

## Business Conditions of Use

### GLOBALCOM INC dba FIRST COMMUNICATIONS, LLC. TERMS AND CONDITIONS OF BUSINESS SERVICE

#### Contract Information

This document sets forth the legal Terms and Conditions (T&Cs) governing the provision of intrastate, interstate and international long distance, dedicated and local telecommunications and other services provided to you by Globalcom Inc dba First Communications ("First Communications"). These T&Cs contain the contractual obligations between you and 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.

Under the T&Cs of service, First Communications offers to provide Services to you and other customers. **By subscribing to or making use of our Services, you are agreeing to abide by the T&Cs of this Agreement.**

#### Definitions

As used in this Agreement, 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 Letter of Agency ("LOA") if any, and any Service Plan under which you take Services from First Communications. Notwithstanding any language to the contrary, these T&Cs take precedence over any conflicting language in any LOA or Service Plan.
- b. **"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, monthly reoccurring charges (MRCs), non-recurring charges (NRCs); any taxes, surcharges, fees, assessments; and/or recoveries determined by us to be imposed on you or us as a result of use of the Service on your account.
- c. **"Customer"** or **"you"** means the person subscribing to our Services and with whom we have entered into this Agreement. This includes a person we reasonably believe is acting with the authority or knowledge of the person whose name is on the account.
- d. **"First Communications"** means First Communications LLC and its successors and assigns. "First Communications" is also referred to in this Agreement as "us," "our" "we" and "Company."
- e. **"Parties"** means First Communications and you.
- f. **"Service"** or **"Services"** means any and all telecommunication 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. Regarding intrastate long distance service, this 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, this Agreement will apply to the extent permitted by law.
- g. **"Service Plan"** means any service plan, service agreement, rate plan, written service price list or description, or supporting material, describing the Services and their rates, fees and charges.
- h. **"Subscribe"** means the point at which First Communications Service are 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 part of this Agreement. Service Plan information is maintained at <http://www.firstcomm.com>. Rates for Alaska, Hawaii and International countries can be found online at <http://firstcomm.com/internationalrates.asp>. Or First Communication's public reference document is available for inspection at First Communications' headquarters located at 200 East Randolph Street; suite 2300, Chicago, IL 60601. You may obtain a copy of this Agreement, First Communications' Terms and Conditions, or any Rate Plan information; see Notice 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, 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, which 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, which involve a fraction of a billing increment, will be rounded up to the next whole billing increment. In

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addition, if the computed call Charges include a fraction of a cent; 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.

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 services in the event of a violation of the foregoing use restrictions

## Use of Service

You agree not to use any Service for any unlawful or abusive purpose, or purposes that infringe upon others' intellectual property rights, or in any way that damages our property or interferes with or disrupts our system or other users or that are in any way unlawful, fraudulent or abusive, that violates trade and 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 usage include, but are not limited to: (1) accessing, altering, or interfering or attempting, or assisting to access, alter, or interfere with our facilities and/or our information or 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 forth in more detail in (4) 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 to penetrate, or attempt 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 against all 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, using voice services provided to a single location to other locations over a private network without our knowledge or (10) to convey information found to be unlawful or to convey information found to be unlawful, including but not limited to, a finding that such language was foul, profane, obscene, salacious or prurient, or to impersonate another person, with fraudulent or malicious intent, or for any purpose in violation of the law, or in such a manner as to interfere unreasonably with the use of Services by us or others, unless they adhere to First Communications' requirements for such usage, which may be changed from time to time.

You must comply with all laws 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 from harm, compromised capacity or degradation in performance. These measures may impact customer's service, and we reserve the right to deny, modify or terminate service, with or without notice, to anyone we believe is using the Service in a manner that adversely impacts our network. We may monitor customer's compliance, or other subscribers' compliance, with these terms and conditions, 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 numbers for your use of our Services. Prior to activation, reserved telephone numbers for new service or telephone number changes may be altered without notice to you, however we will inform you of the change shortly after activation. We may change active telephone numbers by providing notice, such as an area code change. You have no ownership rights and you may not (1) modify the number assigned to you or programmed into any Mobility device if First Mobility service; (2) transfer or

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duplicate any assigned telephone number other than authorized by us, or (3) transfer the number to any other individual or entity without our permission. First Communications understands that, per FCC regulations, you have the right to take your phone numbers 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 at First Communications' sole discretion.

### 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 accordance with state law, First Communications also reserves the right to suspend, interrupt or restrict Service, 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 notify customers of activity in violation of this Agreement, or in any way a misuse of Service prior to suspending, interruption or restriction of 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 and equipment being available from other carriers. We may have to do things such as change the code or telephone number assigned to or used by you or the technical specifications of the Service, or interrupt Service to perform tests and inspections or for operational or emergency reasons, or to install equipment, or 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 or restrict 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 this Agreement or the law 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 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 to state law. If based on our records and your documentation we determine that you are entitled to a credit, the credit will be provided on a subsequent bill.

Customer is aware that some phone 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 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:

**(800) 589-1531 for Commercial Customers**

or

**(866) 429-9450 for First Mobility Customers**

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 Access

If First Communications is denied or delayed access to the Customer's premise, there will be delays in Service installation or repair. If access is required for an installation or repair, and the technician is unable to gain access during the appointment window, your account will be assessed a trip charge.

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For Business POTS lines, a trip charge may be assessed for installation cross connects (tie downs) or service/repair issues. If a repair issue requires a service technician 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.

### Disconnect or Cancellations

When a business customer requests a disconnection of your Service, primarily, but not exclusively, involving a circuit, you must notify First Communications in writing at least thirty days in advance of the date you wish service to cease, see Notice Section below, Early Termination Fees may apply. All past due balances, MRCs, and other outstanding fees and Charges shall be immediately due and payable upon the effectiveness of service cancellation.

If the Customer chooses to move its local Service to another service provider, First Communications will stop billing for local Services on the date contained in the loss notification. Often, First Communications receives this notification by the other service provider and not directly from the Customer. Early termination fees may apply for business customers; see Term, Early Termination Fee, below. However, upon loss notification for Plain Old Telephone Service bundled packages, if the Service contains stand alone voice mail or internet products, First Communications will notify the customer that these services will be disconnected within 10 days if other billing arrangements are not made. If no billing arrangements are made, the standalone service will be disconnected as of the loss notification. For additional information, see Final Bill, below.

### Term: Early Termination Fee

The term of this Agreement for each Service depends on the Service feature or promotion you select as it is described in the applicable Service Plan. The term of this Agreement for your switched long distance service begins on the date you subscribe to the Service. The term for POTS (Plain Old Telephone Service) 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. 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 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 First Communications incurred on your behalf to fulfill your order. If you select a Service Plan or promotion that requires a fixed term such as a one-year, two-year or three year Service Plan, you agree to purchase Service for the full term. In accordance with state law, Business Customer terms of this Agreement will automatically renew for one year at the end of the chosen term period unless First Communications receives, in writing, a request for non-renewal/cancellation from you at least sixty (60) days prior to the end of the applicable term. Any Charges accrued between Customer's cancellation notice and ninety (90) days thereafter will remain your responsibility. If you select a Service Plan, feature or promotion with a fixed term, and terminate your Service before the end of your fixed term, you will be in material breach of this Agreement. You agree our damages may be difficult to determine due to variable usage and agree to pay us, a reasonable estimate of our damages (not as a penalty) and in addition to all other amounts you owe, any cancellation fee applicable to the Service. The formula used for Early Termination Fee for services other than First Mobility is: the average of the last 3 months usage, plus the MRC, times the number of months remaining of the term, along with 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, Payments 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, monthly recurring charges (MRCs), nonrecurring 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 Service on your account.

### 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 to reflect your estimated monthly Charges and we will base that increase on your actual use of the Service or on

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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. If you default or this Agreement is terminated, we may, without notice to you, apply any deposit towards payment of Charges due. Your deposit will be returned in accordance with applicable law.

Unless otherwise required by state law, if you believe you have overpaid First Communications, you must submit your dispute within 60 days after the claimed overpayment.

### Initial Bill

Billing will begin the date Services are first made available. All Services are billed to you on a monthly cycle. For billing, each month is 30 days. First Communications will prorate recurring fixed monthly Charges for any partial month on a 30-day basis. Recurring monthly Charges and all Service Charges will be billed in advance, except for the initial month (or fraction thereof) and any other charges will be billed in arrears. On your first invoice, you will be billed for the recurring monthly Charges of the initial month (or fraction thereof) and the following month.

### Payment

We will provide your bill in a format that identifies the Charges with reasonable specificity and which may change 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 from time to time. 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 before making a payment. No additional notice or consent is required before we invoice your credit card or debit the account for all amounts due to us. We will notify you of any limits that we impose. If such limits are placed on your account, you may be required to pay for Service with a valid major credit card. You agree to provide a credit card and not a debit card for this feature. You also agree to indemnify us for any claims or expenses resulting from your 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 the Service until your account is paid in full.

### Late Payments and Disputes

All amounts due must be paid by the due date. You agree to pay us a late payment fee of 1.5 percent per month or the highest amount allowed by law for the period(s) for which such Charges would have been payable, for amounts unpaid 31 days after the date of the invoice. Even if we accept late or partial payments (even if marked "Paid in Full"), it will not waive any of our rights to collect the full amount due under this Agreement. You have 60 days from the date of the invoice to give 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 Notice Section below. The Parties shall negotiate in good faith to resolve the dispute. Company will attempt to respond to any dispute within 30 days of receipt of valid notice with our determination of the validity of the dispute and if an adjustment to the disputed invoice is required. However, should we fail to mutually resolve the dispute within sixty (60) days after the dispute was submitted to Company, all disputed amounts shall become immediately due and payable to Company. If a billing error resulted in an over-billing or over charge, First Communications shall refund the over billed or overcharged amount by issuing your account a credit in accordance with applicable law.

### Suspension, Termination for Non-payment

In addition to our other rights to suspend or terminate Service described elsewhere in this Agreement, if you miss a payment, we may suspend the Services or end this Agreement 30 days after the payment was due. 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 or terminate this Agreement (or both) 15 days after non-payment notification is sent. If you breach any representation to us or fail to perform any of the promises you made in this Agreement, or if you are 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 this Agreement, in addition to all other remedies available to us. We may require reactivation charges to renew Service after termination or suspension.

### Final Bill

Upon any termination or expiration of this Agreement, you are responsible for paying all amounts and Charges that you owe under this Agreement, including any applicable cancellation fee and/or the remaining balance of Charges owed for any minimum usage commitments. Furthermore, you agree that you will not receive a credit or refund for any unused minutes in your Usage Service Plan for

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that month's billing cycle. Your final bill may contain a credit for any advanced payments of your monthly recurring charges, exclusive of Usage Plans, prorated for your final month and a debit for all usage due.

### CPNI

First Communications knows how important personal privacy is to our customers. We maintain strict privacy policies and use 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, etc. This generic information allows us to keep up to date with offerings and helps us to 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 new products and service offerings. **NO INFORMATION IS EVER SOLD, RENTED OR GIVEN TO ANOTHER PARTY** unless required by law or unless they are conducting business on your behalf. (e.g., we have used a company to conduct satisfaction surveys on our behalf.)

### 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. We may assume that any person able to provide your password (which does not contain readily available information about you or your account) is authorized by you to receive call detail 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 that the information is untrue, not current, inaccurate or incomplete, First Communications may suspend or terminate your service.

If you use First Communications website, you are responsible for maintaining confidentiality of your account and password, restricting access to your computer, and you agree to accept responsibility for all activities that occur under your account and password. You will ensure you will 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 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 operated or owned by First Communications, without limitation. Generally, any conduct that violates a law, the accepted norm of the Internet community, or that may damage First Communications' reputation, whether or not expressly written in this policy, is prohibited. First Communications' written permission 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, at 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 shall have the right to suspend and/or cancel the Customer's account and any or all services 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 SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTION, DAMAGES, SUITS OR PROCEEDING 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 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-

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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, as described above, at our sole discretion. Upon Service termination, First Communications requires you to return all assigned IP addresses.

### Data Equipment

First Communications is not responsible for the installation, operation, maintenance, compatibility or performance of any Customer Premise equipment. If Customer connects incompatible equipment to the Service, First Communications 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 is likely to cause hazard or service interruption or obstruction, Customer will eliminate such likelihood at First Communications' request.

### First Mobility

Mobility service term is co-terminus with your On-net circuit products with a two (2) or three (3) year commitment. Unless otherwise specified in a written notification, once service term has expired, the customer's service agreement is automatically renewed for an additional 12 month term. This co-terminus policy is throughout the lifetime of the circuit, regardless of when mobility lines are added or disconnected. Furthermore, additional mobility devices added to an existing account is coterminous with the Mobility Shared Plan Agreement associated to which they are assigned.

### 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 **END** or **DISCONNECT** button to ensure that session disconnects and charges cease. Third party applications may automatically reinitiate data sessions without you pressing or clicking **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

We do not guarantee that transfers to or from us will be successful. However First Communications will make every effort to resolve porting issues.

### Mobility Charges

Charges for a completed call from or to your Number 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 Number 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. However, you will not be charged for voice calls that ring and do not pick up, or if you get a busy signal. Notwithstanding the foregoing, in some of the Territory an unanswered call that rings for sixty (60) seconds or more will be billed. Your invoice will contain a summary of charges. Call detail is available on our secured website for your account.

### 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.

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### Mobility Billing

Although it is our intent to submit timely invoices, we reserve the right to invoice for services underbilled or unbilled, furthermore we will limit the period to twelve (12) months prior to the date of the invoice including such amounts, should this occur. However, the twelve (12) month limitation for under billed or unbilled services will not apply in the following scenarios: failure to bill or under billing was caused by your acts, failure or refusal to act, errors or omissions, Force Majeure events (described in Limitation of Liability (i)) or failure to bill or under billing was caused by Fraudulent Usage or Cloning Fraud.

Mobile call charges to landlines in other countries 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. Service Plan

Should you terminate your circuit Service Agreement, the Mobility agreement will also terminate and Early Termination Fees for the Mobility service would 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 was received.

### 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 First 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 First Mobility. We are not the manufacturer of the mobility devices or other equipment and the only warranties on the mobility devices or other equipment are limited warranties extended by the manufacturers.

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 thirty (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) subjecting the Equipment to 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 one hundred and twenty (120) calendar days from the date of the return request.
- There is less than two hundred fifty (250) minutes on the non-resettable call timer of the mobility device.
- Data devices, which meet the 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 issues that have not been caused by liquid or physical damage that can be duplicated by First Communications 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 the customer will be referred to the Original Equipment Manufacturer (OEM) for warranty replacement or repair. First Communications will return mobility device and packaging, along with a reason why the RMA is being rejected. Mobility device and packaging will be mailed back

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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 notify us by calling First Mobility 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 Number for the lost or stolen equipment before you notify us of the loss or theft. We will deactivate Services to the Number upon notification to us 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 will deactivate Services to any Number without prior notice to you if we suspect any unlawful or fraudulent use of the Number. 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 such we shall not be liable to you if changes in any of the Facilities, operations, equipment, procedures or Service render obsolete any Equipment service, software, and/or applications provided in conjunction with use of the service.

### 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 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 DURING THE AFFECTED PERIOD. FOR ALL CLAIMS, 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 LAIMS ALLEGEDLY ARISING FROM THE USE OF SERVICES, DEVICES, EQUIPMENT OR ACCESSORIED USED IN CONNECTION WITH SERVICES. FURTHER, AT NO TIME WILL WE WILL BE LIABLE FOR PUNITIVE, 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 OF SOME OTHER PARTY. THIS PARAGRAPH WILL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT. 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.

### Indemnification

YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD US, OUR AFFILIATES AND AGENTS AND ANYONE PROVIDING SERVICES TO YOU ON OUR BEHALF, HARMLESS FROM CLAIMS OR DAMAGES RELATING TO THIS AGREEMENT OR OUR PROMISES OR STATEMENTS MADE IN IT AND USE OF THE EQUIPMENT OR SERVICE, UNLESS DUE TO OUR GROSS NEGLIGENCE. IT IS YOUR RESPONSIBILITY TO CONFORM TO ALL SUCH LAWS OR 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 THIS AGREEMENT.

### No Warranties

WE MAKE NO EXPRESS WARRANTY REGARDING THE SERVICE OR EQUIPMENT AND DISCLAIM ANY IMPLIED WARRANTY, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. 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 AND ANY STATEMENT REGARDING IT SHOULD NOT BE INTERPRETED AS A WARRANTY. THE ONLY WARRANTY APPLICABLE TO THE EQUIPMENT USED IN CONNECTION WITH THE SERVICES IS THAT PROVIDED BY THE EQUIPMENT MANUFACTURERS THIS PARAGRAPH WILL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

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### Force Majeure

Unless otherwise requires by state law, we will not be responsible for, and will not incur any liability arising out of, any event beyond our reasonable control such as lightning, flood, exceptionally severe weather, or other acts of God, 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 employees), unavailability of network facilities (including third parties).

### Severability

The provisions of the Agreement (including without limitation a Service Plan issued hereunder) shall be severable, and if any of 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 this Agreement will remain in full force and effect.

### 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. 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 THIS 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 this Agreement and those regulations, those regulations shall govern and this Agreement shall survive and be deemed amended as necessary to conform to such regulations. To the extent this Agreement is not subject to FCC or state regulations, you agree that the laws of the State of Ohio govern this Agreement and the relationship between First Communications and you. The Parties further agree that to the fullest extent permitted under this Agreement, Akron, Ohio will be the exclusive forum for any claim, dispute or other difference (collectively, the "disputes") that may arise between them and that the Parties are subject to jurisdiction in Akron, Ohio.

### Pre-Arbitration

Before the initiation of any arbitration between the Parties, written notice of any disputes shall be provided pursuant to the notice provisions of this Agreement. If the dispute cannot be resolved within 60 days of receipt of such notice, either Party may initiate arbitration of the dispute.

### Arbitration

Contractual Business customer 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.** 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 Action

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

### Changes to this Agreement

First Communications may change the Charges for the Services 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 this 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, call to your billed/account number, or e-mail to an address provided by you. 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

## Business Conditions of Use

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 Contractual Business customers who do not agree to a material change(s) made by First Communications to this 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 thirty (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 thirty (30) days of the Customer's Material Change Termination Notice date, will be deemed as Customer's agreement of the material change. Customer's terminating or migrating services after thirty (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 those 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.

### Attorney Fees

If suit is brought or an attorney is retained by us to enforce the terms of this Agreement or to collect any moneys due under this Agreement or to collect money damages for breach of this 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) requests or other communications shall be in writing and delivered as follows:

- Via overnight courier or registered mail, postage prepaid and return receipt requested to First Communications; 200 East Randolph Street, Suite 2300; Chicago, Illinois 60601; Attn: Notices-Legal; or
- Electronic mail to [businesscare@firstcomm.com](mailto:businesscare@firstcomm.com) with confirmed receipt and subject line beginning with "NOTICE-LEGAL".

Written notice to us will be effective when directed to Notices and received by us. Your notice must specify your account number(s) and telephone number(s) and reasonably detail the reason of the Notice.

If we change our address or toll free Customer Service telephone number, we will notify you on your bill or by other written means.

#### To You

Written notification to you will be considered delivered 3 days after the notice was deposited in the US Mail or immediately if delivered electronically such as e-mail 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.

## MISCELLANEOUS

### Privacy

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. 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.

### Assignment

We may assign all or part of this 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 this Agreement without our prior consent.

### Entire Agreement

These Terms and Conditions, together with any other documents directly or indirectly referenced herein are made a part of the Agreement, and represent the entire agreement between you and us relating to the subject matter of this Agreement, which may only be amended as described in this Agreement. This Agreement supersedes any prior written or oral understanding between you and us.

### Other Services

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

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### **Capacity**

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

### **Waiver**

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

### **Law Enforcement**

We reserve the right to cooperate with law enforcement.

### **Copyright, Trademark, License & Site Access**

All content included on First Communications' website, 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 this site and not to download (other than page caching) or modify it or any portion of it except with express written consent of First Communications.

### **TTY Access.**

A TTY (also known as TDD or Text Telephone) is a telecommunications device that allows people who are deaf or hard of hearing, 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**

This 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 to be, and shall constitute and 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 this Agreement. This Agreement (including any referenced documents and attachments) makes up the entire agreement between you and us and replaces all prior written or spoken agreements, representations, promises or understandings between you and us. The provisions of this Agreement that are contemplated to be enforceable after the termination of this Agreement survive termination of this Agreement.