

# Three Terms and Conditions for Business Customers

## 1. Orders

1.1 Three agrees, subject to acceptance by Three of an Order, to provide the Customer with the Mobile Services specified in an Order pursuant to the terms and conditions of this Agreement.

1.2 Three agrees to use reasonable skill and care to fulfil any Order on or before the requested and agreed dates for delivery/ service commencement.

1.3 All Orders are subject to the exclusive 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 Order or other document or communication issued by the Customer. Orders and other documents and communications are accepted by Three for administrative purposes only and do not modify or amend the terms of this Agreement. All terms and conditions on any Order or other document or communication are void and without legal effect.

## 2 Equipment Orders

2.1 The Customer shall be entitled to place an Order with Three for any Equipment made available by Three from time to time.

2.2 Three's acceptance of an Order for Equipment is subject to availability and Three may reject any Order for Equipment without liability or penalty.

2.3 Three reserves the right to add to, substitute or to discontinue any item of Equipment at any time. Three does not guarantee the continuing availability of any particular item of Equipment.

### Delivery, Acceptance and Title

2.4 Three will deliver the Equipment to the address specified on the completed Order provided the address is in the Republic of Ireland.

2.5 The Customer will be deemed to have accepted the Equipment when that item of Equipment has been delivered to the Customer and has been used by the Customer to avail of Mobile Services.

2.6 Risk in an item of Equipment will pass to the Customer on delivery of the Equipment to the Customer.

2.7 Title in the Equipment shall pass to the Customer upon payment of all Charges due in connection with the Equipment.

### Customer Responsibilities

2.8 The Customer shall be responsible for ensuring that the Equipment is up to date with the latest available version of the manufacturer's software. Any failure by the Customer to ensure that the Equipment is maintained on the latest software version may result in performance issues which Three is not liable for.

## **Equipment Warranties**

2.9 Three warrants that each item of Equipment which will conform in all material respects to the manufacturer's specification for a period of 24 months from the date of purchase for Equipment which is not manufactured by Apple Inc. and for a period of 12 months from the date for purchase for Equipment which is manufactured by Apple Inc. (each a "Warranty Period") unless special conditions associated with certain Equipment apply.

2.10 If, within the Warranty Period, the Customer notifies Three of any defect or fault in the Equipment arising under normal use in consequence of which the Equipment fails to conform in any material respect with the manufacturer's specification, Three shall, at Three's exclusive option, either (1) procure the repair of the faulty Equipment by a third party service provider who is authorised to perform repairs on the faulty Equipment by the Equipment manufacturer or (2) replace the faulty Equipment with the same or equivalent item of Equipment (which may be a new or refurbished item). In the event that Equipment is provided to replace Equipment which has failed during its Warranty Period, the replacement Equipment will be provided with its own Warranty Period which shall continue until the expiry of the original Warranty Period.

2.11 The warranty obligations specified in Clause 2.10 shall not apply in the event that a person has amended or damaged the Equipment or has used the Equipment for purposes which conflict with the instructions or advice of Three or the Equipment manufacturer.

## **3 Mobile Services**

3.1 Three agrees to provide the Mobile Services during the Mobile Services Period.

3.2 Three reserves the right to add to, substitute or discontinue any Ancillary Mobile Services at any time. Three does not guarantee the continuing availability of any particular Ancillary Mobile Services.

3.3 The Customer acknowledges and agrees that Three is acting as a mobile service provider for the purposes of conveying SMS and other communications has no knowledge of, involvement with or liability for the content of any SMS or other communications sent to/from the Customer's Equipment/SIM Cards.

3.4 Certain elements of the Mobile Services are dependent on the Customer having suitable infrastructure available and/or using appropriate Equipment and some of the Mobile Services may not function correctly in the event that the Customer is unable to provide suitable infrastructure or fails to use appropriate Equipment.

3.5 The Customer will be liable for all Charges incurred in connection with the Customer's use of the Mobile Services.

3.6 Three may monitor the Customer's usage of the Mobile Services for the purpose of controlling Three's credit risk and the Customer's exposure to fraudulent usage.

3.7 Mobile internet speeds vary due to a number of factors including (a) the location of the user, (b) Device capability (handset/modem), (c) distance of user from the serving Network site, (d) number of users active on the Network site at any given time, (e) location of the handset/modem if using indoors and (f) geographical obstructions.

3.8 Three reserves the right to issue the Customer with reasonable instructions concerning the use of the Mobile Services (including the right to restrict certain components of the Mobile Services) in the interests of safety, quality of service, other Three customers or for any other technical or operational reason Three thinks is necessary. Three may also publish policies including: (i) acceptable use and fair use policies (including a Data Modem Usage policy for Data Modem customers) which provides

more detail about the rules for use of certain Mobile Services, and the actions that might be taken and any network management tools or measures which we may take in order to ensure that use of certain Mobile Services is not excessive, to combat fraud and to ensure that Mobile Services can be enjoyed by all Three our customers; (ii) policies relating to Network management tools or measures that Three may undertake to measure and shape traffic so as to avoid filling or overfilling a network link or node or any IT system; and (iii) policies regarding steps that Three may take to prevent and in reaction to security and integrity threats and vulnerabilities (including threats or vulnerabilities to our Network, IT and other systems). The Customer is able to view these policies on Three's website or request a copy by calling 1913. The Customer agrees to comply with any policy (including any amended policy) published by Three from time to time that applies to use of the Mobile Agreement for Mobile Services and agrees that Three may implement these policies. (Please note that these policies will set out how these measures may impact on service quality.)

#### **4 Services Standards and Permitted Suspension**

4.1 Three warrants that it will perform its obligations in this Agreement with the reasonable skill and care of a competent mobile telecommunications service provider and will keep complete and accurate records of call and billing data so as to ensure accurate billing.

4.2 The Customer acknowledges that the provision of Mobile Services is not error or fault free and is subject to the geographic extent of Airtime coverage and local geography, topography and/or atmospheric conditions and/or other physical or electromagnetic interference and/or the number of users trying to access the Mobile Services in any particular location that may from time to time adversely affect the provision of the Airtime in terms of availability, line clarity and call interference.

4.3 Three may, acting reasonably, ,from time to time and without notice, suspend the Mobile Services and at its discretion disconnect a SIM Card in any of the following circumstances without prejudice to its rights hereunder, provided that it shall use reasonable efforts to restore the Mobile Services and reconnect the SIM Card as soon as reasonably practicable:

4.3.1 during any technical failure, modification or maintenance of the telecommunications systems by which the Mobile Services are provided; and/or

4.3.2 if the Customer fails to comply with the terms of this Agreement after being given written notice of its failure (including but not limited to failure to pay any sums due hereunder) until such failure to comply is remedied; and/or

4.3.3 if the Customer allows to be done anything which in Three's reasonable opinion may have the effect of jeopardising the operation of the Network or the Mobile Services; and/or

4.3.4 because of an emergency or upon instruction by emergency services or any government or appropriate authority or for the Customer's own security.

4.4 Three may, at its discretion, suspend any SIM Card from making calls (other than to the emergency services) and disconnect any SIM Card from the Mobile Services if Three has reasonable cause to suspect fraudulent use of the SIM Card or the Device, or either are identified as being stolen.

4.5 During any period of suspension arising from the circumstances detailed in Clauses 4.3.2, 4.3.3, 4.3.4 and/or Clause 4.4, the Customer shall remain liable for all recurring Line Rental Charges arising in connection with this Agreement.

## **5 Disconnection of SIM Cards**

5.1 The Customer may only disconnect a SIM Card from the Mobile Services by submitting a Disconnection Notice to Three.

5.2 Three shall disconnect a SIM Card which is the subject of a Disconnection Notice from the Mobile Services 30 days following receipt of a Disconnection Notice.

5.3 The Customer shall remain liable for all Charges (including Line Rental Charges) arising in respect of any SIM Cards which are the subject of a Disconnection Notice submitted to Three for the duration of the 30 day term immediately following the date of receipt of a Disconnection Notice.

5.4 In the event that the Customer submits a Disconnection Notice resulting in disconnection of a SIM Card prior to the expiry date of the Minimum Term, the Customer will promptly pay Three the applicable Disconnection Fee.

## **6 Basis of Charges**

6.1 The Charges payable by the Customer to Three are as set out in the Commercial Schedule.

6.2 The Charges are exclusive of Value Added Tax which will be charged at the prevailing rate.

6.3 The Charges detailed in the Commercial Schedule are available subject to the Customer fulfilling all of its commitments as set out in the Commercial Schedule.

6.4 Unless otherwise agreed in writing by Three, any amounts or credits accrued in any Equipment account maintained by Three in the name of the Customer may be used solely for the purposes of offsetting invoices issued by Three for Equipment ordered by Customer while this Agreement is current, do not have any independent monetary value and cannot be used to discharge any outstanding Customer debts.

6.5 All Charges shall be based upon call and billing data recorded by Three. The Customer acknowledges that roaming calls may take longer to be billed than other types of calls.

6.6 The price of Equipment made available to the Customer is not fixed for any specific period of time and is subject to change.

## **7 Billing Arrangements**

7.1 Three shall, on a monthly basis, submit to the Customer one or more invoice(s) which shall itemise Charges for Equipment and Mobile Services.

7.2 Without prejudice to any other rights of Three, in the event of the Customer failing to pay any sums due to Three on time or at all notwithstanding notification by Three of the overdue debt to the Customer, Three shall be entitled to:

7.2.1 charge interest (both before and after any judgement) on amounts overdue from the Customer under this Agreement from the due date until the payment is actually made at the rate of 2% per annum over the base rate of Allied Irish Bank plc for the time being during the relevant period; and

7.2.2 suspend the provision of the Mobile Services, and/or disconnect SIM Cards from the Mobile Services until such time as all payments due including all interest accrued has been paid and satisfied in full.

7.3 Three reserves the right to review any credit applied to this Agreement. Three may require a deposit as security for payment of Charges. Three reserves the right to set off any deposit against the Charges. Three may require the Customer to pay the Charges by means of Direct Debit.

7.4 If the parties agree that payments of the Charges to Three are to be made by credit card and if such payments are not made on the due date, Three is authorised to debit the Customer's nominated credit card company with all Charges due and payable to Three.

7.5 Unless otherwise stated in the Commercial Schedule, call prices are quoted by the minute. The duration of each call is measured in whole seconds and any part thereof will be rounded up to the next whole second. Each call is charged excluding VAT. Based on the duration, the Ex VAT cost of each call is then calculated and the result rounded up to the nearest cent. VAT is then added where applicable to the total of all charges on Customer's invoice.

7.6 Unless otherwise stated in the Commercial Schedule, peak rate call Charges apply from 8:00 to 18:00, Monday to Friday; Weekend rate call Charges apply from 18.00 on Friday to midnight on Sunday. Weekend Charges shall apply for public holidays.

7.7 The Customer hereby agrees to pay the Charges (including any Termination Fees) in full without any deduction or set off within 30 days following the date of Three's invoice.

## **8 Obligations of the Customer**

8.1 The Customer undertakes with Three that throughout the Mobile Service Period it will:

8.1.1 provide Three with such information as Three reasonably request in connection with this Agreement; and

8.1.2 notify Three immediately (and to confirm in writing) on becoming aware that any Device or SIM Card has been lost or stolen or that any person is making improper or illegal use of the Device, SIM Card or the Mobile Services. The Customer will be responsible for any Charges incurred as a result of unauthorised use of any Device, or SIM Card, or the information contained within a SIM Card, until Three has received a request from the Customer to suspend the Mobile Services to that Device or SIM Card.

8.2 The Customer undertakes with Three that throughout the Mobile Service Period it will:

8.2.1 pay the Charges levied by Three in accordance with this Agreement; and

8.2.2 comply with all Laws in relation to the use of Devices and/or other Equipment and the Mobile Services; and

8.2.3 use the Equipment, Software and/or any End-User Licensed Software in accordance with any user guide or other reasonable instruction of any manufacturer or supplier of the same or reasonable instruction of Three and not to copy, reverse engineer or modify the Software or the End-User Licensed Software in any way save as permitted by Law; and

8.2.4 not use the Service in any way to generate AIT; and

8.2.5 not, without the prior written consent of Three which may be withheld at Three's absolute discretion, establish, install or use a GSM Gateway so that telecommunication services are provided via the GSM Gateway to third parties; and

8.2.6 not use the Mobile Services in a manner which is inconsistent with a reasonable customer's good faith use of the Mobile Services or the Network ; and

8.2.7 not use the Mobile Services fraudulently or in connection with a criminal offence or for the purpose of initiating unsolicited communications or storing and/or communicating any material which conflicts with any Laws, is offensive, abusive, indecent, defamatory, obscene or menacing, a

nuisance or a hoax or which breaches any person's intellectual property rights or rights of privacy or is otherwise unlawful.

8.3 The Customer agrees that it is procuring the SIM Cards and Mobile Services solely for its own use and that it will not resell or otherwise act as any form of distributor in respect of the SIM Card or the Mobile Services.

8.4 The Customer agrees that the Mobile Services and/or the Equipment may be dependent upon End-User Licensed Software and if the Customer does not accept the licence terms relating to any End-User Licensed Software, Three shall have no liability whatsoever for any failure to provide the Mobile Services to the Customer where the Mobile Services depend on the use of End-User Licensed Software.

8.5 Where the Customer accepts the terms of a licence in respect of any End-User Licensed Software, then those licence terms shall take precedence over any terms within this Agreement relating to End-User Licensed Software and shall exclusively comprise Customer's sole rights and remedies in respect of such End-User Licensed Software.

8.6 The terms of this Agreement shall also apply to any Orders placed by any Affiliate of Customer. The Customer agrees that it will be liable to Three for all claims, losses and expenses arising out of the breach of the terms of this Agreement by any of its Affiliates (including but not limited to the non-payment by the Affiliate of Charges and Termination Fees, which the Customer agrees to pay in full within 30 days' of notice from Three of the amount outstanding) related to an Affiliate's use of the Mobile Services. The Customer shall procure that the Customer Affiliates who submit Orders are aware of and comply with the terms of this Agreement.

## **9 Duration and Termination**

9.1 This Agreement shall commence on the Commencement Date and shall, subject to earlier termination allowed in accordance with the terms of this Agreement, continue for the Minimum Term and thereafter until it is terminated by means of a Termination Notice or as provided for in Clause 9.5.

9.2 A Termination Notice may be given by either party and this Agreement terminated forthwith if:

9.2.1 the other party is in material breach, and the breach is capable of remedy and the party in breach shall have failed to remedy the breach within thirty (30) days of written notice specifying the breach and requiring its remedy, or the breach is not capable of remedy; or

9.2.2 bankruptcy or insolvency proceedings are brought against the other party, or if an arrangement with creditors is made, or a receiver or administrator is appointed over any of the other party's assets, or the other party goes into liquidation.

9.3 In addition to a party's right to terminate this Agreement in accordance with Clause 9.2:

9.3.1 The Customer may serve on Three a Termination Notice with a minimum of 90 days' notice and the Customer shall be liable for all applicable Termination Fees; or

9.3.2 Three may serve on the Customer a Termination Notice with a minimum of 90 days' notice and the Customer shall not be liable for any applicable Termination Fees.

9.4 Upon the expiry of any Termination Notice or otherwise upon the termination of this Agreement Three will disconnect all SIM Cards (and any other Equipment) from the Mobile Services and the Customer will pay to Three any applicable Termination Fees.

9.5 This Agreement will automatically terminate upon the disconnection of the last SIM Card from the Mobile Services and in circumstances where this occurs prior to the expiry of the Minimum Term the Customer shall be liable for all applicable Termination Fees.

9.6 If this Agreement is terminated and the Customer wishes to transfer to another service provider, Three will provide reasonable assistance to the Customer in respect of the transfer of the Customer's service in accordance with standard industry practice.

9.7 If this Agreement is terminated the mobile phone numbers Three previously provided to the Customer in connection with this Agreement will only be available for a further period of 13 months from the date of disconnection unless the Customer ports (i.e. transfers) the mobile phone number to another operator. Following the end of this 13 month period the mobile phone number will no longer be available and will be recycled.

## **10 Intellectual Property/ Indemnity**

10.1 Title to, and all intellectual property rights in End User Licensed Software and Software, associated documents and all parts thereof will be and remain vested in and be the absolute property of the owner of the copyright in the End User Licensed Software and Software (as applicable) or associated documents as appropriate.

10.2 Except as expressly provided in this Agreement, nothing in this Agreement will be deemed to or require Three to transfer, assign or license any intellectual property rights to the Customer.

10.3 The Customer will not be entitled to use in the course of trade or otherwise in relation to any goods or services of the Customer any registered or unregistered trademark, logotype or abbreviation of the name of Three or any part of Three so that any person might reasonably import a connection between those goods or services and Three or any part of Three.

10.4 All information or materials supplied to Three by the Customer in connection with this Agreement will remain the property of the Customer and will, on receipt of written request from the Customer, be returned to the Customer on termination of the Agreement.

10.5 Any Software supplied is provided on the terms of a non-exclusive, non-transferable licence and such Software is to be used for the sole purpose of operating the Equipment in order to be able to obtain the Mobile Services and/or any Ancillary Mobile Services.

10.6 In the event that the Customer is subject to a third party claim in respect of any alleged infringement of any trademark, patent, registered design or copyright arising from its normal use of the Network, Three will indemnify the Customer in relation to such claim provided that the Customer promptly notifies Three of such third party claim, makes no admission in respect of such claim, allows Three to conduct all negotiations and proceedings (providing Three with all reasonable assistance) and allows Three at Three's own discretion and expense to modify or replace the Mobile Services so as to avoid any continuing infringement. This indemnity does not apply to any such infringements caused by the Customer's own breach of the terms of this Agreement or to any claims in respect of any alleged infringement of any trademark, patent, registered design or copyright arising from the operation or use by the Customer of any Equipment or End User Licensed Software.

## **11 Confidentiality**

11.1 The parties will each keep confidential any information obtained from the other party in connection with this Agreement which is reasonably identified by either party as commercially confidential or which is obviously confidential in nature and neither party will divulge the same to any third party without the consent in writing of the other except such of its employees, contractors,

Affiliates and agents as may need to know the same for the purposes of implementing this Agreement and who are either subject to binding terms of confidentiality or agree to be bound by the provisions of this Clause 11.

11.2 The obligations of confidentiality specified in Clause 11.1 shall not apply to any material or information which is in the public domain (other than as a result of a breach of this Agreement); or already known to the receiving party; or lawfully received from a third party and/or ordered to be disclosed by any court or other tribunal or regulatory authority of competent jurisdiction.

## **12 Limitation of Liability**

12.1 Subject to Clauses 12.3 and 12.4, neither party shall be liable to the other in respect of any matter arising out of or in connection with this Agreement in contract or tort or otherwise for any loss (whether direct or indirect) of profit, business, revenue, anticipated savings, goodwill or any loss or corruption of data, or for any indirect or consequential loss or damage whatsoever.

12.2 Subject to Clauses 12.1, 12.3 and 12.4, Three's aggregate liability of any sort resulting from Three's negligence or otherwise arising in connection with this Agreement shall be limited in respect of all claims arising in each Year to an amount the equal to the Annual Agreement Value. (The term "Annual Agreement Value" means: (i) the total Charges paid or payable by the Customer in the Year prior to the Year in which any claim arises; or (ii) where a claim arises during the first Year of this Agreement, the Charges paid or payable up to the date on which the Customer's right to take action in respect of the first claim made by the Customer in the first Year arose; and "Year" means the first, and each subsequent, consecutive period of 12 months of this Agreement commencing on the Commencement Date).

12.3 Nothing in this Agreement shall exclude or restrict the liability of either party for:

12.3.1 death or personal injury resulting from that party's negligence; or

12.3.2 claims in respect of the Customer's obligations under Clauses 8.2.1 and/or Clause 8.6; or

12.3.3 claims in respect of the Customer's obligations to pay Charges, Termination Fees and/or Disconnection Fees.

12.4 Nothing in this Agreement shall exclude or restrict the liability of either party in respect of any liability which cannot be excluded or restricted by law.

12.5 The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

12.6 Three does not accept and excludes, to the fullest extent legally permitted, all liability for the acts or omissions of Equipment manufacturers and for the acts or omissions of other providers of telecommunication services.

## **13 Matters beyond the Parties reasonable Control**

13.1 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, 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).



## **14 Assignment**

14.1 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.

14.2 At any time Three may assign or transfer this Agreement to any third party and may subcontract the performance of all or part of this Agreement.

## **15 Entire Agreement**

15.1 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.

15.2 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.

## **16 Invalidity**

16.1 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.

## **17 Waiver**

17.1 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.

## **18 Changes**

18.1 Three reserves the right to amend the terms and condition of this Agreement (including the Charges payable by the Customer to Three as set out in the Commercial Schedule where such change to the Charges (1) is required to comply with mandatory regulatory requirements or (2) occurs owing to a general change to Three's Charges which applies to all business customers who make use of the Three telecommunications service which is the subject of a price change) by notifying the Customer of the proposed amendment not less than one (1) month prior to the date of implementation of any such proposed amendment via either direct notification pursuant to Section 22 of this Agreement and/or via the Three website [www.three.ie](http://www.three.ie). In the event of conflict between this Section 18 and Section 22 herein, this Section 18 shall control and prevail.

## **19 Data Protection**

19.1 Both parties shall act in their capacity as Data Controllers in relation to Personal Data shared between the parties in the course of the provision of the Services.

19.2 The Customer will ensure that:

19.2.1 adequate privacy notices have been provided to its servants/agents whose data will be collected through use of the Services so they understand the circumstances their Personal Data will be shared with Three and the purpose of the sharing;

19.2.2 it has a lawful basis for processing the Personal Data which allows the Customer to share the Personal Data with Three and for Three to use any Personal Data in the course of providing Services; and

19.2.3 the servants/agents of the Customer, shall be informed on how to access the Three privacy policy which is available on the Three website or by contacting your Account Manager if a hard copy is required.

19.3 Where the Customer provide Personal Data relating to its servants/agents to Three, such as their name, contact details and service provisioning information, the data is transferred on a controller-to-controller basis. The transfer of usage data from Three to the Customer is likewise transferred on a controller-to-controller basis.

19.4 The Parties agree to comply with all applicable Data Protection Legislation in relation to the processing of any Personal Data belonging to the other party or any end users.

19.5 In the event an end user, the servant/agent of the Customer, seeks to exercise their rights as a Data Subject Three shall be the contact point and be responsible to the end user on behalf of both Parties for fulfilment. Should the end user seek to exercise his/her rights as a Data Subject as against the Customer Three shall co-operate in a timely manner with the Customer in the fulfilment of the request.

19.6 Three may use network data arising from the provision of the Services, that is effectively aggregated and anonymised in accordance with the Data Protection Legislation, for its own business purposes.

19.7 The terms 'processing', 'Personal Data', 'Data Processor' and 'Data Controller' shall be as defined in the Data Protection Acts 1988 to 2018, all as amended, modified, consolidated or re-enacted from time to time. The term 'Data Protection Legislation' shall mean the Data Protection Acts 1988 to 2018, all as amended, modified, consolidated or re-enacted from time to time and all applicable national implementing legislation and guidelines, in each case, as amended, revised or replaced from time to time

## **20 Export Control**

20.1 The Customer agrees, in respect of its use of Mobile Services and Equipment and performance of the subject matter of this Agreement, 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.

## **21 No Partnership**

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

## **22 Notices**

22.1 Any notice or other communication required or permitted under this Agreement to be given in writing to the address of the recipient stipulated herein or as notified from time to time and will be deemed to have been given or made: when delivered personally; or, if properly addressed and posted by registered post in the Republic of Ireland, within two business days of posting; or, if sent by facsimile upon being sent; or, if sent by e-mail or other electronic means upon such communication being acknowledged as having been received.

## **23 Dispute Resolution Scheme – Regulations**

23.1 The method for contacting Three with regard to any dispute the Customer may have is set out in the Three Code of Practice, found on [www.three.ie](http://www.three.ie) or may be obtained by contacting Three Customer Care. The Regulations are available on the website of the Department of Communications, Energy and Natural Resources at [www.dcenr.gov.ie](http://www.dcenr.gov.ie).

23.2 COMREG, (or an independent person appointed by COMREG) may resolve disputes in relation to the Regulations which remain unresolved after due completion of the procedures set out in the Code of Practice. Contact information for COMREG is provided in the Code of Practice.

## **24 Survival**

24.1 The termination of this Agreement shall not affect any of the following: (a) the rights or liabilities of either party accrued prior to and including the date of termination; or (b) the continued existence and validity of the rights and liabilities of the parties under those clauses/sections which are intended expressly or by implication to survive termination or expiry and any other provisions of this Agreement necessary for its interpretation or enforcement.

## **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. **26 Definitions**

In these Three Terms and Conditions for Business Customers the following definitions shall apply: "AIT" Means Artificially Inflated Traffic and occurs where the flow of calls to any particular revenue share service is, as a result of any activity on or on behalf of the party operating that revenue share service, disproportionate to the flow of calls which would be expected from good faith commercial practice and usage of the Network.

"Affiliate" Means any company which is a Holding Company or Subsidiary Company of either party.

"Agreement" Means the Agreement for Mobile Services incorporating the Commercial Schedule (Schedule 1) and the Three Terms and Conditions for Business Customers.

"Airtime" Means mobile airtime and Network capacity. "Ancillary Mobile Services" Means such services (related to the delivery and performance of Mobile Services) as may be made available from time to time by Three.

"Charges" Means the charges specified in the Commercial Schedule and any other charges arising in connection with this Agreement.

"Commencement Date" Means the commencement date of this Agreement specified in the Commercial Schedule.

"Commercial Schedule" Means Schedule 1 of this Agreement.

"Code of Practice" Means the Three Code of Practice made available on [www.three.ie](http://www.three.ie) (as amended from time to time).

"COMREG" Means the Commission for Communications Regulation.

"Customer" Means the entity whose details are specified in this Agreement.

“Data Protection Legislation” means the Data Protection Acts 1988 to 2018, the General Data Protection Regulation (EU) 2016/679, the Electronic Communications Data Protection Directive 2002/58/EC, as amended, revised or replaced from time to time (in particular, by operation of the Directive 2009/136/EC, and all applicable national implementing legislation and guidelines in each case, as amended, revised or replaced from time to time.

“Data Services” Means use of the Network for transmission of data and access to the internet.

“Device” Means a mobile device which incorporates a SIM Card.

“Disconnection Fees” Means the fees specified in the Commercial Schedule which are due and owing to Three upon the submission of a Disconnection Notice during the Minimum Term.

“Disconnection Notice” Means a written notice to disconnect one or more SIM Cards from the Mobile Services.

“Equipment” Means any Devices and other hardware equipment items purchased by the Customer from Three.

“End-User Licensed Software” Means any third party software used or necessary for the performance of the Mobile Services or Equipment, the licence terms for which are governed by a separate agreement with the third party licensor of such software.

“GSM Gateway” Means a device (not designed or adapted to be capable of being used whilst in motion) for mobile telegraphy designed or adapted to be connected by wireless telegraphy to the Three telecommunications network or the telecommunications system of another network operator and used solely for the purpose of sending and receiving messages conveyed by means of the Three telecommunications network or the telecommunications system of another network operator.

“Holding Company” has the meaning provided under section 8 of the Companies Act, 2014.

“Laws” Means all applicable Acts of the Oireachtas, statutory instruments, laws, decrees and regulations (as amended, replaced, updated and re-enacted from time to time).

“Line Rental Charge” Means the recurring Charges specified in the Commercial Schedule which are payable on a monthly basis per SIM Card.

“Messaging Services” Means access and use of the Network for the purposes of transmitting SMS, MMS and other types of messages.

“Minimum Holding” Means the minimum number of SIM Cards detailed in the Commercial Schedule which the Customer agrees to connect to a particular service specified in the Commercial Schedule.

“Minimum Term” Means the minimum term of 24 months from the Commencement Date or such other period specified in the Commercial Schedule.

"Mobile Services" Means the provision by Three to Customer of Voice Services, Messaging Services, Data Services and any other Ancillary Mobile Services.

"Mobile Services Period" Means the period commencing on the Commencement Date and ending on the date this Agreement is terminated, during which the Mobile Services will be provided by Three to the Customer.

“Network” Means the telecommunications network maintained and operated by Three to provide Airtime.

“Numbers” Means the numbers allocated to Three by COMREG and subsequently allocated by Three to SIM Cards.

“Order” Means a request issued by the Customer to Three for the provision of goods or services.

“Regulations” Means the European Communities (Electronic Communication Networks and Services) (Universal Service and User’s Rights) Regulations 2011.

“SIM Card” Means the subscriber identity module card supplied by Three (which shall at all times remain the property of Three), which is allocated to the Customer by Three, and which contains the Number.

“SMS” Means the short message service, which enables text messages to be sent to, and received from Devices.

“Software” Means any software (excluding End-User Licensed Software) supplied to the Customer by Three under the terms of or in respect of this Agreement.

“Subsidiary Company” has the meaning provided under section 7 of the Companies Act, 2014.

“Telemetry Services” Means any technology that allows remote measurement and reporting of information and data.

“Termination Fees” Means the fees specified in the Commercial Schedule which are due and owing upon the termination of this Agreement by the Customer prior to the expiry of the Minimum Term.

“Termination Notice” Means a written notice to terminate this Agreement.

“Three” Means Three Ireland (Hutchison) Limited of 28/29 Sir John Rogerson’s Quay, Docklands, Dublin 2, Ireland.

“Three Customer Care” Means Three’s Customer Care Centre, McLaughlin Road, National Technology Park, Co. Limerick, Ireland. Contact details available on [www.three.ie](http://www.three.ie).

“Three Helpdesk” Means the Three help desk for customers maintained by Three and operated by Three Customer Care. Contact details available on [www.three.ie](http://www.three.ie).

“Total Minimum Holding” Means the total minimum number of SIM Cards as detailed in the Commercial Schedule which the Customer agrees to connect to the Mobile Services.

“Total Minimum Spend” Means the total spend (excluding VAT) detailed in the Commercial Schedule which the Customer agrees to make in connection with the purchase of Mobile Services over the duration of the Minimum Term.

“Voice Services” Means access and use of the Network for voice calls.

*Clause 27 only applies if the Customer is provided with the BlackBerry Service*

## **27 Additional Terms and Conditions applicable to the BlackBerry Service**

27.1 The Customer shall be responsible for: (a) commissioning the Server in accordance with the Server Specifications; and (b) installing the BES Software; and (c) provision of suitably qualified personnel who have a full working knowledge of the Customer’s corporate e-mail system and firewalls; and (d) configuration of the BES Software for each BlackBerry Handheld device; and (e) provision of any necessary training for BlackBerry Handheld Device users; and (f) integration of the Customer’s email accounts with the BlackBerry Internet Mail and BlackBerry Internet Solution, including but not limited to resolving any issues arising from the interface with the Customer’s email internet service provider and/or Customer’s IT infrastructure and policy.

27.2 The Customer recognises that if it uses software packages or applications other than those approved by Three for use with a BlackBerry Handheld Device or the Server, Three shall have no liability whatsoever for any failure of the BlackBerry Service resulting from the use of such software packages or applications by the Customer.

27.3 Customer shall use the returns process as detailed by Three to Customer from time to time for returns of all damaged/faulty BlackBerry Handheld devices and/or other Equipment.

27.4 Customer will take all reasonable steps to ensure that all its BlackBerry Handheld Device users invoke password protection on their BlackBerry Handheld Devices. Three shall not be liable for any losses whatsoever or howsoever occurring as a result of a BlackBerry Handheld Device user failing to invoke adequate password protection. The Customer acknowledges (and agrees to inform its users in this regard) that text messages as well as emails are retained on a BlackBerry Handheld Device even when it is turned off or the SIM Card is removed from it.

27.5 The Customer undertakes to comply with all Laws in relation to the use of the BlackBerry Handheld Devices. The Customer shall be responsible, as licensee of the End-User Licensed Software, for any encryption of information between the Customer's BES Software and the BlackBerry Handheld Devices.

27.6 Three reserves the right to upgrade and change the specification of the BlackBerry Internet Mail and Blackberry Internet Solution at any time. This may include, but is not limited to, changes to the web interface, rules around the maximum number of days that data will be retained and mailbox capacity.

Additional definitions applicable to the BlackBerry Service

"BES Software" Means the software known as the 'BlackBerry Enterprise Server Software' and which, when installed on Customer's Server of the required Server Specification, forms part of the End-User Licensed Software for the purposes of using the BlackBerry Service.

"BlackBerry Handheld" Means a Device the principle purpose of which is for use with the BlackBerry Service.

"BlackBerry Internet Mail and BlackBerry Internet Solution" Mean the use of the BlackBerry Service in conjunction with compatible Internet based e-mail accounts.

"BlackBerry Service" Means the Mobile Service which enables the Customer to send and receive emails using a BlackBerry Handheld and in addition to use the BlackBerry Voice Service and / or the BlackBerry Internet Mail and Blackberry Internet Solution.

"BlackBerry Voice Service" Means the service which enables voice calls to be made and / or received on their BlackBerry Handheld. "Server" Means the computer server provided by the Customer on which the BES Software will be installed and will operate.

"Server Specification" Means the minimum specification of the Server which shall be available from Three on request