONS APPLY WHETHER THE CLAIM IS BASED ON CONTRACT, TORT, STATUTE, FRAUD, MISREPRESENTATION, OR ANY OTHER LEGAL OR EQUITABLE THEORY. FIRST COMMUNICATIONS WILL NOT BE LIABLE FOR ANY DAMAGES IF SERVICES ARE INTERRUPTED OR THERE IS A PROBLEM WITH THE SERVICES OR EQUIPMENT OR MATERIALS OF SOME OTHER PARTY. WE ARE NOT AN OPERATOR SERVICE PROVIDER AND AS SUCH DO NOT HANDLE EMERGENCY CALLS. WE ARE NOT LIABLE IN ANY WAY FOR ANY CALL TO ANY EMERGENCY PROVIDER OR THE FAILURE TO CONNECT TO SUCH PROVIDER OR ANY ACTION THAT OCCURS OR FAILS TO OCCUR AS A RESULT. YOU ACKNOWLEDGE AND AGREE THAT FIRST COMMUNICATIONS USES CERTAIN UNDERLYING THIRD PARTY SERVICE PROVIDERS AND REPRESENTATIVES 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, AND/OR SOFTWARE PROVIDED BY ANY THIRD PARTY INCLUDING ANY SUCH EQUIPMENT, MATERIALS, SERVICES OR SOFTWARE PROVIDED, LEASED OR LICENSED BY US. THIS PARAGRAPH WILL SURVIVE TERMINATION OR EXPIRATION OF THE AGREEMENT.

### 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 OR DAMAGES RELATING TO THE AGREEMENT OR OUR PROMISES OR STATEMENTS MADE IN IT AND USE OF THE EQUIPMENT OR SERVICE, UNLESS DUE TO OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. IT IS YOUR RESPONSIBILITY TO CONFORM TO ALL SUCH LAWS OR

## Business Conditions of Use

REGULATIONS AND YOU WILL INDEMNIFY US FROM CLAIMS ARISING FROM ANY SUCH USE WHETHER LAWFUL OR NOT. THIS PARAGRAPH WILL SURVIVE TERMINATION OR EXPIRATION OF THE AGREEMENT.

### No Warranties

WE MAKE NO EXPRESS WARRANTY REGARDING THE SERVICE OR EQUIPMENT OR MATERIALS AND DISCLAIM ANY IMPLIED WARRANTY, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. 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 CUSTOMER CONTENT, WILL BE SECURE OR NOT LOST OR DAMAGED. THE SERVICES AND EQUIPMENT AND MATERIALS 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 OR MATERIALS COULD LEAD TO 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 ABSOLUTELY ACCURATE OR SECURE DATA, PERFORMANCE OR INFORMATION IS REQUIRED. WE DO NOT AUTHORIZE ANYONE TO MAKE ANY WARRANTY ON OUR BEHALF AND YOU SHOULD NOT RELY ON ANY SUCH STATEMENT. WE ARE NOT THE MANUFACTURER OF EQUIPMENT OR DESIGNER OF ANY SOFTWARE AND ANY STATEMENT REGARDING IT SHOULD NOT BE INTERPRETED AS A WARRANTY. FIRST COMMUNICATIONS DOES NOT GUARANTEE THAT ANY PRODUCT OR SERVICE 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 THE EQUIPMENT MANUFACTURERS, IF ANY, TO THIRD PARTY END USERS OF FIRST COMMUNICATIONS. FIRST COMMUNICATIONS DOES NOT WARRANT THAT TIME IS OF THE ESSENCE WITH RESPECT TO ANY SERVICES. THIS PARAGRAPH WILL SURVIVE TERMINATION OR EXPIRATION OF THE AGREEMENT.

### Force Majeure

First Communications will not be responsible for, and will not incur any liability arising out of, any event beyond our reasonable control such as lightning, hurricane or other exceptionally severe weather, acts of God, flood, fire or explosion, civil disorder, terror attacks, war or military operations, national or local emergency, anything done by any government or other competent authority or labor difficulties of any kind (including those involving our 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 or materials.

### Liens and Encumbrances

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 or materials located within the 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 Customer's facilities installed within the Premises or elsewhere. Notwithstanding the foregoing, if any such lien is filed at any time against the Premises and/or First Communications' or its Representatives' property, 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 us 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 set forth above, First Communications may, at its 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 Customer to First Communications.

### Eminent Domain/Condemnation

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 will give prompt notice thereof to Customer. If a landlord or First Communications 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 First Communications decides not to rebuild such building or portion thereof in which the Premises is located or relocate the same, this Agreement 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, we 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 we fail to complete the repair or relocation within 90 days, Customer shall thereupon have the

## Business Conditions of Use

option to terminate this Agreement 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 charges for the affected Customer facilities, for the period from the date of the damage or taking to the date of the repairs or relocation.

### Resolution of Disputes

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

### Choice of Law Forum

Where our Service terms and conditions are regulated by a state agency or the Federal Communications Commission ("FCC"), the regulations are available for your inspection. If there is any inconsistency between the Agreement and those regulations, those regulations shall govern and the Agreement shall survive and be deemed amended as necessary to conform to such regulations. To the extent the Agreement is not subject to FCC or state regulations, you agree that the laws of the State of Ohio govern the Agreement and the relationship between First Communications and you, without regard to conflict of laws principles. The Parties further agree that to the fullest extent permitted under the Agreement, Akron, Ohio will be the exclusive jurisdiction for any claim, dispute or other difference that may arise between the Parties, including any collections suit initiated by First Communications against you. Each Party consents to personal jurisdiction and venue in Akron, Ohio and waives any objection it may have based on inconvenient forum. **Notwithstanding anything set forth herein, each Party irrevocably waives any right to trial by jury in connection with any claim.**

### Pre-Arbitration

Except for our collections suits which are not subject to the following arbitration provisions, before the initiation of any arbitration between the Parties, written notice of any claim, dispute or other difference (collectively, "Disputes") shall be provided pursuant to the notice provisions of the Agreement, see Notices Section below. If the Dispute cannot be resolved within 60 days of receipt of such notice, either Party may initiate arbitration of the Dispute.

### Arbitration

Disputes that arise between the Parties, except for those Disputes that fall exclusively within the jurisdiction of a state or federal regulatory body, shall be exclusively resolved by binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association with arbitration to occur in Akron, Ohio. **The Parties agree that their Disputes will be resolved individually and shall not be resolved on a consolidated or class basis or joined with Disputes of any third-party.** Subject to the limitations of liability set forth herein, the arbitrator(s) may award declaratory relief, preliminary and permanent injunctive relief, and direct compensatory damages, but may not award any incidental, consequential, punitive or other damages disclaimed herein and each Party waives, to the fullest extent permitted by law, any claims for any such damages. To the extent such damages may not be so waived, if an arbitrator decides to award such damages they shall be limited to the total amount of Service Charges paid by you to us in connection with the Service that is the subject of the dispute.

### Regulatory/Provider or Representative Action

Notwithstanding anything to the contrary in the Agreement, in the event that any regulatory agency, legislative body, court or incumbent or other provider or Representative modifies or creates regulations or laws or changes charges and or fees to First Communications in a manner that increases the costs for First Communications to provide its Services, First Communications reserves the right to pass such increased costs to the Customer.

Customer acknowledges that certain pricing set forth in the Agreement may be based on underlying facilities being available to First Communications as unbundled network elements (UNEs). In this instance, pricing does not include special access service Charges, and First Communications may cancel or refuse to provide Service for any or all location(s) under this Agreement for which Company is unable to secure or maintain underlying facilities at quoted pricing. In such event, we will notify Customer of the affected location(s), and if special access service is available the additional Charges required in order for First Communications to provide Services to such location(s). If the Parties are unable to agree on such increased Charges within 10 days after notice by First Communications, then we will not be required to provide Services for such location(s).



## Business Conditions of Use

### Changes to the Agreement

First Communications may change the Charges for the Services at any time and from time to time. We may decrease Charges without providing advance notice. According to applicable state law, First Communications will notify the Customer of increases in Charges by bill insert, bill message or other notice. With respect to other changes to the Agreement, First Communications will notify you, by a posting on its website at [www.firstcomm.com](http://www.firstcomm.com), recorded announcement, bill insert, bill message, newspaper ad, postcard, letter, facsimile, call to your billed/account number, call to any phone number (including 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 of communication and/or notice. Choice of notification methods will remain in First Communications' sole discretion and as directed by state law. Notwithstanding the above, First Communications withholds the right to make any changes, without notice to you, that it deems necessary or appropriate (increases or decreases) to any taxes, surcharges, fees, assessments, or other recoveries (including without limitation the recovery of costs associated with Universal Service obligations and primary interexchange carrier charges) arising under, based upon or required by state or federal statute or regulation. For Customers who do not agree to a material change(s) made by First Communications to the Agreement, not applicable for taxes, surcharges or other recoveries noted above, you may terminate the Agreement by giving us notice as described below without Early Termination Fees 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 Customer's agreement to the material change. Customer's terminating or migrating Services after 30 days of the Customer's Material Change Termination Notice date will incur Early Termination Fees. 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.

### Technology Evolution

In the normal course of technology evolution and enhancement, First Communications updates and upgrades its networks, products and Services. In some instances, these efforts will result in the need to ultimately replace or discontinue certain offerings or technologies. In such event, we will undertake such efforts in a customer-focused and commercially reasonable manner. Accordingly and notwithstanding anything in the Agreement to the contrary, First Communications reserves the right, in its sole discretion, after providing the notice set forth below, to: (1) migrate Customer to a replacement technology; or (2) discontinue any product or Service without either Party being in breach of the Agreement or incurring ETFs or other liability relating to the discontinuance of the affected product or Service.

If First Communications takes any action set forth above, we will provide advance notice reasonable designed to inform each affected Customer of such pending action. The form of our notice may include without limitation, calling any phone number (including any cell number) associated with the account or providing written notice to any address associated with the account or the Agreement including via email or any address First Communications uses for billing in the form of bill insert, bill message or other notice, or as set forth in a Service Order. Customer agrees that such notice is reasonable and sufficient notice of our pending action.

### Attorney Fees

If suit is brought or an attorney is retained by us to enforce the terms of the Agreement, including to collect any Charges due under the Agreement or to collect money damages for breach of the Agreement, then we will be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, witness fees, court costs, costs of investigation, arbitration costs and other related expenses incurred in connection therewith.

### Notices

#### From You

All notices (including your notice of disconnect or cancellation), requests or other communications shall be in writing and delivered as follows, except as otherwise permitted herein:

- Via overnight courier or registered mail, postage prepaid and return receipt requested to First Communications, LLC; 3340 West Market Street; Akron, OH 44333; Attn: Notices-Legal; or
- Electronic mail to [businesscustomercancellations@firstcomm.com](mailto:businesscustomercancellations@firstcomm.com), with confirmed receipt and subject line beginning with "NOTICE-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.

#### To You

If we change our address or toll-free Customer Service telephone number, we will notify you on your bill or by other means as specified in Changes to the Agreement.

## Business Conditions of Use

Except for notice as otherwise permitted herein, written notification to you will be considered delivered three days after the notice was deposited in the U.S. Mail, one day after receipt via overnight courier, or immediately if delivered electronically such as e-mail, facsimile, text or short messaging service or we may notify you by leaving a message on your First Mobility device. You are responsible for notifying us of any change in your address or other account contact information.

## MISCELLANEOUS

### Privacy; Law Enforcement

We are not liable for any lack of privacy that may be experienced with regard to the Service. You authorize our monitoring and recording of calls to us concerning your account or the Service and you consent to our use of automatic dialing equipment to contact you. If you have provided an email or cell phone number that is necessary for provision of the Service, you expressly consent to our contact by SMS and/or email alerts as part of receiving such Service. We have the right to intercept and disclose any transmissions over our facilities in order to protect our rights or property or pursuant to court order or subpoena. We reserve the right to cooperate with law enforcement.

### Assignment

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

### Severability

The provisions of the Agreement (including, without limitation, a Service Plan issued hereunder) shall be severable, and if any of the terms are held unenforceable or invalid because of scope of activity, duration, or any other reason, such provision shall be adjusted to cure such invalidity to the minimum extent necessary. The unenforceable or invalidity of one provision will not affect any other and the remaining terms of the Agreement will remain in full force and effect.

### Entire Agreement

The Agreement represents the entire agreement between you and us relating to the subject matter of the Agreement, which may only be amended as described in the Agreement. The Agreement supersedes any prior written or oral understanding, agreement, representation or promise between you and us relating to the subject matter of the Agreement. Notwithstanding anything set forth in the Agreement, all proposals, samples, diagrams, descriptive materials, specifications and advertising issued or used by First Communications and any descriptions or illustrations contained in First Communications' catalogues, brochures, reports or manuals are for general informational purposes only and shall in no event form part of the Agreement.

### Other Services

You may receive special promotions or discounts on other services and products offered by First Communications or its affiliates in connection with the purchase of certain Services and products. These promotions or discounts may terminate upon termination or expiration of the Agreement or suspension of the Services.

### Capacity

You represent that you are legally competent to enter into the Agreement, that you are over 18 years old, and that you are not aware of any disability that would prevent you from entering into the Agreement.

### Waiver

If we do not enforce a claim or right, this does not amount to a waiver of our rights to enforce such a claim or right.

### Copyright, Trademark, License and Site Access

All content included on First Communications' 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 and software are the property of First Communications or its content supplier and are protected under applicable law.

First Communications grants you a limited non-exclusive license to access and make personal use of the website and not to download (other than page caching) or modify it or any portion of it except with express written consent of First Communications. 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 First Communications and/or its Representative in connection with the Services. You may not copy, reproduce, distribute or create derivative works from the content included on First Communications' website or other materials presented or made available to you as part of the Services.

## Business Conditions of Use

### TTY Access

A TTY (also known as TDD or Text Telephone) is a telecommunications device that allows people who are deaf or hearing impaired, or who have speech or language disabilities, to communicate by telephone. TTY doesn't work with all devices. **If you have a TTY-capable device, it may not function effectively, or at all, when attempting 911 calls and should not be relied on for such calls.**

### 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 shall be deemed and will be treated as an original signed Agreement or counterpart, as applicable.

### Headings

Section headings are for descriptive purposes only and are not intended to be used to interpret the Agreement.

### Survival

The provisions of the Agreement that are contemplated to be enforceable after the termination or expiration of the Agreement survive termination or expiration of the Agreement.