

## **First-SIP, LLC Terms of Service**

These Terms of Service constitute the agreement ("Agreement") between First-SIP, LLC ("we," "us" or "First-SIP, LLC") and the user ("you," "user" or "Customer") of First-SIP, LLC residential and business communications services and any related products or services ("Service").

This Agreement governs both the Service and any devices, such as an IP phone, Multimedia Terminal Adapter, Analog Telephone Adapter or any other IP connection device ("Device" or "Equipment"), used in conjunction with the Service. If you purchased Equipment from a retail store, dealer or other provider other than First-SIP, LLC, you are a "Retail Customer" for purposes of this Agreement.

BY ACTIVATING OR USING THE SERVICE, YOU REPRESENT THAT YOU ARE OF LEGAL AGE TO ENTER INTO THIS AGREEMENT AND THAT YOU HAVE READ AND UNDERSTAND FULLY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

### 1. EMERGENCY SERVICES - 911 DIALING

#### 1.1 Definitions

##### 1.1.1 E-911

Enhanced-911 or E-911 enables calls to be routed to Public Safety Answering Points (PSAP) such that both the calling phone number and the address are immediately available to the PSAP operator.

#### 1.2 Description of First-SIP, LLC 911 Capabilities

First-SIP, LLC VoIP Services support E911. You acknowledge and understand that the Service supports E911 access to emergency services ONLY IF THE SERVICE IS OPERATED FROM THE SERVICE LOCATION OF RECORD, and then only if the user has an active connection to the service, in accordance with these Terms of Service. Our E911 dialing feature is not automatic; you must separately take affirmative steps to register the address where you will use the Service within the web based customer portal. You must do this for each active account. The E911 Dialing feature may not work at all when used in conjunction with a Soft Phone, Virtual Numbers or user provided Customer Premise Equipment

#### 1.3. Service Outage

##### 1.3.1 Power Failure or Disruption

You acknowledge and understand that 911 dialing does not function in the event of a power failure or disruption. Should there be an interruption in the power supply, the Service and 911 dialing will not function until power is restored. A power failure or disruption may require the Customer to reset or reconfigure equipment prior to utilizing the Service or 911 dialing.

##### 1.3.2 Broadband Service / ISP Outage or Termination / Suspension or Termination by First-SIP, LLC

You acknowledge and understand that service outages or suspension or termination of service by your broadband provider and/or ISP or by First-SIP, LLC will prevent ALL Service including 911 dialing.

### 1.3.3 Service Outage Due to Suspension of Your Account

You acknowledge and understand that service outages due to suspension of your account as a result of billing issues may prevent ALL Service, including 911 dialing.

### 1.3.4 Other Service Outages

You acknowledge and understand that if there is a service outage for ANY reason; such outage may prevent ALL Service, including 911 dialing. Such outages may occur for a variety of reasons, including, but not limited to those reasons described elsewhere in this Agreement.

### 1.4 Failure to Designate the Correct Physical Address When Enrolling or Changing Your Address

Failure to provide the current and correct physical address and location of your First-SIP, LLC equipment during enrollment or change of address will result in any 911 communication you may make being routed to the incorrect local emergency service provider and will likely prevent a timely response to your emergency. This must be the actual physical street address where you are located, not a post office box, mail drop or similar address.

### 1.5 Use of Service from Different Location

You acknowledge and understand that 911 dialing does not function properly or at all if you move or otherwise change the physical location of your First-SIP, LLC Device to a different street address. Failure to provide the current and correct physical address and location of your First-SIP, LLC equipment will result in any 911 dialing you may make being routed to the incorrect local emergency service provider. This emergency service provider may not be able to provide emergency services.

### 1.6 Alternative 911 Arrangements

You acknowledge that First-SIP, LLC does not offer primary line or lifeline services. You should always have an alternative means of accessing traditional E911 (911) services.

### 1.7 Softphones

First-SIP, LLC 911 dialing cannot be used in conjunction with a Soft Phone application, and is only available on First-SIP, LLC certified Devices or Equipment.

### 1.9 Automated Number Identification

At this time it may or may not be possible for the Public Safety Answering Point (PSAP) and the local emergency personnel to identify your phone number when you dial 911. First-SIP, LLC system is configured in

most instances to send the automated number identification information; however, one or more telephone companies, not First-SIP, LLC, route the traffic to the PSAP and the PSAP itself must be able to receive the information and pass it along properly, and PSAPs are not yet always technically capable of doing so. You acknowledge and understand that PSAP and emergency personnel may or may not be able to identify your phone number in order to call you back if the call is unable to be completed, is dropped or disconnected, or if you are unable to speak to tell them your phone number and/or if the Service is not operational for any reason, including without limitation those listed elsewhere in this Agreement.

#### 1.10 Automated Location Identification

When calling from a mobile phone it is impossible to pinpoint your exact location. You acknowledge and understand that you will need to state the nature of your emergency promptly and clearly, including your location, as PSAP and emergency personnel will NOT have this information. You acknowledge and understand that PSAP and emergency personnel will not be able to find your location if the call is unable to be completed, is dropped or disconnected, if you are unable to speak to tell them your location and/or if the Service is not operational for any reason, including without limitation those listed elsewhere in this Agreement.

#### 1.11 Disclaimer of Liability and Indemnification.

We do not have any control over whether, or the manner in which, calls using our 911 Dialing service are answered or addressed by any local emergency response center. We disclaim all responsibility for the conduct of local emergency response centers and the national emergency calling center. We rely on third parties to assist us in routing 911 Dialing calls to local emergency response centers and to a national emergency calling center. We disclaim any and all liability or responsibility in the event such third party data used to route calls is incorrect or yields an erroneous result. Neither First-SIP, LLC nor its officers or employees may be held liable for any claim, damage, or loss, and you hereby waive any and all such claims or causes of action, arising from or relating to our 911 Dialing service unless such claims or causes of action arose from our gross negligence, recklessness or willful misconduct. You shall defend, indemnify, and hold harmless First-SIP, LLC, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to you in connection the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorneys fees) by, or on behalf of, you or any third party relating to the absence, failure or outage of the Service, including 911 Dialing, incorrectly routed 911 Dialing calls, and/or the inability of any user of the Service to be able to use 911 Dialing or access emergency service personnel.

#### 1.12 Alternate 911 Arrangements.

If you are not comfortable with the limitations of the 911 Dialing service, you should consider having an alternate means of accessing traditional 911 or E911 services or terminating the Service.

## 2. SERVICE

### 2.1 Term.

Unless otherwise specified by your signed Agreement, service is offered on a monthly basis for a term that begins on the date that First-SIP, LLC activates your Service and ends on the day before the same date in the

following month. Subsequent terms of this Agreement automatically renew with the original term unless you give us written notice of non-renewal at least thirty (30) days before the end of your term in which the notice is given. You are purchasing the Service for full monthly terms, meaning that if you attempt to terminate Service prior to the end of a monthly term, you will be responsible for the full month's charges to the end of the then-current term, including, without limitation, unbilled charges, plus a termination fee, if applicable, all of which will immediately become due and payable. You will also be responsible for the next full month's charges in the event that you do not provide the requisite thirty-day notice of termination prior to the expiration of the then-current term. Expiration of the term or termination of Service will not excuse you from paying all accrued and unpaid charges due under this Agreement

## 2.2 Residential Use of Service and First-SIP, LLC provided Device.

If you subscribe to First-SIP, LLC residential services, the Service and the Device are provided to you solely for residential use. You shall not resell or transfer the Service or the Device to another party without our prior written consent. You are prohibited from using the Service or the Device for auto-dialing, continuous or extensive call forwarding, telemarketing (including, without limitation, charitable or political solicitation or polling), fax or voicemail broadcasting or fax or voicemail blasting. We reserve the right to immediately terminate or modify your Service if we determine, in our sole and absolute discretion, that your use of the Service or the Device is, or at any time was, inconsistent with normal residential usage patterns. In addition, you will be required to pay our higher rates for commercial service for all periods in which your use of the Service or the Device was inconsistent with normal residential use.

## 2.3 Business Use of Service and First-SIP, LLC provided Device.

If you subscribe to First-SIP, LLC Business services, the Service and Device are provided to you as a business user. You shall not resell or transfer the Service or the Device to another party without our prior written consent. You are prohibited from using the Service or the Device for auto-dialing, continuous or extensive call forwarding, telemarketing (including, without limitation, charitable or political solicitation or polling), fax or voicemail broadcasting or fax or voicemail blasting. We reserve the right to immediately terminate or modify your Service if we determine, in our sole and absolute discretion, that you have at any time used the Service or the Device for any of the aforementioned or similar activities.

## 2.4 Use of Service only.

For Service only Customers, you are responsible for supplying, operating and supporting the Customer Premise Equipment for use with the Service. You shall not resell or transfer the Service to another party without our prior written consent. You are responsible for supplying, operating, and supporting the standard SIP based Customer Premise Equipment for use with the Service. You are prohibited from using the Service or the Device for auto-dialing, continuous or extensive call forwarding, telemarketing (including, without limitation, charitable or political solicitation or polling), fax or voicemail broadcasting or fax or voicemail blasting. We reserve the right to immediately terminate or modify your Service if we determine, in our sole and absolute discretion, that you have at any time used the Service or the Device for any of the aforementioned or similar activities.

## 2.5 Prohibited Uses.

(a) Unlawful. You shall use the Service and the Device only for lawful purposes. We reserve the right to immediately terminate your Service if, in our sole and absolute discretion, we determine that you have used the Service or the Device for an unlawful purpose. In the event of such termination, you will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a termination fee, if applicable, all of which will become immediately due and payable upon termination of your Service. If we believe that you have used the Service or the Device for an unlawful purpose, we may forward the relevant communication and other information, including your identity, to the appropriate authorities for investigation and prosecution. You hereby consent to our forwarding of any such communications and information to these authorities. In addition, First-SIP, LLC will provide information in response to law enforcement requests, subpoenas, court orders, to protect its rights and property and in the case where failure to disclose the information may lead to imminent harm to the customer or others.

(b) Inappropriate Conduct. You shall not use the Service or the Device in any way that is threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, or any similar behavior. We reserve the right to immediately terminate your Service if, in our sole and absolute discretion, we determine that you have used the Service or the Device in any of the aforementioned ways. In the event of such termination, you will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a termination fee, if applicable, all of which will become immediately due and payable upon termination of your Service. If we believe that you have used the Service or the Device in any of the aforementioned ways, we may forward the relevant communication and other information, including your identity, to the appropriate authorities for investigation and prosecution. You hereby consent to our forwarding of any such communications and information to these authorities. In addition, First-SIP, LLC will provide information in response to law enforcement requests, subpoenas, court orders, to protect its rights and property and in the case where failure to disclose the information may lead to imminent harm to the customer or others

## 2.6 Use of Service and Device by Customers outside the United States.

Although we encourage you to use the Service to place calls to foreign countries from within the United States, we do not presently offer or support the Service in any countries other than the United States and Canada. If you use the Service or the Device outside of the United States or Canada, you will be solely responsible for any violations of local laws and regulations resulting from such use. We reserve the right to terminate your Service immediately if we determine, in our sole and absolute discretion, that you have used the Service or the Device outside of the United States or Canada.

## 2.7 Copyright; Trademark; Unauthorized Usage of Device; Firmware or Software.

(a) Copyright; Trademark. The Service and Device and any firmware or software used to provide the Service or provided to you in conjunction with providing the Service, or embedded in the Device, and all Services, information, documents and materials on our websites are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All of our websites, corporate names, service marks, trademarks, trade names, logos and domain names (collectively "marks") are and will at all times remain our exclusive property. Nothing in this Agreement grants you the right or license to use any of our marks.

(b) Unauthorized Usage of Device; Firmware or Software. You have not been granted any license to use the firmware or software used to provide the Service or provided to you in conjunction with providing the Service, or embedded in the Device, other than a nontransferable, revocable license to use such firmware or software

in object code form (without making any modification thereto) strictly in accordance with the terms and conditions of this Agreement. You expressly agree that the Device is exclusively for use in connection with the Service and that we will not provide any passwords, codes or other information or assistance that would enable you to use the Device for any other purpose. We reserve the right to prohibit the use of any interface device that we have not provided to you. You hereby represent and warrant that you possess all required rights, including software and/or firmware licenses, to use any interface device that we have not provided to you. In addition, you shall indemnify and hold us harmless against any and all liability arising out of your use of such interface device with the Service. You shall not reverse compile, disassemble or reverse engineer or otherwise attempt to derive the source code from the binary code of the firmware or software.

## 2.8 Tampering with the Device or Service.

You shall not change the electronic serial number or equipment identifier of the Device or to perform a factory reset of the Device without our prior written consent. We reserve the right to terminate your Service if we believe, in our sole and absolute discretion, that you have tampered with the Device. In the event of such termination, you will remain responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a termination fee, if applicable, all of which will immediately become due and payable. You shall not attempt to hack or otherwise disrupt the Service or make any use of the Service that is inconsistent with its intended purpose.

## 2.9 Theft of Service.

You shall notify us immediately, in writing or by calling our customer support line, if the Device is stolen or if you become aware at any time that your Service is being stolen, fraudulently used or otherwise being used in an unauthorized manner. When you call or write, you must provide your account number and a detailed description of the circumstances of the Device theft, fraudulent use or unauthorized use of Service. Failure to do so in a timely manner may result in the termination of your Service and additional charges to you. Until such time as we receive notice of the theft, fraudulent use or unauthorized use, you will be liable for all use of the Service using a Device stolen from you and any and all stolen, fraudulent or unauthorized use of the Service.

## 2.10 Return of Device (Does Not Apply to Retail Customer with non First-SIP, LLC provided device)

Customers may return the Device to us within fourteen (14) days of the termination of Service to receive a credit for the purchase price of the hardware fee provided that:

- the Device is in original condition, reasonable wear and tear excluded;
- the original documentation is returned with the Device, together with the original packaging, all parts, and accessories;
- prior to returning the Device to us, you obtain a valid return authorization number from our customer care department, which can be reached at support@first-sip.com or (210) 807-9225; and
- you pay all costs of shipping the Device back to us.

If you disconnect multiple lines, we will issue you a credit for all hardware fees upon receipt of all Devices in accordance with the requirements set forth above. If you receive cartons or Devices that are visibly damaged, you must note the damage on the carrier's freight bill or receipt and keep a copy. In such event, you must keep

the original carton, all packing materials and parts intact in the same condition in which they were received from the carrier and contact our customer care department immediately at support@first-sip.com or (210) 807-9225.

#### 2.11 Number Transfer on Service Termination.

Upon the termination of your Service, we may, in our sole and absolute discretion, release to your new service provider the telephone number that you ported (transferred or moved over) to us from your previous service provider and used in connection with your Service if:

- such new service provider is able to accept such number;
- your account has been properly terminated;
- your account is completely current, including payment for all charges and applicable termination fees; and
- you request the transfer upon terminating your account.

#### 2.12 Service Distinctions.

The Service is not a telecommunications service and we provide it on a best efforts basis. Important distinctions exist between telecommunications service and the Service offering that we provide. The Service is subject to different regulatory treatment than telecommunications service. This treatment may limit or otherwise affect your rights of redress before regulatory agencies.

#### 2.13 Ownership and Risk of Loss.

You will own the Device and bear all risk of loss of, theft of, casualty to or damage to the Device, from the time it is shipped to you until the time (if any) when it is returned to us in accordance with this Agreement.

#### 2.14 No 0+ or Operator Assisted Calling.

May Not Support x11 Calling. The Service does not support 0+ or operator assisted calling (including, without limitation, collect calls, third party billing calls or calling card calls). The Service may not support 311, 511 and/or other x11 (other than certain specified dialing such as 911 and 411, which are provided for elsewhere in this Agreement) services in one or more (or all) service areas.

#### 2.15 Directory Listing.

The phone numbers you obtain from us may be listed in telephone directories and is determined on a per Service basis. Phone numbers transferred from your local phone company will retain the original listing. As a result, someone with your phone number may not be able to utilize a reverse directory to lookup your address.

#### 2.16 Incompatibility with Other Services.

(a) Home Security Systems. The Service may not be compatible with home security systems. You may be required to maintain a telephone connection through your local exchange carrier in order to use any alarm monitoring functions for any security system installed in your home or business. You are responsible for contacting the alarm monitoring company to test the compatibility of any alarm monitoring or security system with the Service.

(b) Certain Broadband and Cable Modem Services. You acknowledge that the Service presently is not compatible with prior versions of the AOL broadband service and there may be other services with which the Service may be determined to be incompatible. You further acknowledge that some providers of broadband service may provide modems that prevent the transmission of communications using the Service. We do not warrant that the Services will be compatible with all broadband services and expressly disclaim any express or implied warranties regarding the compatibility of the Service with any particular broadband service.

### 3. CHARGES; PAYMENTS; TAXES; TERMINATION

#### 3.1 Billing.

When the service is activated, you must provide us with a valid email address and a credit or debit card number from a card issuer that we accept. We reserve the right to stop accepting credit or debit cards from one or more issuers. If your credit or debit card expires, you close your account, your billing address changes, or your credit or debit card is cancelled and replaced on account of loss or theft, you must advise us at once. We will bill all charges, applicable taxes and surcharges monthly in advance (except for usage-based charges, which will be billed monthly in arrears, and any other charges which we decide to bill in arrears) to your credit or debit card, including but not limited to:

- activation fees;
- monthly Service fees;
- international usage charges;
- equipment purchases;
- termination fees; and
- shipping and handling charges.

The amount of such fees and charges shall be published on our website and may change from time to time. Notification of monthly invoices will be sent to you via your email address on file with us. We reserve the right to bill at more frequent intervals if the amount you owe to us at any time exceeds \$50.

#### 3.2 Billing Disputes.

You must notify us in writing within seven days after receiving your credit or debit card statement if you dispute any First-SIP, LLC charges on that statement or you will be deemed to have waived any right to contest such charges. All notices of disputed charges should be sent to:

By MAIL

ATTN: First-SIP, LLC BILLING DEPT.

1150 N Loop 1604 W Ste 108-421  
San Antonio, TX 78248

-or-

By EMAIL

billing@first-sip.com

### 3.3 Payment and Collection.

(a) Payment. We only accept payment by credit or debit card. Your subscription to the Service authorizes us to charge your credit or debit card. This authorization will remain valid until 30 days after we receive written notice from you terminating our authority to charge your credit or debit card, whereupon we will charge your credit or debit card for the termination fee, if applicable, and any other outstanding charges and terminate your Service. We may terminate your Service at any time in our sole and absolute discretion if any charge to your credit or debit card is declined or reversed, your credit or debit card expires and you have not provided us with a valid replacement credit or debit card or in case of any other non-payment of account charges.

(b) Collection. If your Service is terminated, you will remain fully liable to us for all charges pursuant to this Agreement and any and all costs we incur to collect such amounts, including, without limitation, collection costs and attorney's fees.

### 3.4 Termination; Discontinuance of Service.

We reserve the right to suspend or discontinue the Service generally, or to terminate your Service, at any time in our sole and absolute discretion. If we discontinue the Service generally, or terminate your Service without a stated reason, you will only be responsible for charges accrued through the date of termination, including a pro-rated portion of the final month's charges. If your Service is terminated on account of your breach of any provision of this Agreement, you will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus the termination and hardware fee, if applicable, all of which will immediately become due and payable.

### 3.5 Taxes.

You are responsible for all applicable federal, state, provincial, municipal, local or other governmental sales, use, excise, value-added, personal property, public utility or other taxes, fees or charges now in force or enacted in the future, that arise from or as a result of your subscription or use or payment for the Service or a Device. Such amounts are in addition to payment for the Service or Devices and will be billed to your credit card as set forth in this Agreement. If you are exempt from payment of such taxes, you must provide us with an original certificate that satisfies applicable legal requirements attesting to tax-exempt status. Tax exemption will only apply from and after the date we receive such certificate.

### 3.6 Termination Fee.

For customers on an annual term, you will be charged 75% of the remaining value of your agreement. For customers on a monthly term, you will be charged a termination fee of \$49.99 per voice line if your Service is terminated for any reason during the first twelve months following the activation of your Service.

- Non-recurring charge to you for cancelled LNP (Number porting) requests.
- Cancellations with more than 48 hours before FOC will be billed at \$20.00 per telephone number.
- Cancellations with less than 48 hours before FOC will be billed at \$75.00 per telephone number.
- Customer initiated snap-backs will be billed \$350.00 per telephone number.

### 3.7 Money Back Guarantee; Limitations and Conditions.

(a) Residential and Business Customers. We offer a 30-day money back guarantee from the date of activation of your Service (different periods apply for Retail Customers depending on the applicable offer details contained in the advertising or online content of the retail store or dealer that sold the Retail Customer the Equipment). The money back guarantee applies only to the first-ordered line per account, not to additional or secondary lines. We will refund the activation fee, the monthly charge for the first month of Service, shipping charges and the termination fee provided that: you have not exceeded 250 minutes of usage; you cancel your Service within the applicable period; you return the Device to us in original condition, normal wear and tear excluded, within 14 days after the cancellation of your Service; the Device is returned in the original packaging with the UPC or bar code intact and is accompanied by all components, accessories, parts, manuals, registration cards and other documentation; and prior to returning the Device to us, you obtain a valid return authorization number from our customer care department, which can be reached at support@first-sip.com or (210) 807-9225. Federal excise taxes and any other applicable taxes cannot be refunded. You will be responsible for any charges for international usage, payphone calls to First-SIP, LLC toll free numbers and directory assistance. We reserve the right to terminate or revoke this money back guarantee at any time, without prior notice.

### 3.8 Payphone Charges.

If you use our "Toll Free Plus" feature or any toll free feature that we offer in the future, we will be entitled to recover from you any charges imposed on us either directly or indirectly in connection with toll free calls made to your number. We may recover these amounts by means of a per-call charge, rounded up to the next cent, or in such other fashion as we deem appropriate for the recovery of these costs.

### 3.9 Charges for Directory Calls (411).

We will charge you \$0.99 for each call made to First-SIP, LLC directory assistance.

### 3.9 Charges for International Calls.

International calling is not enabled by default. You will need to contact First-SIP, LLC by phone, email, or online portal, and request that it is enabled for your account. Once, this is enabled, then you can add funds through the portal. These calls are prepaid, and your credit card will be charged when clicking the 'Submit' button.

#### 4. LIMITATION OF LIABILITY; INDEMNIFICATION; WARRANTIES

##### 4.1 Limitation of Liability.

We will not be liable for any delay or failure to provide the Service, including 911 Dialing, at any time or from time to time, or any interruption or degradation of voice quality that is caused by any of the following:

- an act or omission of an underlying carrier, service provider, vendor or other third party;
- equipment, network or facility failure;
- equipment, network or facility upgrade or modification;
- force majeure events such as (but not limited to) acts of God, acts of nature, strikes, fire, war, riot, acts of terrorism and government actions;
- equipment, network or facility shortage;
- equipment or facility relocation;
- service, equipment, network or facility failure caused by the loss of power to you;
- outage of, or blocking of ports by, your ISP or broadband service provider or other impediment to usage of the Service caused by any third party;
- any act or omission by you or any person using the Service or Device provided to you; or
- any other cause that is beyond our control, including, without limitation, a failure of or defect in any Device, the failure of an incoming or outgoing communication, the inability of communications (including, without limitation, 911 Dialing) to be connected or completed, or forwarded.

Our aggregate liability under this agreement will in no event exceed the Service charges with respect to the affected time period.

##### 4.2 Disclaimer of Liability for Damages.

IN NO EVENT WILL First-SIP, LLC, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS OR ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION THE SERVICE BE LIABLE FOR ANY DIRECT, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER DAMAGES, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY, WRONGFUL DEATH, PROPERTY DAMAGE, LOSS OF DATA, LOSS OF REVENUE OR PROFITS, OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR INABILITY TO USE THE SERVICE, INCLUDING INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL THROUGH THE 911 DIALING SERVICE OR TO OBTAIN EMERGENCY HELP. THE LIMITATIONS SET FORTH HEREIN APPLY TO CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCT LIABILITY, TORT AND ANY AND ALL OTHER THEORIES OF LIABILITY AND APPLY WHETHER OR NOT WE WERE INFORMED OF THE LIKELIHOOD OF ANY PARTICULAR TYPE OF DAMAGES.

##### 4.3 Indemnification and Survival.

(a) Indemnification. You shall defend, indemnify, and hold harmless First-SIP, LLC, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to you in connection with the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorneys fees) by, or on behalf of, you or any third party or user of the Service, relating to the Services, including, without limitation, 911 Dialing, or the Device.

(b) Survival. The provisions of this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall survive.

#### 4.4 No Warranties on Service.

WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE SERVICE OR DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS. WITHOUT LIMITING THE FOREGOING, WE DO NOT WARRANT THAT THE SERVICE OR DEVICE WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION. NEITHER First-SIP, LLC NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS, OR ANY OTHER SERVICE PROVIDER OR VENDOR WHO FURNISHES SERVICES DEVICES, OR PRODUCTS TO CUSTOMER IN CONNECTION WITH THE SERVICE, WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO OUR OR YOUR TRANSMISSION FACILITIES OR PREMISES EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF First-SIP, LLC OR ITS SERVICE PROVIDER'S OR VENDORS' NEGLIGENCE. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICE OR DEVICE, IF ANY, BY First-SIP, LLC OR First-SIP, LLC AGENTS OR INSTALLERS ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.

#### 4.5 First-SIP, LLC provided Device Warranties.

(a) Limited Warranty. Except as set forth herein, if you received the Device new from us and the Device included a limited warranty at the time of receipt, you must refer to the separate limited warranty document provided with the Device for information on the limitation and disclaimer of certain warranties. Remedies for breach of any such warranties will be limited to those expressly set forth in such documentation.

(b) No Warranty. If your Device did not include a limited warranty from us at the time of receipt, you are accepting the Device "as is". You are not entitled to replacement, repair or refund in the event of any defect.

(c) Disclaimer. OTHER THAN WARRANTIES AS TO THE DEVICE EXPRESSLY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE DEVICE AND THE RETAIL CUSTOMER LIMITED WARRANTY EXPRESSLY SET FORTH HEREIN, WE MAKE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, FITNESS OF THE DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE DEVICE OR ANY FIRMWARE OR SOFTWARE IS "ERROR FREE" OR WILL MEET CUSTOMER'S REQUIREMENTS. THE FOREGOING WILL NOT BE DEEMED TO LIMIT ANY DISCLAIMER OR LIMITATION OF WARRANTY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE DEVICE.

#### 4.6 No Third Party Beneficiaries.

No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights.

#### 4.7 Content.

You will be liable for any and all liability that may arise out of the content transmitted by you or to any person, whether authorized or unauthorized, using your Service or Device (each such person, a "User"). You shall assure that your and your User's use of the Service and content comply at all times with all applicable laws, regulations and written and electronic instructions for use. We reserve the right to terminate or suspend your Services and remove your or your Users' content from the Service, if we determine, in our sole and absolute discretion, that such use or content does not conform with the requirements set forth in this Agreement or interferes with our ability to provide Services to you or others. Our action or inaction under this Section will not constitute any review or approval of your or Users' use or content.

### 5. MISCELLANEOUS

#### 5.1 Governing Law.

The Agreement and the relationship between you and us is governed by the laws of the State of Florida without regard to its conflict of law provisions. To the extent court action is initiated to enforce an arbitration award or for any other reason consistent with Section 5.2, you shall submit to the personal and exclusive jurisdiction of the courts located within the state of Florida and waive any objection as to venue or inconvenient forum.

#### 5.2 Mandatory Arbitration and No Jury Trial.

Any dispute or claim between you, any member of your household or any guest or employee of you and us arising out of or relating to the Service or Device will be resolved by arbitration before a single arbitrator administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitration will take place in Miami, Florida. The arbitrator's decision will follow the plain meaning of the relevant documents, and will be final and binding. Without limiting the foregoing, the parties agree that no arbitrator has the authority to: (i) award relief in excess of what this Agreement provides; or (ii) award punitive or exemplary damages. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICE MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE OR BE FOREVER BARRED. All claims shall be arbitrated individually. You shall not bring, or join any class action of any kind in court or in arbitration or seek to consolidate or bring previously consolidated claims in arbitration. THIS ARBITRATION PROVISION CONSTITUTES A WAIVER OF ANY RIGHT TO A JURY TRIAL AND AN AGREEMENT TO BE SUBJECT TO JURISDICTION IN, AND CONDUCT ARBITRAL PROCEEDINGS IN, Florida.

### 5.3 No Waiver of Rights.

Our failure to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision.

### 5.4 Entire Agreement.

This Agreement, including any future modifications as may occur within the terms of the Agreement, and the rates for Services found on our website constitute the entire agreement between you and First-SIP, LLC and govern the use of the Service by you, members of your household, guests and employees. This Agreement supersedes any prior agreements between you and First-SIP, LLC and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter.

### 5.5 Severability.

If any part of this Agreement is legally declared invalid or unenforceable, all other parts of this Agreement will remain valid and enforceable. Such invalidity or non-enforceability will not invalidate or render unenforceable any other portion of this Agreement.

## 6. FUTURE CHANGES TO THIS AGREEMENT

We may change the terms and conditions of this Agreement from time to time. Notices will be considered given and effective on the date posted on <http://3ngnetworks.com/pages/tos>. Such changes will become binding on you on the date they are posted to our website and no further notice by us is required upon your continued use of the Service. The Agreement as and when posted supersedes all previously agreed to electronic and written terms of service, including, without limitation, any terms included with the packaging of the Device and also supersedes any written terms provided to Retail Customers in connection with retail distribution, including, without limitation, any written terms enclosed within the packaging of the Device.

## 7. PRIVACY

First-SIP, LLC Service utilizes, in whole or in part, the public Internet and third party networks to transmit voice and other communications. First-SIP, LLC is not liable for any lack of privacy which may be experienced with regard to the Service. Please refer to our Privacy Policy at <http://3ngnetworks.com/pages/privacypolicy> for additional information.