

# FIRSTCOM EUROPE LTD

## TERMS AND CONDITIONS

### GENERAL TERMS

#### 1. DEFINITIONS

1.1. The following words have the following meaning:

“**Account**” means the Account opened by Firstcom in the name of the Customer relating to the Services.

“**Agreement**” means these terms and conditions and the Customer Order Form.

“**Affiliate**” means any subsidiary of Firstcom or any entity that directly or indirectly controls, is controlled by, or is under common control with Firstcom.

“**BT**” means British Telecommunications Plc.

“**Commencement date**” means the date the Services ordered (as set out on the Customer Order Form) become live, for clarity this is not the order date mentioned on the Customer Order Form. If your order contains packaged services (i.e. a number of Services for a fixed monthly amount) your commencement date is the date the final Service went live with Firstcom.

“**Customer**” or “**You**” means the company, partnership, sole trader or other legal entity named in the Customer Order Form.

“**Customer Order Form**” means the accompanying document titled Customer Order Form containing details of the Customer and the Services.

“**Data Services**” means the Services relating to data as specified in the Customer Order Form.

“**Equipment**” means any Equipment supplied by Firstcom to the Customer.

“**Firstcom**” or “**we**” or “**us**” means Firstcom Europe Ltd, including its successors and assigns and any Affiliates thereof.

“**Firstcom Designated Carrier Network**” means the telecommunications network.

“**Least Cost Routing Software**” means software installed on a telephone system which automatically enables the routing of calls via different telephone networks.

“**Line Rental**” means rental of the Customer’s ISDN or Analogue line(s).

“**Microenterprises**” means microenterprises, small enterprises and not-for-profit Customer for which no more than 10 individuals work (employees, volunteers or otherwise).

“**Minimum Term**” means the minimum duration for each Service which, unless otherwise expressly stated on the Customer Order Form, will be as stated in this Agreement under the Service Specific Terms and Conditions.

“**MLU Access**” means the automatic insertion of the unique Firstcom access code by a unit of Firstcom.

“**Network Services Plan**” means the particular Network Services Plan specified in the Customer Order Form.

“**Preferred Commencement Date**” means the preferred date on which that particular Service is due to commence.

“**Services**” means the services requested by the customer as particularised in the Customer Order Form.

“**Services Literature**” means Firstcom’s literature specific to the Services.

“**Site**” means the place of business at which the Services and Equipment are to be provided as specified in the Agreement.

“**Software**” means any computer programme that was on the Equipment when supplied or that the Customer received separately.

“**Support Services**” means the support and maintenance services purchased by the Customer as set out in a Customer Order Form.

“**User**” means the Customer and any individual or company permitted to use the Services.

1.2. Headings are inserted for the ease of reference only and do not affect the interpretation of this Agreement.

1.3. Any words following the words **including, include, in particular, for example** or any similar expression will be construed as illustrative and will not limit the sense of the words preceding those words.

#### 2. THE SERVICES

2.1. **Customer Order Form.** The Customer will complete, sign and return to Firstcom a Customer Order Form or Purchase Order prior to Firstcom agreeing to provide the Services. In any event, the Customer agrees that

the receipt by Firstcom of a Purchase Order from the Customer or the use by Customer of any of the Services shall be deemed to be acceptance by the Customer of the Customer Order Form and these terms and conditions.

- 2.2. **Reasonable care and skill.** We will use all reasonable care and skill to provide you with the Services throughout the term of the Agreement.
- 2.3. **Estimated dates and times.** Dates and times for provision of the Services are estimates only and no liability will accrue to Firstcom for failure to meet any such dates.

### 3. CUSTOMER'S OBLIGATIONS

- 3.1. **Use of Services.** The Customer undertakes to Firstcom that the Services will be used only as follows:
  - 3.1.1. in accordance with the Agreement;
  - 3.1.2. only the Customer and the Users will use the Services and no other person will be permitted;
  - 3.1.3. the Services Literature and any other instructions regarding the use of the Services as may be notified to the Customer by Firstcom from time to time will be complied with promptly and deemed to form part of the Agreement; and
  - 3.1.4. for the duration of the Minimum Term it will route all its inbound, non-geographic and outbound calls (including without limitation all its voice, fax and data traffic) via Firstcom on an exclusive basis. For the avoidance of doubt the Customer acknowledges and accepts that during the Minimum Term it will not use any services offered by a third party which are competitive.
- 3.2. **Restrictions on Use of Services.** The Customer will ensure that the Services are not used in the following manner:
  - 3.2.1. For the transmission of any material which is intended to be a hoax call to emergency services or is of a defamatory, offensive, abusive, obscene or menacing character;
  - 3.2.2. Use fraudulently in connection with a criminal offence or in any other way which is unlawful or immoral;
  - 3.2.3. Use which constitutes a violation or infringement of the rights of any other or may, at Firstcom's discretion, be otherwise objectionable;
  - 3.2.4. Use which allows third parties to interfere with or corrupt the Services in any way; or
  - 3.2.5. Otherwise than for the purposes of a telecommunications system.
- 3.3. **Timely Installation.** If the Customer prevents Firstcom from delivering or installing the Services and/or Equipment, including where the Site(s) is unprepared, or if the time from order date to installation of the Services and/or Equipment exceeds 6 months, Firstcom reserves the right to: (i) charge its costs, including without limitation legal costs, to the Customer; and/or (ii) deliver the Services and/or Equipment to site and the Customer must pay in full via the agreed payment method.
- 3.4. **Other obligations.** The Customer agrees that at all times during the term of the Agreement it :
  - 3.4.1. Provide access to all appropriate sites for Firstcom personnel during the Customer's normal working hours and allow the removal, installation and maintenance of any Equipment;
  - 3.4.2. Keep its telecommunications equipment in good working order and ensure that such equipment complies with all applicable standards and approvals so as to enable Firstcom to provide the Services;
  - 3.4.3. Provide all reasonable assistance required by Firstcom to enable it to provide the Services;
  - 3.4.4. promptly provide Firstcom (free of charge) with any information Firstcom may reasonably require to enable it to proceed with the performance of its obligations under the Agreement including any information which Firstcom may reasonably request for the purposes of credit verification and debt collection and the Customer permits Firstcom to use such information and to provide it to third parties acting on behalf of Firstcom for such purposes;
  - 3.4.5. Give Firstcom at least three (3) month's prior written notice of any premises' relocation for telephone number(s) on which the Services are registered; and
  - 3.4.6. Pay Firstcom (at its then current published rates) for all call-out visits required if Firstcom determines that the problem with the Services is not the fault of Firstcom or Access Equipment has been damaged by the Customer.

3.5. **Indemnity.** Customer will Indemnify Firstcom fully against all losses, liabilities, costs (including legal costs) which Firstcom may incur as a result of any breach of the Customers obligations under this Agreement or any misuse of the Services. The Customer must report to Firstcom as soon as it becomes aware of any fraud, deception, or unauthorised or unlawful use relating to the Equipment or Services. The Customer must advise Firstcom in writing if it changes its address.

#### 4. **FIRSTCOM'S RIGHTS**

4.1. **Flexibility.** Firstcom will be entitled to alter any access or authorisation number or method of Services from time to time and may reprogram the Customer's equipment as a result. Firstcom may at any time change the Firstcom Designated Carrier Network, the Services or any Equipment if it needs to do so to comply with any applicable safety or other statutory requirements; or where the change does not materially detract from the quality or performance of the Services. Firstcom will pay for any change to the Firstcom Designated Carrier Network, Services or Equipment made under this clause.

4.2. **Data collection and use.** Firstcom may collect data and information about the Customer's use of the Services and Equipment and share such data and information with: (i) Affiliates of Firstcom; and (II) third parties; but solely for the purposes of providing the Services to the Customer.

#### 5. **CHARGES AND PAYMENT**

5.1. **Payment.** The Customer must pay all sums due to Firstcom within 14 days after the date of the invoice by Direct Debit. If Customer fails to complete the direct debit form, a monthly surcharge of £5 (plus VAT) will be added to the charges to cover Firstcom's increased administrative costs. The Customer is responsible for all charges arising from the use of the Services by any person utilising the Customer's registered Services (with or without the Customer's authorization).

5.2. **Failure to pay.** If the Customer fails to make payment within 14 days of the date of the invoice, without prejudice to its other rights hereunder, Firstcom may:

5.2.1. require the Customer to pay all sums due under this Agreement on demand;

5.2.2. charge interest at a rate equal to the lesser of 3% per month above the Bank of England's Base Lending Rate applicable at the time or the maximum rate permitted by applicable law on any overdue fees, from the due date until the date the overdue amount (plus applicable interest) is paid in full; and

5.2.3. charge the Customer Firstcom's reasonable collection costs, including £85 (plus VAT) for administrative costs.

For the avoidance of doubt, non-payment will be deemed to be a material breach of this Agreement.

5.3. **Increase in charges.** The charges under this Agreement will be increased annually on the anniversary date by a percentage price increase that is equal to the percentage increase in the UK Retail Price Index in the preceding 12 month period plus 3.5%. Negative price movements are expressly excluded. For example, if the charges are £100 per month and the UK RPI increase is 5%, then the charges will increase to  $108.5\% \times £100 = £108.50$  per month.

5.4. **VAT.** All sums due to Firstcom under the Agreement are subject to Value Added Tax ("VAT"), and any applicable taxes, levies or charges which from time to time may be introduced.

5.5. **Invoices.** If there are any errors or omissions in a Firstcom invoice for any period, Firstcom may issue an invoice at a later date. Customers who require paper billing will be charged at the cost of up to £5 (plus VAT) per paper invoice provided.

5.6. If the Customer obtains any services from a third party which are competitive with or substantially similar to the Services during the Minimum Term, materially breaches this Agreement, gives less than the specified amount of written notice to terminate this Agreement, ceases to use the Services or a part thereof (including reduced usage), terminates this Agreement prior to the expiry of the Minimum Term or any subsequent period equivalent to the Minimum Term or fails to achieve any minimum call spend as set out on the Agreement, the Customer accepts that Firstcom will be entitled to invoice the Customer for the loss it suffers, including, for example, loss of revenue for the short notice given for the balance of the Minimum Term based upon an average of 6 calendar months bills of the Customer in which periods the Customer has made

full use of the Services (or such lesser period as is available). Firstcom reserves the right to apply this clause in the alternative to any other provisions in this Agreement.

- 5.7. Where the agreed payment method states 'lease', Firstcom reserves the right to use a third-party finance/lease company to facilitate the purchase of any equipment supplied as part of the Agreement.

## 6. ACCESS EQUIPMENT

- 6.1. The Customer will provide without charge or cost to Firstcom appropriate equipment space, environment and continuous stable electrical power to install and maintain the equipment at its premises.
- 6.2. All Firstcom Access Equipment will remain in the ownership of Firstcom. For Access Equipment on Customer's premises, the Customer will ensure that it is kept safe and upon termination of the Agreement, the Customer will ensure that Firstcom is allowed prompt access to all relevant premises to remove its Access Equipment.
- 6.3. For the avoidance of doubt, if any item of Equipment fails, it will not affect the rights and liabilities of either party for the other items. The Customer's duties under the Agreement will continue and will not be affected by the breakdown, theft, loss, destruction of, or damage to any Equipment.

## 7. INTELLECTUAL PROPERTY RIGHTS

Intellectual Property Rights in all documents, drawings and information including if applicable any access codes supplied to the Customer in connection with the Agreement remain vested in Firstcom or the intellectual property right owner. Such documents, drawings and information are confidential and must not be copied, disclosed or used (except for the purpose for which they were supplied) without Firstcom's prior written consent.

## 8. SUSPENSION

- 8.1. **Suspension.** Firstcom may suspend the Services to the Customer at its sole discretion including but not limited to the following:
  - 8.1.1. if any credit limit between Firstcom and the Customer is breached
  - 8.1.2. If Customer materially breaches the Agreement (including, without limitation, failure to make any payment or to provide any deposit required to be made or provided under the Agreement).
  - 8.1.3. In order to comply with an order, instruction or request of any government, emergency service organisation or other competent authority;
  - 8.1.4. technical problems or work on the network or for reasons of safety;
  - 8.1.5. Fraud or attempted fraud is suspected by Firstcom (in its reasonable opinion) in connection with your use of the Services; or
  - 8.1.6. to maintain or upgrade the Firstcom Designated Carrier Network at the Site.
- 8.2. **Effect on Fees.** Firstcom may levy an administration fee of £52.50 (plus VAT) per number for lifting such a suspension under clauses 8.1.1 and 8.1.2. If suspension occurs for technical reasons or to prevent fraud and that suspension lasts for more than 24 hours, the Customer will receive a pro-rata credit against the monthly access charge for the period of the suspension.
- 8.3. **Notice.** In certain circumstances it may not be possible for Firstcom to provide notice of the suspension. Firstcom will use reasonable endeavours taking account of the circumstances to provide the Customer with as much notice of the suspension and to maintain the suspension for as short a period as is reasonably possible.

## 9. TERMINATION

- 9.1. **Termination Notice.** If the Customer wishes to terminate the Services at the end of the Minimum Term (or any subsequent term) prior written notice of at least 90 days (but no more than 120 days) must be provided to Firstcom by recorded delivery. If such notice is not received by Firstcom, the Services will continue for a further period of 24 months or the Minimum Term stated on the Customer Order Form (whichever is longer) ("Rollover Term"). This clause does not apply to Microenterprises.
- 9.2. **Termination.** Either party (without prejudice to its other rights) may terminate the Agreement forthwith in the event that the other party:

- 9.2.1. materially breaches the Agreement and (if such breach is remediable) fails to remedy it within 14 days of receiving written notice to do so; or
  - 9.2.2. takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this clause.
- 9.3. **Effect of termination or expiration.** If the Agreement is terminated by either party or expires, the Customer will:
- 9.3.1. Pay to Firstcom all outstanding charges together with any interest payable under the Agreement from the date of termination;
  - 9.3.2. Immediately stop using the Services;
  - 9.3.3. Immediately stop using and return to Firstcom all equipment owned or provided by Firstcom and/or allow entry to the Customer's premises during normal business hours for the removal of any Firstcom Access Equipment, The Customer's obligations in respect of the Equipment will continue to apply until First com has removed the Equipment.
- 9.4. After termination of this Agreement, Firstcom will not be responsible for any further programming required by the Customer.

## 10. CONFIDENTIALITY

- 10.1. Except as expressly permitted under this Agreement, the Customer and any User will at all times keep confidential the terms of this Agreement and all matters relating to the Services, and will not disclose the same to any third party without the prior written consent of Firstcom, unless required to do so by a court order or legislation. This obligation will not apply to information which the recipient can prove was in its possession on a non-confidential basis before it was received or which the recipient obtains on a non-confidential basis from some other person who is not under any confidentiality obligation in respect of that information or which is in the public domain otherwise than through breach of confidentiality by the recipient.
- 10.2. Details of the Agreement and the conduct of the Account may be registered with a licensed Credit Reference Agency. Information thus registered may be used to help make credit decisions, for fraud prevention or the tracing of debtors.

## 11. DATA PROTECTION

Both parties must comply with the current Data Protection Legislation when dealing with personal data given to the other party under the Agreement.

## 12. LIMITATION OF LIABILITY

- 12.1. Firstcom accepts liability for death or personal injury resulting from our negligence or for our fraud or fraudulent misrepresentation or for any other liability that we cannot by law exclude or limit.
- 12.2. We also accept liability for loss or damage to your physical property arising from our negligence. We'll pay up to £10,000 for such loss or damage in total in any 12 month period.
- 12.3. Except as set out in Clauses 12.1 and 12.2, Firstcom will not be liable to the Customer in relation to the Services and this Agreement, whether in contract, tort or otherwise (including negligence) for more than £5,000 for one event or series of related events and £15,000 in total for all events arising in any 12 month period.
- 12.4. Firstcom and its suppliers and service providers do not offer or guarantee a fault free service. Except as expressly set out in this clauses 12.1 and 12.2, Firstcom will not be liable to the Customer in relation to the Services and this Agreement, whether in contract, tort or otherwise (including negligence) for any:
- 12.4.1. consequential or indirect loss;
  - 12.4.2. loss of actual or anticipated profits;
  - 12.4.3. loss of revenue;

- 12.4.4. loss of contracts or business;
  - 12.4.5. loss of anticipated savings;
  - 12.4.6. loss of reputation or goodwill;
  - 12.4.7. loss of or interruption of business;
  - 12.4.8. loss of use or corruption of software, data or information;
  - 12.4.9. acts and omissions of other telecommunications operators;
  - 12.4.10. faults in the Customer's telecommunications equipment
  - 12.4.11. any damages whatsoever caused any reprogramming of the Customer's existing Least Cost Routing Software unless such damage is caused by Firstcom's negligence;
- 12.5. In the event of any failure in the Services, Firstcom will not be liable to the Customer for any charges incurred by the Customer should it direct its telecommunications traffic to another carrier.
- 12.6. Firstcom reserves the right not to provide the Services due to any technical limitations of the telephone system, telephone exchange, or Firstcom Access Equipment.
- 12.7. Firstcom is not responsible for call charges resulting from fraudulent use of the Equipment or Services by the Customer or any third parties and the Customer agrees to pay all additional charges related to such fraud. Firstcom will automatically provide Exceptional Call Reporting for the Customer to cover this risk and this will be provided free of charge to the Customer for a period of 3 months from the start date of the Customer Order Form. Thereafter, charges will apply and the cost of Exceptional Call Reporting will be paid by the Customer unless Customer informs Firstcom within the first 3 month period that they do not wish for Exceptional Call Reporting to continue. This clause will always apply unless the Customer specifically states in writing to Firstcom that the Customer does not want this Exceptional Call Reporting cover to apply. Customer acknowledges that there is an excess charge of £250 (plus VAT) for any monies claimed against Exceptional Call Reporting.

### 13. DEPOSIT AND CREDIT LIMIT

- 13.1. **Deposit.** Firstcom may, on 7 days prior written notice to the Customer, require a payment specified by Firstcom to be held as a deposit against any charges arising from the use of the Services and Firstcom will be entitled to offset such deposit against any amounts due under this Agreement from time to time including interest. Any deposit held by Firstcom will not accrue any interest.
- 13.2. **Credit Limit.** Firstcom may, on 7 days prior written notice to the Customer, stipulate a reasonable monetary limit that will apply to all charges due or which may become due to Firstcom from the Customer. If at any time the amount of charges payable to Firstcom exceeds the stipulated monetary limit, Firstcom will immediately notify the Customer and any amounts incurred in excess of the stipulated monetary limit will immediately become due and payable.

### 14. MICROENTERPRISES AND SMALL ENTERPRISES

- 14.1. The below applies only to Microenterprises and prevails over any conflicting clauses in this Agreement:
- 14.1.1. **Minimum Contract Term – Minimum Term** for our services will be no longer than 24 months unless otherwise agreed in writing by you.
  - 14.1.2. **Automatically Renewable Contracts** – clauses in this Agreement which automatically renew our Agreement with you do not apply to you. Once you have completed the Minimum Term of your contract, you are on a rolling 30 day contract until you renew, change or cancel your contract.
  - 14.1.3. If you are in the process of transferring your services and have 10 days or more before the transfer date, then you can request that we cancel the transfer. You will be subject to cancellation charges for the Services stated in the Agreement.
  - 14.1.4. Firstcom will not extend your contract without your express consent when you buy additional services.
  - 14.1.5. If we make changes to the Services, we will give you at least one (1) month's prior written notice of such changes. You may terminate this Agreement at no additional cost within one month after notification if the changes are not exclusively of benefit to you. This does not apply if the change is purely administrative and has no negative effect on you.

## **15. ASSIGNMENT**

- 15.1. The Customer may not assign, transfer or otherwise deal with any of its rights under the Agreement without prior written consent from Firstcom, such consent not to be unreasonably withheld.
- 15.2. Firstcom may assign, transfer, sub-contract or deal with any of its rights hereunder to an Affiliate or other person by providing at least one (1) month's prior written notice to the Customer.

## **16. FORCE MAJEURE**

Neither party will be liable to the other for any loss or damage which may be suffered by the other party due to any cause beyond the first party's reasonable control including drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, pandemic or epidemic, the act or omission of Government, highway authorities, public telecommunication operators or other competent authority, war, military operations, or riot, difficulty, delay or failure in manufacture, production or supply by third parties of the Services or any part thereof. If any force majeure event lasts for more than 3 months and that event prevents either party from performing all or a material part of its obligations during that period, either party may terminate this Agreement, by giving 14 days prior written notice to the other party.

## **17. THIRD PARTY RIGHTS**

No person who is not a party to this Agreement has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of this Agreement.

## **18. NO WAIVER; SEVERANCE**

Failure by either Firstcom or the Customer to exercise or enforce any right conferred by the Agreement will not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of any other right on any later occasion. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it will be deemed deleted, but that will not affect the validity and enforceability of the rest of this agreement.

## **19. ENTIRE CONTRACT**

The Agreement represents the entire understanding between the parties in relation to the subject matter of the Agreement and supersedes all other agreements and representations made by either party, whether oral or written.

## **20. SERVICE OF NOTICE**

Except as otherwise set out in this Agreement, any notice, invoice or other document which may be given under the Agreement will be deemed to be duly given if sent by recorded post to the registered office of the party to be served (or any other address notified by the party to be served to the other party in writing), or by electronic mail to: (a) Firstcom at [billing@firstcomeurope.co.uk](mailto:billing@firstcomeurope.co.uk); or (b) Customer at Customer's email address stated on the Customer Order Form. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **21. SURVIVAL**

Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement, will remain in full force and effect.

22. **CUSTOMER'S PURCHASE ORDER.** Any terms or conditions in Customer's purchase order or any other related documentation submitted by or on behalf of the Customer to Firstcom do not form part of this Agreement and are void, unless otherwise expressly agreed in writing and signed by both Customer and Firstcom.

## **23. ORDER OF PRECEDENCE**

To the extent of any inconsistency, the Service Specific Terms and Conditions will prevail over the General Terms.

## 24. GOVERNING LAW

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation will be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

## SERVICE SPECIFIC TERMS AND CONDITIONS

### 25. NETWORK SERVICES (INCLUDING LINE RENTAL)

25.1. **Charges.** Firstcom will invoice the Customer monthly in advance for the Line Rental and monthly in arrears for other Network Services at the prices set out in the Network Services plan (as amended in accordance with clause 5.3).

25.2. **Set up charge.** All calls made on Firstcom tariffs are subject to 1p setup charge on local and national calls and 3p setup charge for all calls made to mobiles. Calls to international destinations are subject to a call setup fee.

25.3. **Minimum call charge.** All calls made on Firstcom discount and saver tariffs are subject to 1p minimum call charge.

25.4. **Inclusive or bundled call packages.** For Inclusive or bundled call packages that include mobile destinations, the inclusive mobile allowance only includes calls to the main UK carriers (Vodafone, O2, EE, Three). Calls to any other destination commencing 07 will be charged at the standard tariff rate.

25.5. **Previous Agreements.** The Customer agrees that signing this Agreement will terminate any previous network services/line rental agreement. The Customer authorises Firstcom to use all information the Customer provides in order to liaise directly with another service provider.

25.6. **Minimum Term.** The Customer agrees to purchase the network services/line rental services specified in the Customer Order Form for a Minimum Term of 24 months, which cannot be cancelled or refunded except as set out in this Agreement or the Customer Order Form.

25.7. **Termination Notice.** If the Customer wishes to terminate the network services/line rental services at the end of the Minimum Term (or any subsequent term) prior written notice of at least 90 days (but no more than 120 days) must be provided to Firstcom by recorded delivery. If such notice is not received by Firstcom, the network services/line rental services will continue for a further period of 24 months or the Minimum Term stated on the Customer Order Form (whichever is longer) ("Rollover Term").

25.8. **Early Migration.** If the Customer migrates its call traffic from Firstcom's network before the expiry of the notice required under this Agreement, Firstcom reserves its right to invoice an amount equal to the Customer's average monthly gross profit multiplied by the number of months remaining in the Minimum Term for any products migrated away.

25.9. **Early Termination.** If this Agreement ends before the Minimum Term or subsequent fixed period ends (other than as a result of force majeure or any breach of this Agreement by us) you will pay us:

25.9.1. the Monthly Rental Charges or Package Price which would have been payable if the Agreement had not ended early;

25.9.2. a disconnection fee of £159.00 (plus VAT) for every line and channel whether the Agreement has reached the full minimum period or not;

25.9.3. a charge equal to four times the value of average monthly call billing during the term of this Agreement up to and including the month of termination. If you are on a package which includes bundled minutes, the value is the average excess monthly call charges that are not included in your bundle.

25.10. **Charges for Cancellation and Deferment.** If Customer requests Firstcom to cancel any network transfer or line work order being processed on behalf of the Customer, Customer will pay to Firstcom the full value of the charges due for the Minimum Term within 14 days of the cancellation request being made. If the Customer defers or delays their network transfer or line work order, Firstcom reserves the right to charge an administration fee of £159 (plus VAT) to be paid within 14 days of the request for deferment or delay by the Customer.



- 25.11. **Third Party Service Provider Charges.** The Customer is solely responsible for any third party service provider's charges, including those that relate to faults, equipment used by third party service provider engineers, missed appointments, engineer visits or any other charges that third party service provider may make.
- 25.12. **Backdated Charges.** All charges relating to line rental are normally charged in a timely manner; however, Firstcom reserves the right where necessary to apply and charge the Customer backdated line rental or other charges. The Customer is responsible for the payment of these charges in accordance with the payment terms under this Agreement.
- 25.13. **Fair Usage.** Any unlimited services provided are subject to a fair usage policy of up to 2000 minutes per channel or user. You will be liable to pay for any usage above this at the Firstcom standard pence per minute rate available at [www.firstcomeurope.co.uk](http://www.firstcomeurope.co.uk).
- 25.14. **Call Recording.** Call recording storage is for a maximum of 30 days unless otherwise specified in the Customer Order Form.
- 25.15. **Routing Equipment.** All routers and routing equipment supplied by Firstcom must be returned to Firstcom by Customer within 14 days after the termination or expiration of the Customer Order Form, failing which Customer must pay to Firstcom a charge of £500 (plus VAT) for the router(s) and routing equipment.

## 26. MOBILE SERVICES

- 26.1. **Charges.** The Customer will be charged for all use of the lines supplied including;
- 26.1.1. A monthly access charge which is payable one month in advance, together with payment for any extra services which Firstcom is providing to the Customer;
  - 26.1.2. Call charges for all calls made in the previous month according to the Firstcom tariff which the Customer has chosen;
  - 26.1.3. If the Customer chooses to use the telephone abroad, these charges will include all incoming calls that the Customer receives during that period.
- 26.2. **Adjusting charges.** If the network provider exercises any right against Firstcom to withhold or claw-back payments made by the network provider to Firstcom, Firstcom will be entitled to charge, claw-back or adjust payments, tariffs or discounts made or given by Firstcom to the Customer to the extent that they are based upon payments from the network provider.
- 26.3. **Non-Commercial Use Charges.** If any cellular connection is not being used for commercial purposes, then Firstcom will be entitled to charge, claw-back or adjust any payments, tariffs or discounts made or given in respect of that connection.
- 26.4. **Minimum Term.** The Customer may be supplied with a number of cellular connections (lines) at different times at the Customer's own request. Each supply will be for a Minimum Term of 24 months from the date of the order which cannot be cancelled or refunded except as set out in this Agreement or the Customer Order Form. Subject to any other right of termination under the Agreement, this may only be terminated by giving 90 days' prior written notice not to expire before the end of the Minimum Term.
- 26.5. **Additional Equipment / Upgrade.** Where Firstcom has provided further equipment in respect of any line at a subsidised price (upgrade) or financial support in lieu of equipment (upgrade support) then the Minimum Term that relates to that line is extended by a further period equal to the Minimum Term from the date of supply of the upgrade or upgrade support. This clause does not apply to Microenterprises.
- 26.6. **Termination.** If the Customer terminates the Agreement in breach of these terms and conditions, the Customer will be obliged to pay the monthly access charges in relation to each line supplied until the earliest date that the Customer would have been entitled to end each supply. When this Agreement is terminated Firstcom will disconnect the Customer from the network and it must pay all charges owed to Firstcom.
- 26.7. **Change of Supplier.** In the event that the Customer wishes to change its mobile services supplier after the relevant Minimum Term has expired, Firstcom will arrange for the transfer of the telephone number to the new supplier providing that the Customer has: (i) given the appropriate period of notice to terminate that supply; (ii) paid a reasonable administration fee; (iii) paid all sums due to Firstcom under this Agreement; and (iv) paid a deposit in respect of unbilled calls.

## 27. DATA SERVICES

- 27.1. **Charges.** Firstcom will provide the Customer with the Data Services and associated installation at the charges set out in this Agreement. Unless otherwise agreed in writing, the charges will be payable monthly in advance from the start of the Minimum Term.
- 27.2. **Fair Usage.** Any unlimited services provided are subject to a fair usage policy of 40gb per month. Any usage above 40gb per month will be charged to you at up to £2 (plus VAT) per excess gb used.
- 27.3. **Excess Charges.** If you are subject to a monthly data limit and you exceed this then you will be liable to pay for any usage above this at up to £2 (plus VAT) per excess gb used.
- 27.4. **Disconnection Charges.** Firstcom will always charge the customer a broadband disconnection fee of £45 (plus VAT).
- 27.5. **Fee Increases.** All fees are subject to change from time to time in the event that the carrier increases its fees to Firstcom. Details of any such increase will be provided to the customer as soon as reasonably possible and in any event, at least 30 day prior written notice of the increase will be provided. Microenterprises may terminate the Agreement within 30 days of notification of the increased price, at no additional cost.
- 27.6. **Minimum Term.** The Customer agrees that a Minimum Term of 24 months applies to Data Services supplied to Customer by Firstcom. This Minimum Term cannot be cancelled or refunded except as set out in this Agreement or the Customer Order Form
- 27.7. **Termination Notice.** If the Customer wishes to terminate the Data Services at the end of the Minimum Term (or any subsequent term) prior written notice of at least 90 days (but no more than 120 days) must be provided to Firstcom by recorded delivery. If such notice is not received by Firstcom, the Data Services will continue for a further period of 24 months or the Minimum Term stated on the Customer Order Form (whichever is longer) ("Rollover Term").
- 27.8. **Early Termination.** If the Customer terminates the Agreement before the end of the Minimum Term or Rollover Term Firstcom may charge the Customer the charges that would have been payable for the balance of the Minimum Term or Rollover Term.
- 27.9. **Carrier.** Firstcom may obtain telecommunication services from a carrier in order to supply the Data Services to the Customer and may change the data provider at any time.
- 27.10. **Technical restrictions.** The Customer accepts that it may not be able to receive the Data Services due to certain technical restrictions. If such technical restrictions are discovered after the date of the Agreement, Firstcom may immediately terminate the Agreement in whole or in part without prejudice to any of its rights under the Agreement.
- 27.11. **Change of Site.** If the Customer moves from the Site(s), Firstcom will be entitled to charge the fees that would have been payable by the Customer for the balance of the Minimum Term. If the customer wishes to receive the Data Services at a new Site(s), it may be required by Firstcom to start a new Agreement.

## 28. SUPPORT SERVICES

- 28.1. **Charges.** The Customer will pay 40% of the total order value or £500 (plus VAT) (whichever is the greater) on signing the Agreement and the remaining amount on the installation date. Payment will be due on receipt of the invoice. Firstcom will have the right to stop servicing the Equipment if the Customer does not pay on time.
- 28.2. **Fee Increases.** Firstcom may from time to time increase the charge for Support Services to account for cost increases and we will provide at least 30 days prior written notice before this increase. Microenterprises may terminate the Agreement within 30 days of notification of the increased price, at no additional cost. For all other Customers, if this increase exceeds 10%, the Customer may terminate the Agreement by writing to Firstcom within 30 days of the date of the invoice for the increased price. Customers will not be allowed to terminate the Agreement if the increase has resulted from additions made to the system.
- 28.3. **Minimum Term.** The period of Support Services will start on the Preferred Commencement Date. It will continue for the Minimum Term of 60 months (which cannot be cancelled or refunded except as set out in this Agreement or the Customer Order Form) and then from year to year until terminated at any time by either party giving termination notice in accordance with clause 9.1.
- 28.4. **Ownership of Equipment.** Ownership of the Equipment will remain with Firstcom unless it is paid for in full by the Customer. Until that time the Customer will hold it as Firstcom's fiduciary agent and bailee. The Customer must keep the Equipment separate from other equipment and it must be properly stored, protected,

insured and identified as Firstcom's property. The Customer is not permitted to sell the Equipment and Firstcom can insist on its return.

- 28.5. On expiry of Firstcom's associated lease agreements, the leased system(s) become(s) the property of Firstcom. An invoice will be raised for secondary rental or title of the Equipment unless the Equipment is returned to Firstcom at 2nd Floor, Unit 1B, Parklands, Bolton, BL6 4SD in good working condition by the customer within 30 days of the expiry of the lease.
- 28.6. **Faulty Equipment.** If requested within the manufacturer's warranty period, Firstcom will replace faulty items free of charge with an identical model or one with similar capabilities. Firstcom will do this only if Firstcom supplied the Equipment to the Customer, the Equipment has been maintained only by Firstcom, the Customer is not at fault and liability is not excluded.
- 28.7. **Support Services.** Throughout the term of the Agreement Firstcom will ensure that the performance of the Equipment and the servicing meet the approved standard of the manufacturer including telephone technical support, an engineer's visit to Site when required, service of the central control unit and all components within it, service of key phone instruments, service of Voicemail – auto attendant hardware. Firstcom will endeavour to respond to reported faults within the level of service taken by the Customer but at no time will a failure by Firstcom to do so be construed as a material breach of the Agreement. Support Services will not cover failure due to changes to or disconnection from the approved system, failure of any supplies or connected services, changes in the environment, ancillary items including but not limited to answer phones, call loggers, payphones, public address systems, printers, external music on hold sources, system cabling and consumables unless otherwise agreed in writing and a force majeure event as defined in the Agreement. Any wilful or accidental damage caused to the Equipment will not be covered by any of the provisions of this Agreement. This would include, any wilful or accidental damage caused by any liquids, or any damage caused by electrical faults, lightning strikes, floods or any other act of God. Normal wear and tear is not covered by this Agreement.
- 28.8. If the Equipment is to be connected to the BT Network or other outside services, it is the Customer's responsibility to arrange for provision of any required circuits. The Customer must pay all costs for circuit rentals, connection charges, inspections, commissioning and any other costs necessary to provide the services. Firstcom will not be responsible for any delays in the provision of services. Any such delay will not give the Customer the right to refuse installation of the Equipment or payment due to us.
- 28.9. After Firstcom has installed the Equipment at the Site, our engineer will confirm to the Customer that the Equipment is working satisfactorily. When this is confirmed, the Customer will be taken to have accepted the Equipment. Any warranties for the Equipment from the manufacturer will be passed to the Customer for 30 days.
- 28.10. The Customer must prepare the Site(s) in accordance with Firstcom's instructions so that any necessary Equipment can be installed. The Customer will meet the costs of preparing the Site(s). The Customer must provide adequate electricity supply and suitable earth connection for the operation of any Equipment to be installed at the Site(s) and, in the case of MLU Access, a designated carrier network test and termination point. The Customer must assist and co-operate with Firstcom to enable Firstcom to carry out its obligations under the Agreement including giving access to the Site(s) to install and maintain the Equipment. Firstcom will normally carry out installation and maintenance work during normal working hours but may, on reasonable notice; require the Customer to provide access at other times. At the Customer's request, Firstcom may agree to work outside normal working hours but the Customer will be liable for paying to Firstcom any overtime charges for relevant staff.
- 28.11. **Installation.** Firstcom will attempt to install the Equipment at the Premises so that the Service can be provided on or before the Preferred Commencement Date agreed by Firstcom. Any installation date will be an estimate only and Firstcom will not be liable for any failure to meet such installation date. Should the Customer prevent Firstcom from delivering or installing the Equipment, including where the Site(s) is unprepared, or if the time from order date to installation of the Equipment exceeds 6 months, Firstcom reserves the right to: (i) charge its costs, including without limitation legal costs, to the Customer; and/or (ii) deliver the Equipment to site and the Customer must pay in full via the agreed payment method. Firstcom will attempt to comply with the Customer's reasonable requests in respect of installation but Firstcom's decision on the routing of cables and wires and the positioning of outlets and Equipment will be final.

Firstcom accepts no liability whatsoever for any loss the Customer or any third party may suffer as a result of installation of the Service.

- 28.12. **Invalidation.** Support Services will not apply if any part of the Equipment that has been serviced, maintained or worked on for whatever reason or purpose by any party other than Firstcom or a party authorised by Firstcom.
- 28.13. **Settlements and Reimbursements.** If your equipment funding includes any settlement or reimbursement this must be claimed from Firstcom within 12 months after the date of installation of equipment otherwise it becomes void and unenforceable and Firstcom will have no liability to pay any invoice from you delivered after that period of 12 months has expired. To clarify the claim must be submitted in writing to Firstcom and acknowledged in writing by Firstcom.
- 28.14. **Fault Assurance Service.** The Customer is not eligible for Fault Assurance credits in the event the lines, as notified within the BT engineering report, have been physically damaged by the Customer or another 3rd party. Fault Assurance Service will be provided free of charge to the Customer for a period of 3 months from the start date of the Customer Order Form. Thereafter, charges will apply and the cost of Fault Assurance Service will be paid by the Customer unless Customer informs Firstcom within the first 3 month period that they do not wish for Fault Assurance Service to continue.

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