

## **Terms and Conditions of Telephone Service**

### **1. DEFINITIONS**

"Account" means the record of all Charges due from a Customer.

"Agreement" means the agreement between First City Telecom and the Customer in respect of the Services incorporating these terms and conditions.

"Charges" means the charges payable in respect of the Services (as amended from time to time in accordance with clause 5.8 below) as set out in the Customer Order Form or as otherwise notified to the Customer before they are incurred.

"Customer" means the party named as such on the Customer Order Form to whom First City Telecom agrees to provide Services and by whom Charges are payable.

"Customer Order Form" means First City Telecom customer order form completed by the Customer.

"Initial Connection" means the time and date when the Services are first made available to the Customer.

"ICSTIS" means the Independent Committee for the Supervision of Standards of Telephone Information Services

"OFTEL" means the Office of Telecommunications

"Operator" means the provider of access to the Telecommunications Network.

"Order" means a Customer's order for services made on a Customer Order Form.

"Premium Rate Number" means the telephone number allocated to a Customer for the purpose of enabling the Customer to provide Premium Rate Services

"Premium Rate Services" means telephone services providing information, advice, entertainment or any other services defined from time to time by ICSTIS as being Premium Rate Services

"Revenue" Means sums payable by First City Telecom to the Customer in respect of Premium Rate Services

"Services" means connection to the Telecommunications Network, provision of Telephone Numbers and other telecommunications services as set out in one or more Customer Order Forms for the Customer or otherwise notified in writing by First City Telecom to the Customer.

"Telecommunications Network" means the public and private telecommunications systems accessed by the Telephone Number or by which the Services are made available.

"Telephone Number" means the telephone number (including Premium Rate Numbers if applicable), allocated to a Customer.

### **1. PROVISION OF SERVICES**

2.1 First City Telecom agrees to provide Services to the Customer on the terms and conditions of this Agreement once First City Telecom has accepted the Customer's Order. First City Telecom will have accepted the order upon the Initial Connection.

2.2 The minimum period for the Services is 3 months from the Initial Connection (the "Minimum Period"). This Agreement will continue after the expiry of the Minimum Period unless and until:

2.2.1 it is terminated by either party giving the other not more than two and at least one month's written notice to terminate the Agreement expiring on the first or any subsequent anniversary date of the Initial Connection. In the case of notice given by the Customer, the notice shall not become operative until the Customer receives, by way of acknowledgement, a cancellation acceptance form

signed by an officer of First City Telecom on First City Telecom headed note paper; or

2.2.2 in accordance with clause 11 below.

2.3 The Services are supplied subject to all limitations of the Telecommunications Network including the risk of imposed prefix or number changes. In particular First City Telecom is unable to guarantee that all overseas systems will be able to access the Customer using the Telephone Number or that telephone keypads will use the same alphanumeric combinations as are currently used in the UK.

2.4 Each Order will with these terms comprise a separate contract between the parties unless the order specifies that it is an amendment to an existing contract.

2.5 Where an Order covers more than one Telephone Number each Telephone Number shall be deemed the subject of a separate and severable Agreement.

2.6 Where the Customer's name or if applicable company registered number on the Customer Order Form is incorrect or incomplete, the Customer agrees that First City Telecom may treat as being the Customer the individual or organisation that paid the initial service charge for the Services

## 2. AZCO Services' OBLIGATIONS

3.1 First City Telecom will use reasonable endeavours to provide the Services but First City Telecom shall not be liable for any failure resulting from factors outside First City Telecom's control. In particular First City Telecom is not responsible for the operation of the Telecommunications Network.

3.2 First City Telecom reserves the right from time to time to improve or alter the Services as it deems appropriate, provided that such changes do not substantially change the nature of the Services.

3.3 First City Telecom will provide an after sales service and help desk contactable by telephone and e-mail within UK office hours.

## 1. CUSTOMER RESPONSIBILITIES

4.1 The Customer shall at all times:-

4.1.1 comply with any reasonable directions or instructions (including requests for assistance or information) issued from time to time by First City Telecom in connection with the Services or any of them;

4.1.2 ensure that the Account is maintained in credit at all times;

4.1.3 ensure insofar as is possible that the Telephone Numbers are not used in any unlawful, improper or damaging manner;

4.1.4 indemnify and hold harmless First City Telecom against all liabilities, claims, damages, losses, costs and proceedings howsoever arising from any improper use of the Services;

4.1.5 indemnify and hold harmless First City Telecom against all liabilities, claims, damages, losses, costs and proceedings howsoever arising from a claim by a third party where the third party claims it has the

right to prevent the Customer from using the Telephone Number.

4.2 Where the Customer's Order Form includes an order for a Premium Rate Number the Customer shall also:-

4.2.1 provide First City Telecom with an accurate description of the Premium Rate Service it intends to provide;

4.2.2 prior to providing the Premium Rate Service ensure that it obtains all necessary licences, authorities and approval from ICSTIS, OFTEL and any other regulatory body relevant to the Premium Rate Service and thereafter maintains such licences, authorities and approval for the duration of this Agreement;

4.2.3 upon the request of First City Telecom provide First City Telecom with written evidence of such licences, authorities and approval ;

4.2.4 notify First City Telecom immediately of any intention on the part of the Customer to change the nature of the Premium Rate Service and obtain First City Telecom's agreement in writing to the proposed change prior to providing the new Premium Rate Service;

4.2.5 ensure the Premium Rate Service:-

4.2.5.1 complies with all relevant legislation, regulations, guidelines and codes of practice;

4.2.5.2 does not include any material which is defamatory, offensive, indecent, threatening or likely to bring First City Telecom into disrepute by virtue of its connection with the Customer;

4.2.5.3 does not refer to First City Telecom or the Operator without their prior approval in writing.

4.2.6 The Premium Rate Service may be monitored from time to time by First City Telecom in order to ensure compliance with the terms and conditions of this Agreement or by the Operator, ICSTIS or any similar authority to ensure compliance with all applicable legislation, regulations, guidelines and codes of practice.

## **2. CHARGES AND PAYMENT**

5.1 Connection and initial service charges are payable on completion of the Customer Order Form.

5.2 Other Charges are payable on invoice. First City Telecom may invoice monthly, quarterly or annually. If Charges are ascertainable in advance they may be invoiced in advance. In respect of all charges First City Telecom requires the Customer to make sufficient deposits as to maintain the Account in credit at all times. Numbers will automatically be suspended in the event of the Account balance, less un-invoiced Charges, reaching zero. First City Telecom will advise the Customer if this is expected to occur.

5.3 First City Telecom may require the Customer to pay by electronic transfer, cheque, by standing order credit/debit card or by direct debit. In the event that the Customer is unwilling or unable to pay by First City Telecom's chosen automated means or such automated means are not set up or fail for any reason

before First City Telecom invoices the Customer an additional administration charge shall be levied for each invoice.

5.4 Certain Services (e.g divert to mobile or international) have additional costs which are outside the control of First City Telecom. Where any such charges are increased to First City Telecom it shall forthwith advise the Customer and be entitled to increase its own charges for the same Services by the same proportion.

5.5 Invoices and the Account will be denominated and payable in Great British Pounds. Any costs for currency conversion or the transmission of payment electronically will be borne by the Customer. Any such costs deducted from the amount received by First City Telecom by the receiving bank will be deducted from the credit to the Account.

5.6 Overdue payments shall be subject to interest at an annual rate equal to the Statutory interest rate chargeable under the Late Payment of Commercial Debts (Interest) Act 1998 both before and after judgement.

5.7 Charges are exclusive of Value Added Tax.

5.8 First City Telecom shall in respect of each Service be entitled to review and vary from time to time the Charges and introduce new charges. Subject to clause 5.4 the varied or new charges shall take effect 2 weeks after written notice has been sent to the Customer detailing such variations or new charges.

5.9 Charges may also be imposed in the following circumstances brought about by a Customer request:-

5.9.1 Change of target destination number.

5.9.2 Change of Operator for any Telephone Number.

5.9.3 Change of service provider upon termination of this Agreement in respect of any Telephone Number.

5.9.4 Transfer of any Telephone Number to another subscriber.

5.10 The Customer shall not dispute the amount of any Operator generated Charges unless and then only to the extent that First City Telecom is entitled to dispute such charges with the Operator.

5.11 First City Telecom shall be entitled to impose a £50 reconnection fee in the event that the Customer requests, and First City Telecom agrees, to reconnect the Telephone Number following disconnection under clause 9.

### **3. REVENUE**

6.1 The Customer shall be entitled to receive Revenue from First City Telecom based on the minutes of call time generated by the use of a Premium Rate Number as recorded in data supplied to First City Telecom by the Operator which shall be conclusive for the purpose of calculating Revenue.

6.2 The rate at which Revenue shall be paid shall be agreed between the parties and recorded in

Schedule 1.

6.3 First City Telecom shall pay Revenue on a monthly basis in arrears by no later than 60 days of the end of the month in which Revenue is accrued.

6.4 First City Telecom shall be entitled to withhold Revenue due to the Customer:-

6.4.1 upon the suspension of the Service in accordance with clause 9;

6.4.2 if First City Telecom suspects the Customer is in breach of any term of this Agreement or any other agreement between the parties;

6.4.3 if First City Telecom suspects the Customer has increased its entitlement to Revenue by fraudulent or improper means;

6.4.4 if First City Telecom has not received the corresponding payment from the Operator

6.5 First City Telecom shall be entitled to set off any Charges due to First City Telecom against Revenue due to the Customer

#### **4. THIRD PARTIES**

7.1 The Customer may allow a third party to use a Premium Rate Number as part of a managed bureau service provided by the Customer in connection with the provision of Premium Rate Services, in which case the Customer shall procure the third party's compliance with the terms of this Agreement and all relevant legislation, regulations, guidelines and codes of practice.

5. First City Telecom's LIABILITY

8.1 First City Telecom does not exclude or restrict any liability to the Customer for death or personal injury attributable to its own negligence or that of its employees or agents.

8.2 First City Telecom shall exercise reasonable skill and care in the provision of the Services.

8.3 Except as stated expressly otherwise in this Agreement, in relation to the provision of Services, First City Telecom shall have no obligation, duty or liability in or for contract, tort (including negligence and breach of statutory duty) or otherwise and all other conditions, warranties, terms representations and undertaking, express or implied (whether they are implied by statute, common law or in any other way) are excluded to the fullest extent permitted by law.

8.4 Where any Service has been continuously unavailable to a Customer for a continuous period of more than 7 days (the "Unavailable Period") and not as a result of any action or omission of the Customer or any event beyond the reasonable control of First City Telecom the Customer may apply to First City Telecom for a rebate of any time based Charges in respect of the unavailable Period and First City Telecom shall allow the Customer a proportionate rebate of such time based charges. First City Telecom shall have no other liability for failure or unavailability of the Telecommunications Network.

8.5 First City Telecom shall not be liable for any indirect or consequential losses, damage or expenses suffered by the Customer including (but not limited to) loss of anticipated sales profits or savings,

goodwill, business contracts or losses resulting from third party claims.

8.6 Notwithstanding the provisions of clause 8.3 and subject to clause 8.1, First City Telecom's liability to the Customer for breach of contract shall be limited to £5,000. Any other liability shall be limited to the amount of relevant insurance cover carried by First City Telecom.

## **6. SUSPENSION OF SERVICES**

9.1 First City Telecom may suspend all or part of the Services or any of them for so long as reasonably required or disconnect the Telephone Number at any time without notice if:-

9.1.1 the Customer is in material breach of this Agreement or any other agreement between the parties and in particular in breach of clause 4 or 5;

9.1.2 the Customer acts in such a way or permits anything to be done which, in the reasonable opinion of First City Telecom, relates to the Services and may impair or jeopardise the operation of the Services or any part of the Telecommunications Network;

9.1.3 required to do so directly or indirectly by law, the Operator, OFTEL or ICSTIS;

9.1.4 required for modification or maintenance or in cases of emergency

9.1.5 First City Telecom has reason to believe the Services are being used for unlawful, fraudulent or improper purposes.

9.2 The Customer shall remain liable for all Charges during any period of suspension attributable to the actions or omissions of the Customer

## **7. DATA PROTECTION ACT**

10.1 Information that the Customer provides to First City Telecom about private individuals relevant to First City Telecoms dealings with the Customer will be stored within First City Telecom's computer system and manually.

10.2 For the purpose of the Data Protection Act 1998 ("the Act") First City Telecom needs to specify the purposes for which it will use that information. It will of course only use it for legitimate purposes, including:-

10.2.1 communicating with the individuals concerned as necessary in connection with the Customer's dealings with First City Telecom.

10.2.2 communicating with the Customer in connection with First City Telecom's services generally;

10.2.3 providing it to third parties as required by the Customer or the law or as necessary in connection with the Customer's dealings with First City Telecom (including for inclusion in publicly available directories). Those third parties may be outside the European Economic Area;

10.2.4 providing it to licensed credit-referencing agencies for credit checks to be undertaken.

10.3 By giving First City Telecom that information the Customer consents to First City Telecom holding using and disclosing it for those purposes.

10.4 First City Telecom is permitted under the Act to hold and use personal data for the purposes specified above. It will not process such data provided by the Customer otherwise than for those purposes or as otherwise required by the Customer.

10.5 First City Telecom confirms that it will comply with the Seventh Data Protection Principle under the Act (data security) in relation to all personal data supplied by the Customer.

## **8. TERMINATION OF AGREEMENT**

11.1 First City Telecom may terminate this Agreement immediately by notice in writing to the Customer if:-

11.1.1 the Customer is in breach of any of the terms of this Agreement or any other agreement between the parties and does not remedy the breach within 7 days of the date of written notice from First City Telecom specifying the breach and requiring it to be remedied;

11.1.2 any licence, permission, agreement or authorisation granted to the Operator or to First City Telecom necessary for the provision of the Services is suspended, revoked or terminated; or

11.1.3 First City Telecom is unable to recover from the Operator Revenue payments due to the Customer.

11.2 Either First City Telecom or the Customer may terminate this Agreement immediately by notice in writing if it has reasonable reason to believe that the other has or will have debts to it which will not be paid when due.

11.3 The Customer can at any time by reasonable notice terminate any Agreement upon the transfer of the Telephone Number the subject of that Agreement to another Operator or service provider. In these circumstances the Customer shall be liable to compensate First City Telecom for its likely loss of income under that Agreement (from whatever source) from the date of termination to the date on which the Customer could have first terminated the agreement under clause 2.3.

11.4 Any termination of this Agreement shall be without prejudice to the rights of either party accrued to the date of termination.

## **9. GENERAL**

12.1 First City Telecom shall address all bills and serve any notices on the Customer pursuant to this Agreement in writing by post to the address set out in the Order or the Customer's registered office or any other address (including e-mail) provided by the Customer for this purpose.

12.2 The Customer shall serve any notice pursuant to this Agreement by post on First City Telecom at its registered office address.

12.3 All documents shall be deemed served 48 hours after posting.

12.4 No failure by First City Telecom to exercise any of its rights under these terms and conditions or concession granted and shall prevent subsequent enforcement of those rights or constitute an agreement to provide the same concession again.

12.5 Subject to clause 12.6, the Customer acknowledges that it has not been induced to enter into this Agreement by any representations made before or on entering into this Agreement (whether made negligently or innocently or whether oral or written) and that it has only relied upon matters set out in this Agreement in deciding to enter into this Agreement.

12.6 The Customer acknowledges that the only remedy it has against First City Telecom for any misrepresentation or untrue statement shall be a claim for damages for breach of this Agreement. However, if First City Telecom has made any fraudulent representations upon which the Customer has relied, the Customer may pursue First City Telecom, and the Customer shall be entitled to all available remedies under English law.

12.7 No variation of this Agreement or waiver hereunder shall be effective unless agreed in writing by First City Telecom.

12.8 If any provision of these terms and conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these terms and conditions and the remainder of the provisions in questions shall not be affected as a result.

12.9 The Customer shall not assign or try to assign any or all of the rights and responsibilities under the Agreement but First City Telecom may transfer its right and obligations hereunder to a new service provider in which circumstances the Customer shall enter into a new agreement in the same terms as this with the new service provider.

12.10 Where two or more persons constitute the Customer their liability is joint and several.

12.11 First City Telecom may require a variation to the terms and conditions of the Agreement if so required by legislation, the Operator, OFTEL, ICSTIS or any similar authority.

12.12 Nothing within this Agreement is intended to create third party rights pursuant to the Contracts (Rights of Third Parties) Act 1999.

12.13 Any dispute as to the sum to which First City Telecom is entitled pursuant to clause 11.3 shall be referred to a single expert to be appointed by agreement between the parties or in default by the application of either party to the President for the time being of the Institute of Chartered Accountants. The expert's fees will be shared equally by the parties.

12.14 This Agreement is governed by English Law and English Courts shall have exclusive jurisdiction as regards any dispute.