

## FIRST RECOVERY LIMITED TERMS & CONDITIONS

### 1. Interpretation

#### 1.1. In these terms:

**"Appointed Representative"** means the person designated as such (in writing) by First Recovery and the Client respectively.

**"Business Day"** means any day which is not a Saturday, a Sunday or a bank holiday or public holiday in England and Wales.

**"Charges"** means the charges levied by First Recovery in accordance with the tariffs, scales, charges, invoicing methods and terms of payment set out in these terms and the Specification Sheet.

**"the Client"** means the person named on the Specification Sheet for whom First Recovery has agreed to provide the First Recovery Service in accordance with these terms.

**"Client Business Information"** means all information pertaining to and which is required for the continuation of the Client's business including contact details for employees, contractors, agents, suppliers, customers, together with information relating to the Client's email service provider including dial-up telephone numbers, email account names, and DNS internet provider address details.

**"the Client Premises"** means the business premises described in the Specification.

**"the Contract"** means the contract for the provision of the First Recovery Service by First Recovery to the Client.

**"Direct Physical Damage"** means damage to, or the complete or partial destruction of, the whole or part of the buildings at the Client Premises, or their contents.

**"the Emergency Accommodation"** means the alternative office accommodation for occupation by the Client to be arranged by First Recovery.

**"the Emergency IT System"** means the substitute IT system to be arranged by First Recovery, including PC's and a PC Network.

**"First Recovery"** means First Recovery DIRECT a division of First Recovery Limited of 148 Leadenhall Street London EC3V 4QT (No. 04631308 registered office 30 Camp Road, Farnborough, GU14 6EW).

**"the First Recovery Service"** means the disaster recovery facilitation services provided to the Client by First Recovery DIRECT and/or its Service Partners described in the Specification Sheet and these terms.

**"the IT Services Provider"** means the person chosen by First Recovery to provide the Emergency IT System and associated services to the Client.

**"Month"** means a calendar month.

**"the Office Services Provider"** means the person chosen by First Recovery to provide the Emergency Accommodation.

**"PC"** means a personal computer or laptop equivalent comprising a CPU, a screen, a keyboard, a mouse, operating system, software, internet browser and e-mail software.

**"PC Network"** means a wireless network including the modems, leased circuits and other telecommunications hardware and software.

**"Person"** includes an individual, a partnership, and any legal entity (including a company, a limited liability partnership and any other corporate body).

**"Service Partner"** means the IT Services Provider and the Office Services Provider, either individually or collectively.

**"the Specification Sheet"** means the sheet to which these terms have been appended by First Recovery.

**"VAT"** means value added tax at the applicable rate prevailing from time to time.

**"Week"** means a period of seven consecutive days.

**"Workstation"** means office furniture comprising a desk, chair and filing space, together with a telephone point and network point for e-mail and internet connection.

#### 1.2. Headings are for convenience only and shall not affect their interpretation.

#### 1.3. Unless the context otherwise so requires:

- (a) references to the Client and First Recovery include their permitted successors and assigns;
- (b) references to statutory provisions include those statutory provisions as amended or re-enacted; and
- (c) references to any gender include all genders.

#### 1.4. In the case of conflict or ambiguity between any provision in these terms and the Specification Sheet, the provision in the Specification Sheet shall take precedence.

### 2. First Recovery's Obligations

#### 2.1. Upon receipt of instructions from the Client's Appointed Representative, First Recovery shall provide to the Client those aspects of the First Recovery Service requested by the Client.

- 2.2. First Recovery has no obligation to provide the First Recovery Service to the Client, or to continue providing it, unless:
- (a) The Client has suffered Direct Physical Damage which prevents the Client carrying on its usual and normal business activities at the Client Premises, and continues to do so; and
  - (b) The Client has paid all First Recovery's charges strictly in accordance with these terms and continues to do so.
- 2.3. If First Recovery starts to provide any part of the First Recovery Service to the Client at the Client's request when it has no obligation to do so, the Client shall promptly pay First Recovery's then current charges for those services.

### **3. The First Recovery Service**

The First Recovery Service comprises the services described in this Clause 3.

#### **3.1. Emergency Accommodation**

- (a) This service is subject to the ready availability of suitable accommodation.
- (b) First Recovery shall use reasonable endeavours to have Emergency Accommodation made available to the Client (through the Office Services Provider) as close as possible in distance to the Client Premises within 2 clear Business Days.
- (c) The Emergency Accommodation is intended to provide temporary accommodation in an emergency so as to enable the Client to carry on its fundamental business activities. It is not intended to be of a standard equivalent to that of the Client Premises, and First Recovery is not obliged to provide accommodation to such a standard. The Emergency Accommodation may provide a different Workstation, office and/or cubicle arrangement to that at the Client Premises. In particular, First Recovery cannot guarantee that all the Workstations will be located in a single room or unit.
- (d) First Recovery shall use best endeavours to ensure that the rental agreement or lease in respect of the Emergency Accommodation is in the name of the Client.
- (e) First Recovery shall pay the Office Services Provider its fee for one month's occupation by the Client, including any deposit or retainer required by the Office Services Provider.

#### **3.2. Emergency IT System**

First Recovery shall use reasonable endeavours to have the Emergency IT System delivered and (subject to the Office Services Provider's consent) installed at the Emergency Accommodation within 2 clear Business Days. This service is subject to the ready availability of suitable IT equipment, software and facilities. Following the installation of the Emergency IT System, First Recovery shall use reasonable endeavours to arrange for appropriate tests to be carried out in order to ensure that it operates adequately in all material respects.

#### **3.3. Emergency Communications Redirect**

First Recovery shall use reasonable endeavours to have telephone calls and facsimile messages directed to the Client's normal telephone number(s) at the Client Premises diverted to the Emergency Accommodation within 2 clear Business Days. This is subject to any third party having any rights in, or control over, the Client Premises, any equipment or software there, or any relevant telecommunications network, providing all necessary permissions, co-operation and access.

### **4. Changes to the First Recovery Service**

- 4.1. First Recovery may make any changes to the First Recovery Service which it reasonably believes are necessary to comply with any applicable health, safety or legal requirement.
- 4.2. First Recovery may make any changes to the First Recovery Service which it reasonably believes do not materially affect the nature or quality of the First Recovery Service.

### **5. The Client's Obligations**

- 5.1. The Client shall comply fully with these terms.
- 5.2. The Client shall pay the charges set out in the Specification Sheet.
- 5.3. The client shall reimburse First Recovery for any monies paid as a deposit or retainer to the Office Services Provider in respect of the Emergency Accommodation. The Client shall reimburse these monies within 14 days of receiving First Recovery's invoice.
- 5.4. The Client shall comply fully with its agreement with the Office Services Provider.
- 5.5. the Client shall pay the Office Services Provider all monies due in respect of the Client's use or occupation of the Emergency Accommodation.
- 5.6. The client shall pay First Recovery the rental fees for any parts of the Emergency IT System it retains beyond the first month.
- 5.7. The Client shall, at its own expense:
  - (a) Provide First Recovery with
    - (i) the Client Business Information, and

(ii) all other information and documentation which is within its possession which is reasonably required by First Recovery, and in each case shall do so in good time to enable First Recovery to fulfil its obligations to the Client.

(b) Co-operate fully with First Recovery and its agents.

(c) Do anything reasonably required by First Recovery (including executing any documents).

5.8. The Client does not become the owner of anything provided by First Recovery, the Office Services Provider, or the IT Services Provider. Nor does the Client acquire any right or interest in or to any such things. The Client shall not dispose of them. The Client shall keep them safe and in good condition until they are returned, and they are at the Client's risk until it returns them.

5.9. The Client shall indemnify First Recovery against any liability which it incurs to any third party (including a Service Partner) as a result of:

(a) the Client's breach of this agreement;

(b) the Client's breach of any terms which apply to the Client's use of any equipment, software, premises, facility or service provided by a Service Partner.

## **6. Confidentiality**

6.1. Any information provided by the Client which is designated confidential by the Client shall be kept confidential by First Recovery, and all confidential information provided by First Recovery which is designated confidential by First Recovery shall be kept confidential by the Client; but the foregoing shall not apply to any information which is public knowledge at the time it is so provided, and shall cease to apply to any information which subsequently becomes public knowledge through no fault of the receiving party.

## **7. Limited warranties**

7.1. The First Recovery Service relates to arrangements for certain equipment, facilities and services to be made available by third parties (the Service Partners) to the Client in certain circumstances. First Recovery warrants that it will exercise reasonable care and skill when providing the First Recovery Service, which includes its selection of the Service Partners, but it does not give any condition, warranty or other assurance regarding any premises, equipment, software, facilities or services provided by the Service Partners other than that the person providing them will have the right to do so and that the Client will have the right to use them in accordance with the terms on which they are provided.

7.2. All conditions, warranties and other terms regarding the First Recovery Service which would otherwise be implied (whether by law, by any circumstances, by the nature of the service, or otherwise) are excluded.

7.3. All conditions, warranties and other terms regarding the Service Partners, and any premises, equipment, software, facilities or services provided by them, which would otherwise be implied (whether by law, by any circumstances, by the nature of what has been provided, or otherwise) are excluded.

## **8. Restricted liability**

8.1. First Recovery will not be liable for any loss of business, revenue or profit.

8.2. First Recovery will not be liable for any loss of, or damage to, reputation.

8.3. First Recovery will not be liable for any indirect or consequential loss or damage.

8.4. Provided it has selected the Service Partners with reasonable care and skill, First Recovery will not be liable for any act, omission or representation of any third party (including the Service Partners), whether wilful, negligent, fraudulent, dishonest, reckless or otherwise.

8.5. If First Recovery should be shown to have failed to have provided the First Recovery Service with reasonable care and skill, it will not be liable for any act, omission or representation of any third party (including the Service Partners), whether wilful, negligent, fraudulent, dishonest, reckless or otherwise, unless it ought reasonably to have foreseen that it was likely to occur.

8.6. First Recovery will not be liable for any act, omission or representation of a Broker, or any other representative, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise.

8.7. First Recovery will not be liable for the consequences of any fault or omission on the part of the Client or its representative, including any instructions supplied by the Client not being received, being received late, being incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form.

8.8. First Recovery will not be liable to pay more than £25,000.00 in aggregate and total, in respect of all claims arising out of this agreement, any breach of it, or any aspect of the First Recovery Service provided to the Client.

8.9. A restriction of a party's liability covers its liability on any legal or equitable basis for loss or damage of the kind described even if: (i) it is loss or damage of a kind which is in the contemplation of the parties, or ought reasonably to be in their contemplation, either at the time of entering into this Agreement or at any other time; (ii) it is loss or damage which arises naturally, in the ordinary course of things; or (iii) it is loss or damage resulting from that party's negligence, or other negligence for which it would otherwise be liable.

- 8.10. As special exceptions, a restriction of a party's liability does not exclude or restrict any liability which it would otherwise have for any of the following: (i) any breach of any condition or warranty regarding title to any goods; (ii) any personal injury to anyone (whether or not it results in their death) resulting from negligence; (iii) fraud.

## **9. Duration and termination**

- 9.1. The Client may terminate the Contract at any time.
- 9.2. If the Client commits a material breach of these terms which cannot be remedied, First Recovery may terminate the Contract with immediate effect.
- 9.3. If the Client commits a material breach of these terms which can be remedied, First Recovery may terminate the Contract with immediate effect if it has notified the Client of the breach and the Client has failed to remedy it within 14 days.
- 9.4. First Recovery may terminate the Contract with immediate effect if: (i) the Client convenes a meeting of its creditors; (ii) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986; (iii) a proposal is made for any other composition scheme or arrangement with (or assignment for the benefit of) the Client's creditors; (iv) the Client is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; (v) if a trustee, receiver, administrative receiver, administrator, liquidator or similar officer is appointed in respect of all or any part of the business or assets of the Client; (vi) if a petition is presented, or a meeting is convened, for the purpose of considering a resolution for the winding up of the Client or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction), or other steps towards that end are taken.

## **10. Consequences of Termination**

- 10.1. On termination of the Contract for whatever reason, First Recovery shall use reasonable endeavours to procure the return to the Client as soon as reasonably practicable of anything belonging to the Client which is in the possession or control of First Recovery or the Service Partners at the time of termination.
- 10.2. Notwithstanding termination of the Contract, the Client shall pay to First Recovery all sums which have become due.
- 10.3. Termination of the Contract for any reason shall not prejudice any other rights or remedies which either party would otherwise be entitled to, whether under these terms or otherwise, and shall not affect any accrued rights or liabilities of either party.
- 10.4. Termination of the Contract for any reason shall not prevent the coming into force, or the continuation of, any provision which, either expressly or by implication, is intended to come into force upon, or continue after, such termination.

## **11. Force majeure**

- 11.1. A party is not in breach of this Agreement, or otherwise liable to the other party, as a consequence of its late performance or non-performance of its obligations under this Agreement to the extent that its performance is delayed, hindered or prevented by any cause beyond its reasonable control (not including the acts and omissions of its own sub-contractors and the acts and omissions of the other party) provided it promptly notifies the other Party in writing of the reasons for the delay and uses all reasonable endeavours to avoid, overcome or minimise the effects of such delay and fulfils its outstanding obligations as soon as it becomes reasonably practicable to do so.

## **12. General**

- 12.1. These terms, together with the Specification Sheet, constitute the entire agreement between the parties and supersede any previous agreement or understanding. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 12.2. A notice to a party which is required or permitted by these terms must be in writing and must be delivered either at that party's registered office or at such other address as, at the relevant time, it has identified for that purpose.
- 12.3. A party's delay in exercising any right, or seeking any remedy, in respect of any breach of these terms, or its failure to do so, shall not by itself amount to a waiver of that or any other breach and shall not by itself prevent that party exercising that or any other right, or seeking that or any other remedy, in respect of that or any other breach.
- 12.4. First Recovery's acceptance of any payment due under these terms shall not by itself amount to a waiver of any breach of these terms or any other agreement, including any previous failure by the Client to pay any monies due under these terms or any other agreement.