

## FIRSTLIGHT STANDARD TERMS AND CONDITIONS

**TERMS AND CONDITIONS; CONTRACT.** These terms and conditions shall govern any Service Order entered into by Customer and FirstLight when an applicable master form of agreement has not been executed by Customer and FirstLight. These terms and conditions and the Service Order shall be the contract for the ordered services (“Services”).

**BILLING AND PAYMENT.** Billing shall commence upon installation. The Customer is responsible for payment of all invoices within 30 days of the date of such invoice of all charges for services furnished hereunder. All past due invoice amounts are subject to a late charge of 1.5% per month of the balance due, or such lesser maximum charge as required by applicable law. Customer agrees to pay all costs and expenses of collection of any amounts due from Customer hereunder, including reasonable attorney’s fees. FirstLight will charge a fee, as allowed by law, for each check returned for insufficient funds. Customer must notice FirstLight Fiber no later than the date such invoice is due if Customer will withhold the disputed amounts, and failure to notice FirstLight Fiber within such time frame and withholding monies shall be a material breach of this Agreement. If Customer has previously made payment and later disputes all or a portion thereof, Customer must provide notice to FirstLight Fiber no more than sixty (60) days after FirstLight Fiber’s receipt of the payment in question. Customer waives all rights to dispute any payment previously made if notice is not provided to FirstLight Fiber within the aforementioned sixty (60) day period. In the event any portion of an invoice is disputed the Parties shall make good faith efforts to resolve such dispute within 30 days of receipt of Customer’s notice to FirstLight Fiber of such dispute. If the dispute is resolved in favor of FirstLight Fiber and FirstLight Fiber has not yet received payment, Customer shall make payment within ten (10) days of written demand or the date of an invoice for such payment and shall include interest from the original due date to the date of payment, calculated as provided for above. In the event the dispute is resolved in favor of Customer and Customer has previously made payment, the amounts resolved in favor of Customer shall be either i) paid to customer within ten (10) days of written demand, or ii) credited back to Customer on the next regularly scheduled monthly invoice from FirstLight Fiber, at Customer’s option, and shall include interest from the original due to the date of payment or crediting, as the case may be, calculated as provided for above.

**ADDITIONAL FEES.** Should a Customer request an expedited installation, or requests changes to an order after it has been accepted by FirstLight, or requires assistance on Moves/Adds/Changes, additional fees will apply. When such requests are made, FirstLight Fiber shall inform the Customer as to the amount of the additional charges.

- a) Expedite Fees – If customer requests an expedite on a pending service order, expedite fees would apply.
- b) Change Order Fees – If a customer requests a change to an order after it has been accepted by FirstLight, change order fees may apply.
- c) Moves/Adds/Changes (MAC) – If a customer requests support on MAC activity, additional charges shall apply.



**USE.** Customer may use the Services for any lawful purpose for which they are intended, provided that Customer may not resell, sublease or sublicense any dark fiber or collocation space provided hereunder. Customer shall not use the Services so as to interfere with or impair service over any of the facilities and equipment comprising the FirstLight network or equipment or of any third party. Customer shall at all times use the Services in full compliance with all applicable laws and FirstLight's Acceptable Use Policy located at [www.firstlight.net](http://www.firstlight.net). For certain Private Line and Voice Services the customer must certify and covenant the percentage of traffic interstate and intrastate jurisdiction in nature. If applicable to the service, Customer certifies and covenants that more than 10% of the traffic on the Service is interstate pursuant to the FCC's "Mixed-Use Rule" or so-called "10% Rule", unless expressly stated otherwise on the Service Order.

**SERVICE DATE AND TERM.** The contract created by these terms and conditions and a service order shall become effective on the date the service order is signed by both Customer and FirstLight and it shall continue in force until the end of the term designated in the Service Order ("Service Term"), which shall commence upon the provision of Service ("Contract"). Unless written notification is provided by Customer 30 days prior to expiration of the Service Term, the Services and Contract shall automatically continue on a month-to-month basis. FirstLight shall use reasonable efforts to make Services available by Customer's requested service date. FirstLight shall not be liable for any damages whatsoever resulting from delays in meeting any service dates. Such delays shall include, but not be limited to, delays in obtaining necessary regulatory approvals for construction, delays in obtaining right of way approvals, and delays in actual construction work.

**COMMENCEMENT OF BILLING.** Upon installation, testing and completion of the Service requested in any Customer Order, FirstLight will deliver to Customer a Completion Notice. Upon receipt of the Completion Notice, Customer shall have a period of seventy-two (72) hours to indicate that the Service or Work has not been completed or is not properly functioning. Unless Customer delivers written notice to FirstLight within such seventy two (72) hour period that the Service is not completed in accordance with the Customer Order and not functioning properly, billing shall commence on the applicable Service Commencement Date, regardless of whether Customer has procured services from third parties (including carriers) needed to operate the Service, and regardless of whether Customer is otherwise prepared to accept delivery of ordered Service. In the event that Customer notifies FirstLight within the time period stated above that the Service/Work is not completed and functioning properly, then FirstLight shall correct any deficiencies in the Service and deliver a new Completion Notice to Customer, after which the process stated herein shall be repeated.

**CLIENT RESPONSIBILITIES.** (a.) Access: Customer is responsible for securing, at its own cost, all authorizations for FirstLight to access any part or aspect of the premises where Services are to be delivered, including but not limited to easements, conduit and risers, so that FirstLight and its contractors may install, repair, maintain, inspect, replace or remove any and all facilities and equipment provided by FirstLight. Access to such premise shall be made available at a time mutually agreeable to Customer and FirstLight. FirstLight shall also have the right to obtain access to its cable installed in Customer-provided conduit at any splice or junction box. (b.) Provision of Equipment Space, Conduit, and Electrical Power: Customer shall provide the necessary equipment space, conduit, HVAC service and electrical power required to terminate and maintain the facilities used to provide Service on the premises without charge or cost to FirstLight, which must be made available to FirstLight on a timely basis. Customer shall be responsible for assuring that premises is a safe place to work free from environmental hazards and any equipment space, conduit, other aspects of the premises are protected against fire, theft, vandalism or



other casualty, and that the use thereof complies with all applicable laws and applicable leases or other contractual agreements. (c.) Governmental Authorizations: Customer shall be responsible to obtain and continue in effect all government authorizations necessary to permit Customer to use their Service and comply with its obligations under this contract.

**REMOVAL OF CUSTOMER EQUIPMENT AT FIRSTLIGHT FACILITIES.** Upon the expiration or earlier termination of the applicable Data Center/Colocation Order, Customer shall quit and surrender possession of the facilities to FirstLight in good order and clean condition, reasonable wear and tear excepted and shall promptly remove all customer equipment from the FirstLight facilities and from the Building in accordance with FirstLight's Policies and Procedures. If Customer fails to do so within five (5) days of such expiration or termination, FirstLight may treat the Equipment as abandoned property and either charge Customer for the removal and/or storage costs or dispose of the equipment in any manner that FirstLight shall elect. For the avoidance of doubt, in the case of any sale of the customer equipment by FirstLight, to the extent permitted by applicable law, Customer shall not be entitled to receive the proceeds of such sale. FirstLight has no duty to preserve or care for any customer equipment abandoned or deemed abandoned hereunder, and Customer hereby waives and releases, and indemnifies FirstLight with regard to, any claims it (or any other party) may have in connection with any such removal, storage or sale. Any wiring or other electrical components installed in the subfloor or overhead area of the FirstLight facilities to support the operation of the customer equipment may be removed by FirstLight after the expiration of the Order Term at Customer's sole cost and expense. The cost of removal of such wiring or electrical components may be deducted by FirstLight from any deposits held by FirstLight in connection with the Agreement or billed to Customer. Licensee shall pay any such fees promptly upon receipt of a bill therefor.

**PORTING SERVICES:** The Customer may, subject to FirstLight's prior written approval, cancel a Service and subsequently order a new Service, provided the new Service's MRC and term are not reduced in respect to the Service intended to be replaced and any charges, including but not necessarily limited to termination liability for a canceled Off-Net Service, special construction charges for the cancelled Service and NRC for the new Service, are paid by the Customer in accordance with the terms herein, and further provided that such new Service must i) be ordered by Customer within 30 days after Customer cancels the Service intended to be replaced and ii) FirstLight can reasonably issue a FOC Date that is also within 30 days of Customer canceling the Service intended to be replaced. In the event that Customer fails to place an order for a new Service satisfying all criteria of this section, Customer shall be liable for full Early Termination Liability on the Service that was intended to be replaced. For the sake of clarity any Service ordered prior to cancelling the existing Service or otherwise pending or being provisioned cannot be used as a new Service.

**FRAUDULENT USE OF SERVICES.** Customer is responsible for all charges attributable to use of Customer's Service or facilities even if incurred as the result of fraudulent or unauthorized use of Service by any person, whether such use is authorized by, or known or unknown, to Customer, except Customer shall not be responsible for fraudulent or unauthorized use by FirstLight Fiber or its employees.

**TOLL FRAUD.** In the event that Customer installs its own terminal communications equipment, including but not limited to PBX, on its premises which may access FirstLight Fiber's toll services, it is expressly agreed and understood that the security of, and fraud controls within, such terminal equipment, are the sole responsibility of Customer. It is expressly understood that such terminal equipment may have the capability to allow calls to be originated from remote locations, routed through such equipment, and connected to FirstLight Fiber's toll service, in the same manner as a call originated from Customer's

premises. Any arrangement, commonly known in the industry as “remote calling or remote PBX access,” could create opportunities for outside third persons to have toll calls appear to originate on and be charged as originating from such terminal equipment. The obligation to provide appropriate security to protect against unauthorized calls rests solely with Customer. It is expressly understood that the Customer is responsible for all charges attributable to use of Customer’s terminal equipment even if incurred as a result of fraudulent or unauthorized use of the Customer’s terminal communications.

**EQUIPMENT.** (a.) Title: Customer acknowledges and agrees that Customer has no right, title or ownership interest in any fiber, cable, space or other facilities and equipment provided by FirstLight. Customer shall neither create nor permit to be created any liens or encumbrances on any fiber, cable, space or other facilities and equipment provided by FirstLight. Upon termination of Service, FirstLight shall remove its equipment and shall have the right, but not the obligation, to remove all other facilities from any applicable premises. (b.) Maintenance: FirstLight shall use reasonable efforts to maintain the

Services in accordance with applicable performance standards therefor. There are no additional charges for FirstLight maintenance services on FirstLight’s facilities and equipment. However, FirstLight shall have no responsibility for the maintenance and repair of facilities and equipment, which it does not furnish, and Customer shall be obligated to pay FirstLight’s standard charges when a Customer requests maintenance or repairs and such maintenance or repair need is attributable to facilities or equipment provided by Customer or a third party.

**FIRSTLIGHT INTERNET AVAILABILITY SERVICE LEVEL.** The Availability Service Level for FirstLight’s IP Transit network is 99.999%. In the event that the FirstLight IP Transit network becomes unavailable as a result of FirstLight’s fault, error, or omission, and for reasons other than an Excused Outage, Customer will be entitled to a service credit for the affected Service based on the cumulative unavailability of the affected Service in a given calendar month as set forth in the following table. For purposes of this section, unavailability means the total inability to transmit or receive packets.

**Cumulative Unavailability Service Level Credit (in hrs:mins:secs)**

Time	Credit
00:00:01 Seconds – 00:05:00 Minutes	No Credit
00:05:01 Minutes– 00:45:00 Minutes	5% of MRC
00:45:01 Minutes– 04:00:00 Hours	10% of MRC
04:00:01 Hours – 08:00:00 Hours	20% of MRC
08:00:01 Hours –12:00:00 Hours	30% of MRC
12:00:01 Hours –16:00:00 Hours	40% of MRC
16:00:01 Hours – 24:00:00 Hours	50% of MRC
24:00:01 Hours or greater	100% of MRC

**FIRSTLIGHT BURSTABLE INTERNET BANDWIDTH BILLING.**

- A. Burstable Maximums: Available at 3 x CIR (committed information rate) or up to the provisioned port speed or a max of 10 Gbps, whichever is lower.
  - 1. For example: (a) Customer has a 30Mbps service on a 100Mbps port, and Customer can burst up to 90Mbps; (b) Customer has purchased a 50Mbps service and is on a 100Mbps port. Customer can burst up to 100Mbps; (c) Customer has a 5Gbps service (CIR) on a 10Gbps port, the max is 10Gbps so no bursting beyond the 10Gbps.
  - 2. Customer is not guaranteed the bandwidth beyond what they purchased as a base service.
- B. Measurement: When Customer purchases FirstLight Internet Service that is a burstable service, bandwidth usage will be calculated by FirstLight using the 95<sup>th</sup> percentile of samplings taken at five (5) minute intervals on a monthly basis. Samples are taken by FirstLight via SNMP from the FirstLight switch or router port the Customer is directly connected to and the results are the greater of input or output bits per second. The 95<sup>th</sup> percentile is determined by sorting the sample data from the smallest to the largest and discarding the top 5%, with the remaining largest sample designated as the 95<sup>th</sup> percentile.
- C. Billing: If after measurement it is determined that Customer did burst beyond their base service, Customer will pay the Mbps effective base service rate multiplied by two for each additional Mbps beyond their CIR.
  - 1. For example, a customer with 100Mbps service paying a base rate of \$825 per month pays effectively \$8.25 per Mbps, multiply this rate by two for the burstable Mbps rate. As a result, if Customer were to burst to 150Mbps, Customer would pay 50 x \$16.50 that month (additional).

**FIRSTLIGHT VOICE SERVICES AVAILABILITY.** Voice transit network including central office switching is 99.999% availability. In the event that the FirstLight Voice transit network becomes unavailable as a result of FirstLight’s fault, error, or omission, and for reasons other than an Excused Outage, Customer will be entitled to a service credit for the affected Service based on the cumulative unavailability of the affected Service in a given calendar month as set forth in the following table.

**Cumulative Unavailability Service Level Credit (in hrs:mins:secs)**

Time	Credit
00:00:01 Seconds – 00:05:00 Minutes	No Credit
00:05:01 Minutes– 00:45:00 Minutes	5% of MRC
00:45:01 Minutes– 04:00:00 Hours	10% of MRC
04:00:01 Hours – 08:00:00 Hours	20% of MRC
08:00:01 Hours –12:00:00 Hours	30% of MRC
12:00:01 Hours –16:00:00 Hours	40% of MRC
16:00:01 Hours – 24:00:00 Hours	50% of MRC
24:00:01 Hours or greater	100% of MRC

**FIRSTLIGHT ACCESS LOOP AVAILABILITY.** Standard Access Loop configuration is 99.5% available. Geo-diverse Redundant Access Loop configuration is 99.999% available. In the event that the FirstLight Access

Loop becomes unavailable as a result of FirstLight’s fault, error, or omission, and for reasons other than an Excused Outage, Customer will be entitled to a service credit for the affected Service based on the cumulative unavailability of the affected Service in a given calendar month as set forth in the following table. Outage is inability to transmit or receive packets or voice across the loop.

Service Level Credit			
For any Geo-diverse Redundant Access Loop		For any Standard Access Loop	
Cumulative Unavailability (in hrs:mins:secs)		Cumulative Unavailability (in hrs:mins:secs)	
00:00:01– 00:45:00	5%	00:00:01– 00:45:00	No Credit
00:45:01– 04:00:00	10%	00:45:01– 04:00:00	No Credit
04:00:01 – 08:00:00	20%	04:00:01 – 08:00:00	5%
08:00:01 –12:00:00	30%	08:00:01 –12:00:00	10%
12:00:01 –16:00:00	40%	12:00:01 –16:00:00	25%
16:00:01 – 24:00:00	50%	16:00:01 – 24:00:00	40%
24:00:01 or greater	100%	24:00:01 or greater	50%

**FIRSTLIGHT CLOUD COMMUNICATIONS AVAILABILITY.** The Cloud Communications network systems transit network including central office switching 99.999%. The Availability Service level for FirstLight Cloud Communications and Voice over IP related services which are Redundant is 99.999%. In the event that any FirstLight Redundant Service becomes unavailable as a result of FirstLight fault, errors or omissions, and for reasons other than an Excused Outage or Force Majeure, Customer will be entitled to a service credit off of the monthly recurring charges for the affected service as designated in the Redundant Credit Schedule. In the event that any FirstLight Non-Redundant Service becomes unavailable as a result of FirstLight for reasons other than an Excused Outage or Force Majeure, Customer will be entitled to a service credit for the affected service off of the monthly recurring charges as designated in the Non-Redundant Credit Schedule. In the event that any FirstLight “Off Net” service becomes unavailable there will be no service credits issued.

Service Level Credit			
For any Redundant Cloud Communications Service		For any Non-Redundant Cloud Communications Service	
Cumulative Unavailability (in hrs:mins:secs)		Cumulative Unavailability (in hrs:mins:secs)	
00:00:01– 04:00:00	No Credit	00:00:01– 04:00:00	No Credit
04:00:01 – 08:00:00	20%	04:00:01 – 08:00:00	10%
08:00:01 –12:00:00	30%	08:00:01 –12:00:00	25%
12:00:01 –16:00:00	40%	12:00:01 –16:00:00	40%
16:00:01 – 24:00:00	50%	16:00:01 – 24:00:00	40%
24:00:01 or greater	100%	24:00:01 or greater	50%

Service level credits do not apply for any “Off-Net” Service.



For purposes of this Section, “unavailable” or “unavailability” means the duration of an interruption of the Service measured from the time when the outage is reported to the time when it is resolved, this is referred to as time to repair.

**FIRSTLIGHT ETHERNET NETWORK SERVICE LEVELS.**

**Network Availability Guarantee** – If the Network Availability Guarantee is not met, Customer will receive a credit of 1/30th of the monthly recurring charges for the Ethernet Service at the impacted service location for each calendar day that the Availability did not meet the Availability as listed within the Service Level Criteria Table for Ethernet Services.

The FirstLight Network Availability guarantee does not include outages caused by equipment on the Customer’s side of the point of demarcation, scheduled maintenance events, Customer-caused outages or disruptions and Force Majeure events. In the event that any FirstLight Ethernet Service becomes unavailable as a result of FirstLight fault, errors or omissions, and for reasons other than an Excused Outage, Customer will be entitled to a service credit off of the monthly recurring charges for the Ethernet Service at the impacted service location.

**Service Level Criteria – Ethernet Services**

Network Availability	High	Business	Commodity
Single Path	99.9%	99.5%	99%
Dual Path	99.999%	99.99%	99.9%

**Packet Delivery Guarantee** – The FirstLight Ethernet Network is guaranteed to deliver a percentage of IP packets averaged over a calendar month. The FirstLight Packet Delivery Availability guarantee does not include outages found to be caused by Customer-owned CPE (router or LAN), scheduled maintenance events, Customer-caused outages, oversubscription or disruptions and force majeure events. If the Packet Delivery Guarantee is not met in a calendar month, Customer will receive a credit of 1/30th of the monthly recurring charge for each calendar day that packet failure exceeded the guaranteed percentage on average for that day.

**Service Level Criteria – Ethernet Services**

Network Packet Delivery Rate	High	Business	Commodity
Single Path	>99.999%	>99.99%	>99.9%
Dual Path	>99.999%	>99.99%	>99.9%





**VOICE OVER PUBLIC INTERNET.** FirstLight makes no representations or warranties and makes no performance level guarantees for voice quality over the Public Internet. Customer assumes all risk for voice quality over the Public Internet. FirstLight will accept repair tickets to our Network Operations Center related to voice over the Public Internet, if and only if, the Customer provides written documentation of Tier 1 troubleshooting and triage on the customer internet connection having already been performed by the Customer. FirstLight may bill at its standard regular hour and overtime rates for technician time spent troubleshooting a Customer internet issue. It shall be a material breach of this contract for which FirstLight reserves the right to terminate the contract with a thirty (30) day notice for repeated calls into its Network Operations Center resulting in FirstLight troubleshooting the Customer internet connection. Upon such termination, the Customer would be liable for Early Termination Charges.

**DEFAULT.** If Customer shall fail to pay any undisputed amount required under this contract and such failure continues for ten days after written notice to Customer, or fails to comply with any other material provision of this contract and such noncompliance continues for thirty days after written notice to Customer, FirstLight, at its sole discretion may elect to: (i) terminate this contract whereupon in addition to all sums then due and payable, all future monthly or other charges hereunder shall become immediately due and payable and/or (ii) pursue any other remedies as may be provided by law or inequity.

**LIMITATIONS OF LIABILITY.** (a.) Liability for Service Interruptions: To the extent that any portion of the Service is unavailable, interrupted, or materially degraded, FirstLight and Customer agree that Customer's sole and exclusive remedy shall be the credit allowances for interruptions as provided below under the section entitled "Credit Allowances". (b.) Liability for Damages to Property: FirstLight shall not be liable for any damages whatsoever to property unless the damage is caused by FirstLight's willful misconduct or negligence. (c.) Liability for Services and Equipment Not Provided by FirstLight: FirstLight shall not be liable for any damages whatsoever associated with service or equipment which it does not furnish or for any act or omission of any other party furnishing to Customer facilities or equipment used for or with the Service. (d.) Liability for Force Majeure Events: Neither party shall be liable for any failure of performance or Service for reasons beyond its reasonable control including without limitation casualty, condemnation or loss of rights-of-way and any other event generally recognized as an event of Force Majeure. (e.) Liability for Negligence or Fault of Customer: FirstLight shall not be liable for any interruptions or damages due to the fault or negligence of Customer or due to the failure or malfunction of Customer-provided equipment or facilities. (f.) Liability Regarding Governmental Authorization: FirstLight shall use commercially reasonable efforts to obtain and keep in effect all governmental authorizations necessary in order to provide Service hereunder. FirstLight shall be entitled to take, and shall have no liability for, any action necessary including termination to bring the Service into conformance with any governmental regulations or authorizations, and Customer shall cooperate fully and take such action as may reasonably be requested by FirstLight as part of such compliance. (g.) No Special Damages: In no event shall FirstLight be liable for special, indirect, consequential, exemplary, or punitive damages attributable to its performance or nonperformance of this Contract. (h) FirstLight's liability under any theory of damages shall not exceed an amount equivalent to the total fees paid in the prior twelve (12) month period to FirstLight by Customer under this contract.

**TERMINATION.** FirstLight may terminate this Contract without liability and Customer's payment obligation will expire if: (a.) The facilities used to provide Service are taken by exercise of condemnation or eminent domain, or (b.) The facilities shall in FirstLight's judgment, be made inoperable and beyond economically or technologically feasible repair. In the event of nonpayment of any bill rendered by



FirstLight, or the non-payment of any required deposit, FirstLight may suspend Service until the bill rendered or the required deposit has been paid.

**TERMINATION BY CUSTOMER.** Customer may cancel Service at any time and for any reason during the Contract by providing at least thirty (30) days prior written notice. Notice should be mailed to Finance Department, FirstLight, 41 State Street, Albany, NY 12207 or e-mailed to [disconnects@firstlight.net](mailto:disconnects@firstlight.net). If Customer cancels under this clause, Customer agrees to pay FirstLight:

- a) 100% of any unpaid or waived non-recurring charges;
- b) 100% of any service charges incurred and not yet paid;
- c) 100% of the monthly recurring charges for each month remaining in the first year of a Service Order Term specified on the Contract;
- d) 75% of the monthly recurring charge for each month remaining in the second year of a Service Order Term specified on the Contract;
- e) 50% of the monthly recurring charge for each month remaining after the second year of a Service Order Term specified on the Contract; and
- f) 100% of any charges owed by FirstLight to a third party resulting from such termination
- g) The Customer agrees that FirstLight's actual damages arising from early termination are impossible to ascertain, that the early termination charges are a reasonable estimate of the same, and that such charges constitute liquidated damages and not penalties.

**CREDIT ALLOWANCES.** A credit will be provided when the Service is interrupted continuously for more than 24 hours on POTS service, or as defined in the Service Level Credit terms by product type, excluding dark fiber and collocation service, other exceptions are specified below. An interruption period begins when Customer reports an interruption in service to FirstLight at 800-461-4863. Credit allowance does not apply to interruptions: (a.) caused by Customer; (b.) due to failure of power or equipment provided by Customer or third parties, (c.) during any period in which FirstLight is not given access to the Service or premises; (d.) due to scheduled or emergency maintenance and repair; and (e) due to an event of Force Majeure. No more than one full day's credit will be allowed for any period of 24 hours and no more than one month's worth of monthly recurring charge in any given month. All requests for credit for service outages must be made in writing by the Customer to FirstLight no more than 30 days after issuance of the bill for the period in which the outage occurred.

**CHRONIC OUTAGE.** In the event, absent Force Majeure, a Service experiences three (3) or more outages resulting in the granting of Outage Credits in any contiguous thirty (30) day period or more than twenty-four (24) hours of continuous outage on a Service, Customer may, upon written notice received within thirty (30) days of the Chronic Outage, terminate the affected Service without incurring Termination Liability for that Service. Notwithstanding the foregoing, following an outage, for no less than the twenty-four (24) hour period following the initiation of corrective action by FirstLight to restore the affected Service, any subsequent interruption to the Service prior to FirstLight confirming the Service is restored and the event causing the outage has been corrected, shall not be a separate outage and shall not contribute to the three (3) outages granting Customer the right to terminate the affected Service without Termination Liability.

**INDEMNIFICATION.** FirstLight shall be indemnified, defended and held harmless by Customer against all claims, suits, proceedings, expenses, losses, liabilities, damages or damages, including reasonable



attorney fees (collectively “Claims”) arising from the use of Service and to the extent legally permissible for: (i) damage to tangible property; (ii) bodily injury including death; (iii) infringement of a third party’s intellectual property right; (iv) claims made by any client or customer of Customer with regards to the Service; and (v) any breach of a material obligation of this contract.

**ASSIGNMENT.** FirstLight may, without consent from Customer, assign any of its rights, privileges, or obligations under this contract. Customer shall not, without prior written consent of FirstLight (which consent shall not be unreasonably withheld) assign this contract.

**WARRANTIES.** FIRSTLIGHT MAKES NO AGREEMENTS, WARRANTIES, OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE WITH RESPECT TO ANY SERVICES OR EQUIPMENT PROVIDED, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN. FIRSTLIGHT DOES NOT WARRANT THAT THE PROFESSIONAL SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. EQUIPMENT PROVIDED BY FIRSTLIGHT IN CONJUNCTION WITH ANY SERVICE IS PROVIDED ON AN ‘AS IS’ BASIS. FIRSTLIGHT DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON ITS BEHALF AND CUSTOMER SHOULD NOT RELY ON ANYONE MAKING SUCH STATEMENTS. CUSTOMER AGREES THAT ANY EQUIPMENT OF SOFTWARE PROVIDED TO CUSTOMER UNDER THESE STANDARD TERMS AND CONDITIONS WILL CARRY THE WARRANTY CARRIED BY THE MANUFACTURER, OR DEVELOPER, IF ANY, AND FIRSTLIGHT MAKES NO INDEPENDENT WARRANTY WITH RESPECT TO SUCH PRODUCTS.

**SEVERABILITY.** In the event that any term or provision of this contract shall be declared invalid, illegal, or unenforceable, in any respect, by any court or regulatory agency of competent jurisdiction, such invalidity, illegality, or unenforceability shall not in any manner affect the validity or enforceability of any other term or provision of this Agreement. Failure by either party to enforce a provision of the agreement shall not constitute subsequent waiver of such provision.

**MISCELLANEOUS.** If, for any reason, FirstLight determines that Service cannot be provisioned as ordered, FirstLight reserves the right to amend this contract accordingly. In the event the amendment increases the cost quoted herein, the Customer will have the right to terminate the contract. If Customer terminates contract, Customer will be responsible for any charges reasonably incurred by FirstLight. Changes or modifications including, but not limited to, changes or modifications to the rates or terms of this contract may be made, modified, waived or amended only by a written instrument pre-approved and signed by a duly authorized representative of each party. It shall be binding upon each party’s respective successors and assigns.

**JURISDICTION.** The rights and obligations of the parties under this contract shall be in all respects governed by, construed, and enforced in accordance with the laws of the State of New York, excluding its conflict of laws principles. Any action arising under the Agreement shall be brought in a federal or state court located in Albany County, New York. Customer waives any objection to forum or venue in these courts.

**CONFIDENTIALITY.** The Customer agrees that certain information being provided by FirstLight to Customer and/or its representatives in connection with this contract is non-public and confidential and proprietary in nature. The unauthorized disclosure of such confidential information to a third party may cause irreparable harm to FirstLight. Accordingly, Customer agrees not to disclose any such information to any third party without the express written consent of FirstLight. In the event of a breach of this

provision, FirstLight shall be entitled to pursue any and all remedies available at law or in equity, including injunctive relief, and FirstLight shall be entitled to recover its reasonable attorneys' fees.

**INSURANCE.** Each party agrees to maintain insurance policies of the type and including coverage limits provided hereinafter:

a). Workers compensation insurance in compliance with statutory requirements and employer's liability insurance with limits of \$1,000,000 for each accident (minimum) and \$1,000,000 for disease for each employee (minimum).

b). Commercial general liability insurance endorsed to provide coverage for contractual liability and products and completed operations. Automobile liability insurance, which shall include coverage for all owned, non-owned and hired vehicles. Each policy shall include coverage limits for bodily injury and property damage of \$1,000,000 combined single limit for each occurrence (minimum). Excess umbrella liability insurance to cover all risks covered by the general liability and automobile liability policies with a per occurrence limit of \$5,000,000.

c). Each party shall endeavor to provide notice 10 days in advance of any cancellation or material change in a policy may become effective. Each party agrees to require all such policies of insurance to include clauses providing that each underwriter shall waive its rights of recovery, under subrogation or otherwise, against the other party and the other party's officers, directors, employees, contractors and agents. All policies shall be on an occurrence basis and shall be obtained only from insurers who are rated "A-VII" or better in the then most recent edition of Best's Insurance Reports.

In the event Customer does not provide any or all of the insurances herein or any policy shall be cancelled, FirstLight reserves the right to procure such insurance and Customer shall promptly pay FirstLight for associated premiums upon invoicing by FirstLight.

**SOFTWARE AS A SERVICE.** Additional terms and conditions apply to certain Software as a Service (SaaS) offerings and are incorporated herein. Please visit [www.firstlight.net/saas-terms-and-conditions](http://www.firstlight.net/saas-terms-and-conditions) for details.

**PRODUCT MIGRATION.** For those customers who are migrating from an existing FirstLight-provided monthly recurring service to another FirstLight-provided monthly recurring service, where both the old and new service will both be in service for a period of time, FirstLight will provide a 30-day billing grace period, where only the monthly recurring charge (MRC) for the new service will be due and owing and the MRC associated with the existing service will be credited. This one-time credit is being offered to allow the Customer to plan and migrate their network service and account for the overlap in billing during this transition period. After this 30-day grace period, Customer will be responsible for the MRC associated with both services unless the Customer has submitted a formal disconnect notice to FirstLight to terminate the old service.

**SURVIVAL.** All terms herein that by their nature are intended to survive termination, cancellation or expiration of this contract shall survive. Such provisions shall include, but be limited to, payment, indemnification, insurance, limitation of liability and choice of law and venue.