

## **General Terms and Conditions**

### **1. Definitions and interpretation**

1.1 Definitions. In this Agreement the following terms shall have the following meanings:

**"Activation Date"** means the date on which Three confirms to the Customer that the Customer may make operational or active use of the Managed Network Services at a specific Customer Site.

**"Business Day"** means any day when the main clearing banks are open for general business in Dublin, Ireland.

**"Charges"** means the charges payable to Three for the Managed Network Services as set out in the Order Specification.

**"ComReg"** means the Commission for Communications Regulation being the national regulatory authority responsible for the regulation of the electronic communications sector in the Republic of Ireland, registered at Block DEF, Abbey Court, Irish Life Centre, Lower Abbey Street, Dublin 1.

**"Commencement Date"** means the start date of this Agreement specified in the Order Specification.

**"Confidential Information"** means all information of a confidential nature including the relationship of the parties, the existence and terms of this Agreement, prices, and all other information whether of a technical or business nature or otherwise relating in any manner to the business or affairs of the other party which either party and its Affiliates may receive or has received in connection with this Agreement whether in whole or in part and regardless of the medium by which such information is supplied.

**"Customer Equipment"** means the computer hardware, cabling, apparatus and facilities installed or used by the Customer at each Customer Site to access the Managed Network Services.

**"Customer Site(s)"** means the Customer site/sites where the Managed Network Services are to be provided (as specified in Appendix 1 to the Order Specification).

**"Customer Site Policies"** means the Customer policies and regulations which apply in respect of Customer Sites.

**"Data Protection Legislation"** means the Data Protection Acts, 1988 and 2003 and, from 25 May 2018, Regulation (EU) 2016/679.

**"Group Company"** means a subsidiary company or holding company of Three (as the terms 'subsidiary company' and 'holding company' are defined in section 7 and section 8 of the Companies Act, 2014).

**"Installation Charges"** the amounts payable for installing Services Equipment at a Customer Site and/or preparing a Customer Site for provision of the Managed Network Services.

**"Internet"** means the global system of interconnected computer networks that use internet protocol suite (TCP/IP) to link devices worldwide.

**"Law"** means: (i) any applicable statute or any delegated or subordinate legislation; (ii) any enforceable community right within the meaning of the European Communities Act 1972; (iii) any applicable guidance, direction, determination or regulations with which either party is bound to

comply to the extent that the same are publicly available or the existence or contents of them have been notified to the other party; (iv) any applicable judgement of a relevant court of law which is a binding precedent in Ireland, in each case in force at any time during the term of this Agreement.

**“Managed Firewall Services”** means the services provided to the Customer under this Agreement which enables the monitoring of incoming and outgoing of data examination of data sent to and from the Customer’s network (as further generally described in Appendix 2 to the Order Specification).

**“Managed Internet Access Services”** means the services to be provided to the Customer under this Agreement allowing connectivity to the Internet from Customer Sites (as further generally described in Appendix 2 to the Order Specification).

**“Managed LAN Services”** means the local area network services provided to the Customer under this Agreement allowing network connectivity between Customer Sites within a limited radius (as further generally described in Appendix 2 to the Order Specification).

**“Managed Network Services”** means the services to be provided to the Customer under this Agreement including, where specified in Annex 1, Managed Firewall Services, Managed Internet Access Services, Managed LAN Services, Managed WAN Services and Managed Wi-Fi Services.

**“Managed WAN Services”** means the wide area network services provided to the Customer under this Agreement allowing network connectivity between Customer Sites (as further generally described in Appendix 2 to the Order Specification).

**“Managed Wi-Fi Services”** means the services provided to the Customer under this Agreement allowing third party computers, smartphones, or other devices to connect to the Internet within a particular Customer designated area (as further generally described in Appendix 2 to the Order Specification).

**“Minimum Term”** means the minimum number of months from the Activation Date specified in the Order Specification.

**“Network”** means the telecommunications network maintained and operated by Three and used to provide the Managed Network Services.

**“Order”** means an order for Managed Network Services submitted to Three by the Customer.

**“Planned Maintenance”** means any work planned in advance to be carried out by or on behalf of Three which requires the availability of the Managed Network Services to be temporarily suspended.

**“Services Equipment”** means the routers, cabling and other hardware installed by Three at Customer Sites to provide access to the Managed Network Services.

**“Service Level(s)”** means those standards of target performance and fault identification and target resolution to be achieved by Three in providing Support Services to the Customer pursuant to the Support Schedule.

**“Support Services”** means the Managed Network Services support services specified in Schedule 1 to the General Terms and Conditions.

## 1.2 Interpretation

- (a) In the event of a conflict between the Order Specification and the General Terms and Conditions, the terms of the Order Specification will control and prevail. In the event of a conflict between the provisions of the General Terms and Conditions and Schedule 1 to the General Terms and Conditions, the General Terms and Conditions will control and prevail.

## **2. Orders**

- 2.1 Subject to the Customer completing the application procedure for Managed Network Services in accordance with Three's standard procedures and acceptance by Three of an Order, Three agrees to provide the Customer with the Managed Network Services specified in an Order.
- 2.2 All Orders shall be subject only to the terms of this Agreement. Notwithstanding any language on an Order or any other document or communication to the contrary, the terms of this Agreement shall take precedence over any other document or communication issued by the Customer to Three.

## **3. Managed Network Services**

- 3.1 As soon as is reasonably practicable following completion of the Customer's services application and subject to technical feasibility, Three will connect the Customer Sites to the Managed Network Services. Three shall use reasonable efforts to provide the Managed Network Services by any date agreed with the Customer but the Customer acknowledges and agrees that dates agreed for service delivery are estimates and that Three has no liability for any failure to provide the Managed Network Services by any specific date.
- 3.2 Subject to clause 3.3, Three will provide the Managed Network Services with the reasonable skill and care of a competent telecommunications service provider.
- 3.3 The Customer acknowledges and agrees that the provision of Managed Network Services is not error or fault free and is subject to operational, geographic and technical feasibility.
- 3.4 Three makes no additional guarantees or warranties whatsoever in relation to the Managed Network and the Support Services and their operation or use. Any conditions or warranties (whether express or implied by statute, common law or arising from a course of conduct or a previous course of dealing or trade custom or usage) as to merchantability, quality or fitness for a particular purpose (even if that purpose is made known expressly or by implication to Three) are, to the fullest extent permitted by any applicable law, excluded in full.
- 3.5 Three will, subject to ten (10) Business Days' written notice to the Customer, be entitled to discontinue the provision of Managed Network Services (or any component) at a Customer Site without penalty or liability where the Managed Network Services (or any component) are determined by Three to be incapable of delivery owing to operational, geographic or technical circumstances. Three will implement the discontinuation of the Managed Network Services (or any component) in such a way as to avoid and minimise material disruption to the Customer.

## **4. Customer Sites**

- 4.1 The Customer shall provide a contact person for each Customer Site to enable the installation of Services Equipment and shall procure an appropriate supply of electricity and other utilities and services at each Customer Site as may be required to receive, access or use the Managed Network Services.

- 4.2 The Customer authorises Three (and third parties acting on behalf of Three) to access Customer Sites to install the Services Equipment at the Customer Sites. The Customer additionally authorises Three (and third parties acting on behalf of Three) to access Customer Sites at the expiry of this Agreement in order to disconnect and remove the Services Equipment located at Customer Sites.
- 4.3 Three (and any third party acting on behalf of Three) will observe the Customer Site Policies as previously advised in writing to Three. In the event of any conflict between the Customer Site Policies and the terms of this Agreement, the terms of this Agreement will control and prevail.
- 4.4 Three (and any third party acting on behalf of Three) may need to access Customer Sites from time to time (for example, for installation, repairs, maintenance or upgrades) and Customer agrees to permit such access (and agrees not to unreasonably withhold access permissions in this regard).
- 4.5 The Customer will procure a safe and suitable working environment for Three personnel (and for any third party personnel acting on Three's behalf) that are provided with access to Customer Sites in connection with this Agreement.

## **1. Equipment**

- 5.1 Title and ownership in the Services Equipment shall remain with Three and, subject to compliance with the terms of this Agreement and payment of all Charges due, Three grants to the Customer for the term of this Agreement an internal, non-exclusive, royalty-free licence to use the Services Equipment for the purposes of accessing the Managed Network Services and for no other purpose. Risk in the Services Equipment installed at Customer Sites shall transfer and vest in the Customer upon completion of the Services Equipment installation process.
- 5.2 The Customer shall comply with and agrees to be bound by all conditions of any license or instructions under which the Services Equipment or any third party technology is provided as part of the Managed Network Services.
- 5.3 The Customer agrees to use the Services Equipment in accordance with any reasonable instructions issued by Three.
- 5.4 The Customer is responsible for providing, configuring, connecting and maintaining necessary Customer Equipment and other computer hardware, software and telecommunications equipment (where applicable) and services necessary to the provision, access and use of the Managed Network Services.

## **6. Customer Responsibilities and Managed Network Service Limitations**

- 6.1 The Customer will (i) inform Three of existing facilities which run the risk of being damaged either during the installation of the Services Equipment or at any stage as part of the provisioning of the Managed Network Services; (ii) not do anything which damages or adversely affects the performance of the Managed Network Services (nor permit any other person to do so); (iii) maintain the Services Equipment installed at Customer Sites with reasonable skill and care and at no charge or cost to Three; and (iv) use commercially reasonable efforts to prevent third party or unauthorized access to, or use of, the Managed Network Services.

- 6.2 Three shall have no liability for the Customer's inability to access or use the Managed Network Services caused by the Customer's failure to comply with clause 6.1.
- 6.3 The Customer acknowledges and agrees that the Managed Network Services may be suspended or disrupted:
- where there is a general Network failure;
  - to allow Three to carry out routine or emergency maintenance or repair works or upgrade work on the Network;
  - for other operational reasons or emergencies or for reasons of security;
  - where Three are asked to do so by a government or regulatory body; or
  - where Three are entitled to suspend the Managed Network Services in the ways allowed by the terms of this Agreement.
- 6.4 The Customer acknowledges and agrees that Three may modify or release a new version of elements of the Managed Network Services at any time and for any reason including, but not limited to, to address general customer needs or otherwise address competitive demands, to respond to a government regulation, order or Law or to advance innovation in the performance of the Managed Network Services.

## **7. Support Services**

- 7.1 Three will provide the Customer with the Support Services specified in Schedule 1 with the reasonable skill and care of a competent telecommunications service provider.
- 7.2 Subject to clause 7.3, no service credits are due or payable for any failure to achieve or comply with the Service Levels.
- 7.3 At the request of the Customer, Three will provide the Customer with a report setting out Three's performance against the Additional Service Level specified in Schedule 1 (Support Services) in respect of the Managed WAN Services in the immediately preceding month and where Three has failed to attain the specified Service Level in connection with the Managed WAN Services, Three will promptly credit the Customer with an amount equal to the service credits due (where service credits apply). Service credits are calculated in accordance with section 1.5 of the Support Schedule. Payment of service credits operates to the exclusion of any claim for costs, losses, expenses or general damages and is specifically agreed by the Customer to be the sole right for failure on the part of Three to provide the Managed WAN Services in accordance with the Additional Service Level specified in Schedule 1.

## **8. Charges and Payment**

- 8.1 The Customer agrees to pay all Charges within thirty (30) days of the date of Three's invoice without any set-off, counterclaim or deduction. Three reserves the right to charge interest on any overdue amount at 2% per annum above Allied Irish Bank plc's base lending rate as varied from time to time until any outstanding amount due to Three has been paid in full.
- 8.2 Unless otherwise stated, all Charges are in euro (€) and shall be exclusive of Value Added Tax (VAT) and all other mandatory sales taxes.
- 8.3 If the Customer disputes any Charges appearing on a Three invoice the Customer must contact Three before the due date of payment. Following investigation by Three, should these Charges be deemed incorrect the amount payable will be updated in a subsequent invoice. If these Charges are deemed correct then the full amount remains due and payable to Three.

- 8.4 Failure to pay an invoice (other than amounts which are disputed prior to the due date of payment in accordance with clause 8.3) by the Customer within thirty (30) days of the date of invoice may, at Three's option, be treated as a material breach of this Agreement.
- 8.5 The Customer acknowledges and agrees that Installation Charges are upfront non-refundable charges which will be immediately billed following execution of this Agreement by the Customer.

## 9. Confidentiality

- 9.1 Each party (the "**Receiving Party**") shall keep confidential any information relating to the business, affairs, plans or products of the other party or any third party, which is designated as "confidential" or which ought reasonably to be regarded as confidential which is obtained under or in connection with this Agreement ("**Confidential Information**") and shall not divulge the same to any third party without the prior written consent of the other party (the "Disclosing Party").
- 9.2 The provisions of this clause shall not apply to: (a) any information in the public domain otherwise than by breach of this Agreement; (b) information in the possession of the Receiving Party with full right to disclose; (c) information obtained from a third party who is free to divulge the same; (d) information which is properly disclosed pursuant to a statutory obligation, the order of a court of competent jurisdiction or that of a competent regulatory authority; or (e) in the case of Three, disclosure is required by ComReg or an applicable regulator exercising lawful authority.
- 9.3 The Receiving Party may disclose the Disclosing Party's Confidential Information to any of its directors, other officers and employees (each a "**Recipient**") to the extent that disclosure is reasonably necessary for the purposes of this Agreement. The Receiving Party shall ensure that each Recipient is made aware of and agrees to comply with the Receiving Party's confidentiality obligations under this Agreement as if the Recipient was a party to this Agreement.

## 10. Data Protection

- 10.1 Three acknowledges that the Customer is the data controller in respect of any personal data that Three processes in the course of providing Managed Network Services to the Customer and that Three is the data processor.
- 10.2 Three shall only process personal data under this Agreement in accordance with the reasonable written instructions of the Customer and in accordance with applicable Data Protection Legislation, including in particular:
- 10.2.1 the adoption of appropriate technical and organisational measures against accidental disclosure, loss or destruction of personal data;
- 10.2.2 informing the Customer within 72 hours in the event of unauthorised disclosure, loss or destruction of any personal data processed under this Contract ("**Security Incident**") which comes to Three's attention. Unless required by law or other obligation, Three agrees that it will not communicate with any third party including but not limited to the media, vendors, consumers and affected individuals regarding any Security Incident without the consent and direction of the Customer;
- 10.2.3 referring to the Customer any requests, notices or other communication from data subjects, the Office of the Data Protection Commissioner or any other law enforcement agency relating to personal data for Customer to resolve;

10.2.4 ensuring that Three personnel processing personal data under this Agreement are under an obligation of confidentiality;

10.2.5 at the cost of the Customer, Three will make available reasonable information necessary to demonstrate compliance with this clause, which shall include, once per calendar year on giving 28 days' notice, the right for the Customer to conduct a reasonable audit of Three to satisfy the Customer that Three is in compliance with this clause. Where any instances of non-compliance are confirmed, the Client's sole remedy shall be to request Three to remediate such non-compliance within a reasonable timeframe; and

10.2.6 where requested to do so in writing, and at the cost of the Customer, Three will make available such information and assistance as are reasonably necessary to the Customer to comply with its obligations to

- i. respond to requests for exercising the data subject's rights
- ii. report personal data breaches and
- iii. conduct data protection impact assessments and prior consultation with Data Protection Authorities.

10.3 Customer acknowledges that Three shall transfer personal data to third party sub-contractors (including group companies) to whom disclosure is reasonably necessary in order for Three to carry out the Managed Network Services and hereby provides its general authorisation to such transfers. Customer further agrees that Three shall transfer personal data disclosed pursuant to this Agreement to such sub-contractors based outside the European Economic Area but only where adequate safeguards are put in place by Three or such sub-contractors to protect such personal data as required under Data Protection Legislation.

10.4 Without prejudice to any other provision of this Agreement relating to termination, on termination of this Agreement, Three shall, on written instructions from the Customer and at its cost, either delete or return all personal data processed as part of this Agreement to Customer unless Three is subject to an overriding legal, regulatory or other requirement to retain such personal data.

10.5 The terms 'processing', 'personal data', 'data processor' and 'data controller' shall be as defined in the Data Protection Acts 1988 and 2003 and, from 25 May 2018, Regulation 2016/679, all as amended, modified, consolidated or re-enacted from time to time.

## **11. Intellectual Property Rights**

11.1 All "Telecommunications Technology" (as defined below) associated with the Managed Network Services is owned by Three or its licensor's and will be accessed and used only by the Customer for use solely in connection with the Managed Network Services and no separate license is granted thereto. The Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Managed Network Services or any software, data and documentation related to the Managed Network Services (individually and collectively referred to as "**Telecommunications Technology**"); modify, translate, or create derivative works based on the Managed Network Services or the Telecommunications Technology; or copy (except for archival purposes), rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Managed Network Services or the Telecommunications Technology; use the Managed Network Services or the Telecommunications Technology for the benefit of a third party, (except for authorized Customer users in connection with Managed Wi-Fi Services); or remove any proprietary notices or labels with respect to the Managed Network Services.

## **12. Liability (Limitations and Exclusions)**

12.1 **Limitation of Liability.** To the maximum extent permitted by applicable law, for all events and circumstances, Three's aggregate and cumulative liability to the Customer arising out of or relating to this Agreement including (without limitation) on account of performance or non-performance of obligations, regardless of the form of action, whether in contract, tort (including negligence), statute or otherwise will be limited to direct damages and will not exceed the total Charges paid to Three by the Customer under this Agreement during the six (6) months preceding the first event giving rise to liability. The foregoing limitation shall not apply to claims (1) for personal injury or death caused by negligence; (2) for fraud or wilful default; or (3) which cannot be limited or excluded by law.

12.2 **Disclaimer of Liability/Damages.** All liability on the part of Three (including liability for negligence) arising in connection with this Agreement, howsoever caused, giving rise to economic loss, loss of goodwill, loss of savings, loss of data or indirect or consequential loss, is hereby excluded to the greatest and fullest extent permitted by law. The Customer acknowledges and agrees that it is solely responsible for the results obtained from the use of the Managed Network Services.

### **13. Suspension/Termination for Failure to Pay Charges**

13.1 If the Customer fails to pay any Charges due to Three in accordance with the terms of this Agreement, Three may forthwith on ten (10) Business Days' written notice to the Customer suspend provision of the Managed Network Services (and Three shall be released from its obligations under this Agreement until any balance due is paid). Should the Customer fail to pay any Charges which remain due to Three following the expiry of this ten (10) Business Day notice period within a further period of ten (10) Business Days, Three may immediately terminate this Agreement on written notice to the Customer.

### **14. Termination**

14.1 The Customer may terminate this Agreement without penalty upon notice to Three once the applicable Minimum Term has expired and any such termination shall be effective twenty (20) Business Days after the date on which such termination notice is served on Three. The Customer may additionally terminate this Agreement where Three is in material breach of any term of this Agreement and fails to remedy the breach within twenty (20) Business Days of a written notice from the Customer.

14.2 Three shall be entitled to terminate this Agreement forthwith on written notice to the Customer in the event that (a) the Customer is in material breach of any term of this Agreement and where such breach is capable of remedy, the Customer has failed to remedy the breach within twenty (20) Business Days of written notice from Three; (b) the Customer is in material breach of any term of this Agreement which is incapable of remedy; (c) Three is obliged to comply with an order, instruction or request of ComReg, governmental or other regulatory authority, an emergency service organisation or other competent authority; or (d) Three is unable to resolve a dispute with any third party upon whom provision of components of the Managed Network Services is related or contingent. Where the parties are unable to agree the Charges to apply for any term extending beyond the Minimum Term, Three may terminate this Agreement once the applicable Minimum Term has expired and any such termination shall be effective forty (40) Business Days after the date on which such termination notice is served on the Customer.

14.3 Either party may terminate this Agreement if bankruptcy or insolvency proceedings are brought against the other party or an examiner or a receiver is appointed over any property or assets of either party; or if either party makes any voluntary arrangement with its creditors, or if either party goes into liquidation (save for the purposes of reconstruction or amalgamation).



- 14.4 With effect from the date of termination Three will cease providing the Managed Network Services and the Customer will make no further use of the Managed Network Services.
- 14.5 All Charges due under this Agreement shall, notwithstanding the termination of this Agreement, remain due and owing to Three.
- 14.6 Clauses 3.4 (Managed Network Services), 10 (Data Protection), 11 (Intellectual Property Rights), 12 (Liability), 14 (Termination), 20 (Waiver), and 25 (Operative Law) will survive any termination or expiration of this Agreement.

## **15. Matters beyond the parties reasonable control**

- 15.1 Neither party to this Agreement shall be deemed in default or liable to the other party for any matter whatsoever for any delays in performance or from failure to perform or comply with the terms of this Agreement due to any cause beyond that party's reasonable control including, without limitation, acts of God, acts of Government or other competent regulatory authority, acts of telecommunications network operators, war or national emergency, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes and other industrial disputes (in each case, whether or not relating to that party's workforce).

## **16. Assignment**

- 16.1 The Customer shall not assign or transfer the benefit of this Agreement to any third party without the prior written consent of Three, such consent not to be unreasonably withheld or delayed. Three may assign or transfer this Agreement to any Group Company provided the Group Company undertakes to perform the obligations of this Agreement in accordance with the terms herein.

## **17. Subcontracting**

- 17.1 Three is permitted to subcontract the performance of all or part of Three's obligations and undertakings provided for in this Agreement at any time and without notice to the Customer provided at all times that in such circumstances Three shall remain responsible to the Customer for the acts and omissions of any related third party subcontractor and for complying with the terms and conditions of this Agreement.

## **18. Entire Agreement**

- 18.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, proposals, understandings and agreements whether written or oral relating to the subject matter of this Agreement. Each of the parties acknowledges and agrees that in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.

## **19. Invalidity**

- 19.1 If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable, the validity or enforceability of the remaining provisions shall not in any way be affected or impaired. In any such circumstances the parties shall negotiate in good faith in order to agree the terms of a mutual satisfactory provision, achieving as nearly as possible the same commercial effect, to be substituted for the provision which is found to be invalid, illegal or unenforceable.

## **20. Waiver**

20.1 The failure or delay by either party to this Agreement to exercise or enforce any right, power or remedy under this Agreement shall not be deemed to operate as a waiver of any such right, power or remedy; nor shall any single or partial exercise by any party operate so as to bar the exercise or enforcement thereof or of any right, power or remedy on any later occasion.

## **21. Changes**

21.1 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of both parties.

## **22. Export Control**

22.1 Customer agrees, in respect of its use of the Managed Network Services, to be responsible for and to comply with any applicable export or re-export laws, regulations, prohibitions or embargoes of any country, including obtaining written authority from any relevant licensing authority where necessary.

## **23. No Partnership**

23.1 Nothing in this Agreement shall create, or be deemed to create, a partnership between the parties.

## **24. Notices**

24.1 Any notice or other communication required to be given under this Agreement ("**Notice**") shall be in writing (which for this purpose excludes email), signed by or on behalf of the party giving it and may be served by delivering it by hand or sending it by pre-paid registered post to the address and for the attention of the relevant party whose details are set out in this clause 24 (or as otherwise notified from time to time):

**For Three** - For the attention of: 'Business Sales Director', Address: Three Ireland Services (Hutchison) Limited, 28-29 Sir John Rogerson's Quay, Dublin 2 (Copy to 'Head of Legal' at the same address). **For the Customer** - For the attention of: 'Company Secretary', Address: As first stated above.

24.2 Any Notice shall be deemed to have been served (a) if delivered by hand, at the time and date of delivery; (b) if sent by post, at the expiration of two (2) Business Days after the envelope containing the same was delivered into the custody of the postal authorities.

## **25. Operative Law**

25.1 This Agreement, and any issues or disputes of whatever nature arising out of or in any way relating to it or its formation (whether such disputes are contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise) shall be governed by and construed in accordance with the Laws of Ireland and the parties submit to the exclusive jurisdiction of the courts of Ireland.

