



FIRSTDIGITAL
FIRSTDIGITAL COMMUNICATIONS
UNIVERSAL TERMS OF SERVICE

These Terms of Service (hereinafter referred to as the "Terms") apply to the products or services provided by FirstDigital Communications, LLC, a Utah limited liability company (together with its affiliates, "Company") to the person or entity (the "Customer") identified in a valid and binding agreement setting forth the type, quantity, rates and term for each product or service ("Service Agreement"). These Terms incorporate and include the terms, conditions and policies that are: (i) set forth in an addendum, schedule, exhibit or amendment to these Terms, (ii) set forth in an applicable Service Agreement, and (iii) set forth at www.firstdigital.com/legal/universal Terms of Service.

1. **SERVICES.** Company agrees to provide the products and services described in any Service Agreement, including, but not limited to, telecommunications services, unified communication services, collaboration services, and any associated software, hardware or web-based platform services ("Services"). Company retains the right from time to time, in its sole discretion and without liability to Customer, to change without notice the methods, processes and/or the suppliers by which Company provides Services and to change, add to or delete Service offerings with appropriate notice to Customer.
2. **TERM.** The initial term length for the Services is specified in the Service Agreement ("Initial Term") and begins on the date the Service Agreement is executed. If the term length is not stated in the Service Agreement, the Initial Term shall be three (3) years. Except as set forth below, at the end of the Initial Term, Service Agreements having a defined term automatically renew for subsequent terms of the same length as the Initial Term excluding any promotional months ("Renewal Term") at Customer's then-existing pricing, unless either Party provides written notice of termination at least forty-five (45) days prior to the end of the Initial Term or any Renewal Term. In the event of timely notice of termination, Customer will be billed for any terminated Service(s) up to and including the last day of the Service Term. "Service Term" shall mean the Initial Term and any Renewal Term collectively.
3. **RATES.** The rates for Services set forth in the Service Agreement shall be valid for the Initial Term. Rates may be changed as set forth in a Service Addendum or on thirty (30) days written notice from Company in response to changes to applicable federal, state or local laws, rules or regulations including applicable restrictions concerning call recording, call monitoring, call interception and/or direct marketing or telemarketing ("Applicable Laws") or third-party costs beyond the reasonable control of Company. Prices for Services do not include, and Customer is responsible for payment of, all applicable taxes and regulatory fees.
4. **CUSTOMER REPRESENTATIONS.** Customer hereby represents and warrants to Company that: (i) Customer has provided Company its business addresses for billing and 9-1-1 purposes; (ii) Customer possesses the legal right, capacity, and ability to enter into these Terms and is not relying upon any statements, commitments, representations, or warranties other than those expressly set forth in these Terms; (iii) Customer will not use the Services in environments requiring fail-safe performance or in which the failure of the Services could lead directly to death, personal injury, or severe physical or environment damage; (iv) the registration data, user name, contact information, Customer's Location(s), and all other information provided in connection with Customer's account are true and correct at all times, and (v) Customer will use the Services in compliance with all Applicable Laws related to the use of Company's Services.
5. **BILLING & PAYMENT.** Company will bill Customer for licensed-based Services monthly commencing on the date the Service Agreement is fully executed ("License Activation Date"). For non-license-based Services, Company will notify Customer when the Services are installed or connected and available for use (the "Service Activation Date") and will begin billing on the Service Activation Date. Charges that are invoiced repeatedly on a periodic basis ("Recurring Charges"), set up charges, professional services fees, costs that are fixed in amount and not dependent on usage, and taxes and fees are billed in advance. Early termination fees, usage charges, equipment return fees and transfer charges are billed in arrears. Pro-rata billing may occur throughout the course of a billing cycle for feature add-ons that Customer enable during a given month. Customer shall pay interest at the lesser rate of (a) 18% per annum or (b) the highest rate allowed by law for any amounts unpaid as of the due date. Company may assess an additional fee equal to the lesser of (a) fifty dollars (\$50) or (b) the highest amount allowed by law for any check returned for nonpayment and a reactivation fee to restore service on any accounts suspended for non-payment.
6. **DEFAULT & TERMINATION.** If after the Service Activation Date or Tenant Activation Date: (i) Company reasonably believes Customer has failed to comply with any material provision of this Agreement and such noncompliance continues for thirty (30) days after written notice to Customer; (ii) a petition in bankruptcy is filed by or against Customer that is not dismissed within thirty (30) days after filing, or a trustee or receiver is appointed over Customer and Customer's material assets; (iii) Customer fails to make payment when due and such failure continues for more than five (5) business days after written notice from Company, or (iv) Customer cancels or terminates Service before completion of the Service Term, then Company may elect to pursue one or more of the following courses of action:
 - a. terminate all of Customer's Services whereupon the following is immediately due and payable:
 - i. all nonrecurring and Recurring Charges for Services, as well as any Special Constructions costs provided through the termination date;
 - ii. all Recurring Charges for Services through the end of the Service Term; and
 - iii. any nonrecurring charges that were waived or discounted by Company during the Service Term.
 - b. suspend access to any or all of Customer Services, immediately and without liability; and/or
 - c. pursue any other remedies as may be provided at law or in equity.

In addition to any other rights and remedies Company may have, Customer agrees that if Customer cancels, terminates or breaches this Agreement after execution of the Agreement but prior to the Service Activation Date or Tenant Activation Date, Customer shall pay the greater of (i) two (2) months of the monthly recurring charges along with all nonrecurring charges, or (ii) an amount equal to the costs, charges or expenses incurred by Company in any way related to delivery, configuration, installation or activation of the Services. Customer acknowledges and agrees that the precise losses incurred by Company as a result of an early termination are difficult to

ascertain and that the early termination charges set forth in this Section 6 are fair and reasonable estimates of Company's anticipated and actual damages, and not a penalty. Any termination of the Services or this Agreement by Company shall not be construed as an exclusive remedy and shall not waive Company's right to pursue any other remedies. Following a termination other than for breach, Customer may request post-termination assistance that Company may elect to make available such as data retrieval, subject to and conditioned upon Customer's advance payment for such services.

7. SHORT DURATION CALLS

a. **Call length Standard.** For customers utilizing FirstDigital's underlying network for call termination and origination, whose total Short Duration Calls (defined as calls with a duration of 6 seconds or less) are more than ten (10%) percent of total calls during a monthly billing period, a Short Duration surcharge of \$.02 per call will be assessed for all Short Duration Calls above such ten (10%) percent threshold. The calculation is based on and applied against 1+ Long Distance and 8xx Toll Free Domestic calls. International and other type call are excluded from the calculation.

8. SUPPORT. Company will provide support and maintenance services in accordance with any applicable support or service level agreement.

9. CUSTOMER LOCATIONS. Customer shall allow Company access to the Customer's locations to the extent reasonably determined by Company for the installation, inspection, and scheduled or emergency maintenance relating to the Service. Company shall notify Customer at least two (2) business days in advance of any scheduled routine maintenance requiring access to the Customer premises or that may result in a material interruption of Service. Customer will be responsible for providing and maintaining, at its own expense, the level of power, heating and air conditioning necessary to maintain the proper environment for the network facilities on the Customer's premises. In the event Customer fails to do so, Customer shall reimburse Company for the actual and reasonable cost of repairing or replacing any equipment damaged or destroyed as a result of Customer's failure. Customer will provide a safe place to work and comply with all laws and regulations regarding the working conditions on the Customer's premises.

10. EQUIPMENT; SPECIAL CONSTRUCTION

a. **Equipment.** From time to time, Company may assist Customer in procuring hardware and other components ("Equipment") to use with Services. All shipments of Equipment shall be F.C.A. (free carrier), and title and risk of loss or damage shall pass to Customer upon delivery to the carrier. Company will pass through to Customer any manufacturer warranties. Company will replace Equipment only if the Equipment is defective and covered under the warranty. Customer shall be responsible for all lost, stolen, or broken equipment and for ensuring that any Equipment used with Services is in reasonable working condition and configured in accordance with Company's technical requirements. Customer shall not use Equipment except with the Services provided. Unless purchased from Company, Customer is responsible for and must provide all hardware, software, services and other components necessary to access and use the Services.

b. **Special Construction.** Notwithstanding anything to the contrary in these Terms, if Company is required to construct and/or acquire telecommunication facilities from a third party in order to provide Service to Customer ("Special Construction"), and the costs are not explicitly included in the rates for the Service(s), Company will advise Customer in writing of the estimated charges associated with Special Construction prior to undertaking the activity by Company. If Customer agrees to Special Construction based on the estimate and thereafter cancels, terminates or breaches a Service Agreement after execution but prior to the Service Activation Date or Tenant Activation Date, Customer will be required to reimburse Company for all costs incurred by Company in connection with the Special Construction, including any early termination fees Customer shall also reimburse Company for any and all third-party local number portability charges. These payment obligations are in addition to any other rights and remedies Company may have at law, in equity, or as provided by these Terms.

11. LIMITATION OF LIABILITY. EITHER COMPANY NOR ITS AFFILIATES, VENDORS, SUPPLIERS, DISTRIBUTORS, CHANNEL AND OTHER MARKETING PARTNERS OR OTHER REPRESENTATIVES, SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND; COSTS OF PROCUREMENT, COVER, OR SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, LOSS OR CORRUPTION OF DATA; OR LOSS OF BUSINESS OPPORTUNITIES, PROFITS, GOODWILL, OR SAVINGS, WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR ANY OTHER THEORY OF LIABILITY. EXCEPT TO THE EXTENT DAMAGES ARE CAUSED DUE TO COMPANY'S SOLE GROSS NEGLIGENCE, COMPANY'S AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED THE TOTAL AMOUNTS CUSTOMER ACTUALLY PAID TO COMPANY UNDER THIS AGREEMENT IN THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO A CLAIM, BUT IN NO EVENT TO EXCEED \$10,000. THE FOREGOING EXCLUSION AND LIMITATION SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT AND APPLY REGARDLESS OF WHETHER EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, AND ON A CUMULATIVE (RATHER THAN PER-INCIDENT) BASIS. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE PRICING AND OTHER TERMS UNDER THE AGREEMENT ARE BASED ON THE FOREGOING EXCLUSION AND LIMITATION.

12. WARRANTY DISCLAIMER. COMPANY AND ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES THAT: (I) THE SERVICES WILL BE SECURE OR AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, (II) ANY DEFECTS OR ERRORS WILL BE CORRECTED, (III) ANY CONTENT OR SOFTWARE AVAILABLE ON OR THROUGH THE SERVICES IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, (IV) THE CONTENT ON THE SITES OR SERVICES (OR ANY THIRD PARTY SITES OR SERVICES LINKED THERETO) IS ACCURATE, ERROR-FREE, APPROPRIATE, COMPLIANT, OR COMPLETE, (V) THE RESULTS OF USING THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS. CUSTOMER'S USE OF THE SERVICES IS SOLELY AT CUSTOMER'S OWN RISK, AND (VI) IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE SERVICE OR EQUIPMENT FOR A PARTICULAR PURPOSE AND NON- INFRINGEMENT OF ANY THIRD PARTY RIGHTS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE

LAW, THE SERVICES AND CONTENT ARE PROVIDED “AS IS”, “AS AVAILABLE” AND WITHOUT WARRANTY OF ANY KIND AND CUSTOMER IS NOT ENTITLED TO REPLACEMENT OR REFUND IN THE EVENT OF ANY DEFECT.

- 13. RESERVATION OF RIGHTS.** Company reserves the right, but is not obligated, to monitor and audit Customer’s use of the Services for any reason or no reason, without notice, to ensure Customer’s compliance with these Terms. Company reserves the right, but is not obligated, to reject, refuse to transmit or post, block, or remove any posting (including Application Content), or to restrict, suspend or terminate Customer’s access to all or any part of the Services at any time if Customer has violated the AUP or these Terms or to prevent harm to Company’s business or reputation. Company also reserves the right to access, read, preserve, and disclose any information that Company reasonably believes is necessary to (i) satisfy any applicable law, regulation, legal process or governmental or agency request, (ii) enforce these Terms, including investigation of potential violations hereof, (iii) detect, prevent, or otherwise address fraud, security or technical issues, (iv) respond to user support requests, or (v) protect the rights, property or safety of Company, its customers, its customers’ end users, and/or the public. Customer agrees to provide Company with any information Company reasonably requests to investigate and resolve problems relating to Customer’s Account.
- 14. FORCE MAJEURE.** In the event Company’s performance of any obligation under these Terms is prevented, restricted or interfered with by causes outside the reasonable control of Company, including without limitation, acts of God, explosions, vandalism, cable cut, storms, fires, floods or other similar catastrophes, power failure, national emergencies, insurrections, riots, wars, strike, lockouts, boycotts, terrorism, outages of third party connections, utilities, or telecommunications networks, including, without limitation, carrier-related problems or issues, internet-access issues, denial of service attacks, shortage or unavailability of supplies, and other mechanical, electronic or communications failures or degradation, work stoppages or other labor difficulties, or any law, order, regulation or other actions of any governmental authority, agency, instrumentality, or of any civil or military authority, then Company shall be excused from performance to the extent of such restriction or interference. The occurrence of such an event will not constitute grounds for termination of these Terms. Company’s invocation of the Force Majeure clause will not relieve Customer of its obligation to pay for any Services actually provided or permit Customer to terminate any Services except as expressly provided herein.
- 15. INDEMNIFICATION.** Customer will (i) defend Company, its affiliates, and their personnel (collectively, the “Company Parties”) from and against any action, claim, demand, suit, investigation, inquiry, or proceeding (each a “Claim”) threatened or brought against the Company Parties by any third party that arises out of or results from Customer’s use of the Services, breach of these Terms (or any Schedule), or negligence or willful misconduct, and (ii) Customer will indemnify and hold the Company Parties harmless against any damages, attorneys’ fees, defense costs, and other losses payable by the Company Parties pursuant to the adjudication or settlement of any such Claim. Customer shall (1) provide Company prompt notice upon becoming aware of such a Claim, (2) permit Company to have sole and exclusive control over the defense and settlement of any such Claim, if it elects, and (3) provide reasonable assistance to Company in connection therewith; provided that Customer shall not enter into any settlement agreement that would result in any payment or other obligation, or restriction on the business of, Company without its prior written consent.
- 16. COPYRIGHT, TRADEMARKS AND LOGOS.** Except as explicitly granted herein, neither Party is granted a license or other right (express, implied, or otherwise) to use any trademarks, copyrights, service marks, logos, trade names, patents, trade secrets, or other intellectual property of the other Party or its affiliates without the express prior written authorization of the other Party. Notwithstanding anything to the contrary in these Terms, Company may identify Customer as a customer (including use of any Customer logo or trademark) and may refer to these Terms in connection with its business deals, press releases, and marketing and/or promotional materials. The Services may contain third-party software or content provided by Company, Company’s partners and customers, or other third parties, that is subject to and protected by copyrights, trademarks, service marks, patents, trade secrets, or other proprietary rights and laws. Company respects the rights of copyright holders and abides by the federal Digital Millennium Copyright Act (“DMCA”).
- 17. GOVERNING LAW.** These Terms shall be governed by and construed in accordance with the laws of the State of Utah without reference to its principles of conflict of laws. Customer and Company both hereby irrevocably agree that any suit brought by either Party arising out of or relating to these Terms shall be brought in the State of Utah, Salt Lake County, Salt Lake City, and Customer and Company both hereby submit to the personal jurisdiction of such court. The Parties both hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which either Party may raise now, or hereafter have, to the laying of the venue of any such suit, action or proceeding brought in such court and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum. In the event an action is brought or an attorney is retained by either Party to enforce the terms of these Terms or to collect any monies due hereunder, the prevailing Party will be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorney’s fees, court costs, reasonable costs of investigation and other related expenses incurred in connection therewith.
- 18. NO COMMITMENTS.** Customer agrees and acknowledges that Company has made no commitments or promises orally or in writing with respect to delivery of any future features or functions. In relation to any future features or functions, all presentations, RFP responses, and/or product roadmap documents, information or discussions, either prior to or following the date herein, are informational only, and are not the basis for, nor part of this these Terms or any Service Agreement. Company has no obligation to provide any future releases or upgrades or any features, enhancements or functions, unless specifically agreed to by both Parties. Customer acknowledges that its purchasing decisions are not based upon any future features or functions.
- 19. CONFIDENTIALITY.** “Confidential Information” means all nonpublic information relating to a Party or its affiliates that (i) is marked or labeled as confidential or proprietary, or (ii) verbally designated as confidential at the time of disclosure, or (iii) given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered confidential. Confidential Information includes, without limitation, all nonpublic information relating to (i) Company Technology, customers, employees, business plans, agreements, finances and other business affairs, and (ii) the terms of any Service Agreement. Confidential Information does not include information that (i) has become publicly available without breach of these Terms, (ii) was known to the receiving Party at the time of receipt, (iii) is received from a third party who did not acquire or disclose such information by a wrongful or tortious act, or (iv) was independently developed without use of any Confidential Information. Each Party hereby agrees to hold Confidential Information in strict confidence and shall protect such Confidential Information with no less diligence than that with which it protects its own confidential or proprietary information. Each Party may disclose the Confidential Information of the other Party on a “need to know basis” only to its and its affiliates’ directors, officers, advisors, employees and other legal, business or financial partners or

representatives; provided that all such persons are subject to written confidentiality agreements which contain provisions which are no less restrictive than the provisions of this Section 18. In addition, Company may disclose these Terms under a comparable non-disclosure agreement in response to a third-party due diligence request supporting a financing or non-ordinary course of business corporate transaction. If a Party is legally compelled by any means to disclose Confidential Information of the other Party, the disclosing Party will provide prompt written notice in order to allow the other Party time to seek a protective order or other appropriate remedy. Upon the termination or expiration of these Terms, or at any time upon the request of a Party, the other Party will return or destroy (and certify as to such destruction) all Confidential Information in its control or possession, other than copies which the receiving Party may be required to maintain under applicable law or regulation.

20. **NOTICES.** In the event Company is required or desires to provide Customer with notice under these Terms, it will provide electronic notice to the e-mail address on file. In the event Customer changes its e-mail address for notice purposes, Customer shall advise Company immediately in writing. Customer hereby agrees to electronic delivery of all required notifications, including invoices, unless otherwise expressly provided herein. Any notice required or given under these Terms to Company will be in writing and delivered to Company as follows: Company Networks, LLC, 357 West 670 South, Suite 300, Lindon, UT 84042 Attn: VP Customer Care & Legal. Notice will be deemed to be duly given (i) on the date of delivery if personally delivered by hand or by a nationally recognized overnight express courier, or (ii) upon the third day after such notice is deposited in the United States mail by registered or certified mail, postage prepaid, return receipt requested. E-mail or fax notices are informational only and shall not constitute formal notice.
21. **DISPUTE RESOLUTION.** In the event either Party has a dispute or claim against the other Party (except with respect to invoice disputes), the disputing Party shall provide written notice to the other Party in accordance with the provisions of Section 19, above. The Parties agree to escalate disputes to their respective management, who will use commercially reasonable efforts to resolve the dispute by consulting with each other in good faith to reach an equitable resolution satisfactory to both parties within thirty (30) days of the receipt of notice. Neither Party shall pursue or commence proceedings regarding the dispute in any court, administrative arbitral or other adjudicative body prior to engaging in such consultations and negotiations. In the event the dispute is not resolved, and the claim falls within the dollar limit allowed by applicable state law along with any other jurisdictional requirements, either Party may seek to have that dispute resolved in small claims court in any state in which Services are provided to the Customer by Company.
22. **EXPORT TERMS.** By using the Services, Customer represents and warrants that (i) its use of the Services will not violate any embargoes, sanctions, trade restrictions or similar restrictions issued by any applicable governmental entity, and (ii) Customer, its affiliates, and its End Users have not been designated by any applicable government or any government agency as a prohibited or restricted party under any trade restrictions, export laws or the like. Customer also will not use the Site or Services for any purpose prohibited by applicable law, including the development, design, manufacture or production of missiles, or nuclear, chemical or biological weapons. Customer may not use, export, re-export, import, or transfer any technology or data related to the Services except as authorized by both these Terms and all applicable laws, rules and regulations.
23. **GOVERNMENT TERMS.** If Customer (or its End Users) is an agency, department or other entity of any government, then any use, modification, duplication, reproduction, release, performance, display, transfer or disclosure of the Services and accompanying documentation shall be governed solely by these Terms. Any other use shall be prohibited and no other rights are granted.
24. **COMPLETE AGREEMENT; ADDITIONAL TERMS.** These Terms, incorporating all of the applicable documents referenced herein, represents the entire agreement between the Parties, and supersedes all other prior agreements between the Parties, whether written or oral. No statement, representation or warranty made by any agent or representative of Company regarding the Services or Equipment to be provided hereunder or the rates therefor shall be binding upon Company unless expressly included herein. In the event of any conflict between these Terms and the terms and conditions of the Service Agreement or any other terms, conditions, supplements or agreements, the order of precedence is as follows: (1) these Terms, (2) the Service Agreement, and (3) the SLA. If any part of a provision of these Terms is invalid or unenforceable said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provisions of these Terms. In addition, any provisions that by their nature would survive, shall survive termination, cancellation or expiration of these Terms. No failure by either party to enforce any right(s) hereunder shall constitute a waiver of such right(s). Customer may not sell, transfer, or assign its obligations hereunder without the prior written consent of Company. Any such assignment or transfer without the Company's prior written consent shall be void.

END OF TERMS