

## **3T BUSINESS TERMS OF SERVICE**

The following standard terms and conditions (“**Terms of Service**”) apply to all services provided to you, the “**Customer**”, by 3T Systems Ltd. (hereinafter, “**3T**”).

By activating and using the Services (as herein defined), or by delivering a completed Service Order (as herein defined) to 3T, Customer agrees that it has read, understood, and is bound by the Terms of Service. 3T may amend the Terms of Service from time to time and will update the revision date on this website (<http://www.3tsystems.ca/business-tos/>) to indicate when changes have been made. All changes will take effect within 30 days of the date of being posted. Customer is responsible for regularly reviewing information posted on this website, or supplied to Customer by 3T, in order to obtain timely notice of such changes.

**Customer’s non-termination or continued use of the Service(s) after changes are posted on this website shall constitute customer’s acceptance of the Terms of Service as modified by the posted changes.**

### **1. DEFINITIONS**

For the purposes of the Terms of Service, the following capitalized words have the following meanings:

“**Demarcation Point**” means the operational interface and location to which the Services are delivered;

“**Equipment**” means the cable, circuits, instruments, equipment and other facilities owned by 3T and required for the purposes of providing the Services to Customer;

“**Parties**” means 3T and the Customer and “**Party**” means either one of them;

“**Services**” means any services provided by 3T to Customer pursuant to a Service Order, which services shall include, without limitation, installation and maintenance of the Equipment and any temporary services provided while installation and/or maintenance is taking place;

“**Service Location**” means the building or premises at which the Demarcation Point is located, as more particularly described in a Service Order;

“**Service Order(s)**” means one or more service order form(s) setting out the Services that Customer has requested 3T to provision; and

“**Taxes**” means all taxes, levies, fees, imposts, duties, charges, surcharges, assessments or withholdings of any kind or nature levied or imposed upon 3T, its network, Equipment, facilities, or arising from or relating to the provision by 3T of the Services or use thereof by Customer (including, without limitation, universal service fund, sales and excise taxes, real property, gross receipts, and license fees), together with any penalties, fines or interest thereon by any federal, provincial or local government, band, public authority, including its agencies, commissions and tribunals, having jurisdiction.

## **2. PROVISION OF SERVICES**

a) In consideration of the mutual covenants and agreements contained herein and in each Service Order, 3T shall provide the Services to the Customer.

## **3. CHARGES AND PAYMENTS**

a) **Charges:** The charges for the Services are as set out in the applicable Service Order. Customer shall pay all charges for the Services in accordance with the applicable Service Order and these Terms of Service.

b) **Taxes:** Customer shall be responsible for all applicable Taxes which are related to the Services. If a Customer is entitled to an exemption from any applicable Taxes, Customer is responsible for presenting 3T with valid proof of exemption (in a form reasonably acceptable to 3T). 3T will give effect to any valid proof of exemption provided in accordance with the foregoing sentence to the extent it applies to any Services billed by 3T to Customer following 3T's receipt of such proof of exemption.

c) **Payments:** 3T shall invoice Customer for the Services, as described in each Service Order, and payments shall be due and payable to 3T within thirty (30) days after the date of the 3T invoice to Customer. Amounts owing after the due date are subject to a late payment interest charge calculated on the outstanding amount at 2% per month (26.8% per year) until paid in full. Customer shall have ninety (90) days following receipt of each invoice within which to dispute any sums appearing in that invoice; failure on the part of Customer to do so shall be deemed a waiver of Customer's right to dispute such sums. The provisions of this section 3(c) (Payments) are subject to any contrary provisions expressly set out in the Service Order.

## **4. CUSTOMER OBLIGATIONS**

Customer agrees as follows:

a) **Service Location:** Customer will obtain and maintain in place access to the Service Location, including the Demarcation Point, to 3T, its employees, agents, contractors and subcontractors for the purpose of providing the Services as well as providing electrical power and outlets at the Service Location as 3T shall reasonably require for the provision of the Services. Customer is solely responsible for the payment of any and all electrical charges associated with the Services and access charges at the Service Location.

b) **Equipment:** The location of any parts of the Services to be installed at the Service Location shall be determined by 3T in consultation with Customer. Customer shall take all steps reasonably required in order to protect the Equipment from trespass or damage by Customer or other persons where such Equipment is located at the Service Location.

c) **Cable Wiring:** Customer shall be responsible for and shall pay for any and all cable wiring and equipment required to interconnect the Equipment from the Demarcation Point to Customer's equipment

or to Customer's customer equipment, if applicable, to permit Customer to use the Services. Customer will be responsible for use of the Services beyond the Demarcation Point.

d) **Property Ownership:** Unless a Service Order specifically indicates that the equipment is being sold to Customer, any and all equipment provided by 3T in connection with the provision of the Services at or to the Service Location shall remain the property of 3T and shall not by reason of the attachment, installation or connection of any part thereof to any realty become or be deemed a fixture appurtenant to such realty. 3T shall remove the terminating equipment from the Service Location upon termination or expiry of the term for the provision of any Services.

e) **Responsibility:** If the equipment is damaged or destroyed by the negligence or willful acts or omissions of Customer, its employees, agents or contractors, then Customer will be responsible for any such damage.

## **5. USE OF SERVICES**

a) Customer will not permit any of the Equipment to be re-arranged, disconnected, removed, repaired or otherwise interfered with, except with 3T's prior approval.

b) Customer will not use the Services, nor permit them to be used, for any purpose contrary to law.

c) Customer will be allowed to resell the Services under its own branding if expressly authorized by 3T in the Service Order. Customer shall be responsible for all customer care matters associated with Customer's customers.

d) Customer shall not have the right to use 3T's trademarks or trade names in any manner unless 3T gives prior written consent and/or grants the appropriate license. 3T shall not have the right to use Customer's trademarks or trade names in any manner without Customer's prior written consent.

e) Customer shall not have the right to use 3T's registered or pending patents unless 3T authorizes such use through license.

f) In the event that Customer should require any changes to the Services after installation, Customer shall email 3T at support@3tsystems.ca and provide sufficient details of the requested change. While 3T endeavours to accommodate customer requested changes, Customer acknowledges that Services changes are subject to technical, engineering and other constraints and that additional charges may be applicable in the event 3T approves a change to Services. 3T will confirm change activity with customer, including completion date and provide change fees, if applicable, for Customer approval prior to proceeding with change.

## **6. CUSTOMER RESPONSIBILITIES**

a) The Customer is responsible for, and shall indemnify 3T against, all losses, liability, claims, damages, judgments, expenses and costs, of any kind whatsoever, including reasonable legal fees and

disbursements, suffered or incurred by 3T arising from claims of any third party (including Customer's customers and end-users) on any basis whatsoever and arising from or in connection with any event, including but not limited to:

- i) use of the Services by Customer or its customers or end-users or by any third party authorized by Customer;
- ii) the Customer's (or its customer's or end-user's) data, equipment, computer network and other facilities;
- iii) breach of any covenant, term, representation or warranty contained in the Terms of Service or a Service Order by Customer or by any third party authorized by Customer;
- iv) the negligence or willful misconduct of Customer, its customers, end-users or any third party authorized by Customer in connection with use of the Services;
- v) claims made by Customer against any third party who in turn claims contribution or indemnity from 3T; and
- vi) claims by any third party for libel, slander, passing off or infringement of copyright, trademark or patent, illegal, improper or unauthorized use of the Services arising from the content of the video, voice or data carried by Customer, or its customers or end-users.

## **7. LIMITATION OF LIABILITY**

- a) Except with respect to loss or damage caused as a direct result of 3T's negligence, Customer agrees that 3T will not be liable to Customer in relation to: i) any act or omission of any carrier or person other than 3T; ii) any act or omission of the Customer or its customers or end-users; iii) any claims related to defamation, copyright or trademark infringement or the violation of any third party rights arising from use of the Services; iv) infringement of patents arising from combining or using Customer-provided facilities with the Services or the Equipment where the Services or the Equipment would pose no infringement in the absence of such combination or use; or v) any unauthorized use of the Services.
- b) 3T's total cumulative liability, if any, to Customer for damages related to the provision of Services pursuant to any Service Order (including fundamental breach or otherwise), negligence, any act or omission by 3T or its representatives, or under any other theory of law or equity will be limited to those damages actually proven as directly attributable to 3T and will in no event exceed the aggregate of three (3) months of fees and charges for the affected Services under such Service Order.
- c) **Notwithstanding anything in these terms of service or any service order, in no event will any Party be liable to the other Party or any third party for punitive, special, indirect, consequential or incidental damages, including without limitation, lost profits or loss or damage to data, even if the Party has been advised of the possibility of such damages.**

d) **Except as expressly stated in a Service Order, 3T makes no warranty of any kind whatsoever, express or implied, statutory or otherwise in relation to the services and, without limitation all implied warranties or conditions of merchantable quality or fitness for a particular purpose, or that all requirements of Customer will be met with respect to any services provided by 3T hereunder, are hereby disclaimed by 3T and excluded from the agreement between the Parties.**

e) For greater certainty, to the extent that a Service Level Agreement (“SLA”) applies to any of the Services, the remedies set out in that SLA constitute Customer’s sole remedy for any failure of the Services to be provided in accordance with the standards set out in the SLA.

## **8. TERMINATION**

a) Either Party may terminate any and all Service Order(s) without penalty on written notice to the other Party if the other Party has filed a petition in or has been assigned into bankruptcy or insolvency legislation, or makes an assignment for the benefit of creditors or makes any arrangements or otherwise becomes subject to any proceedings under applicable bankruptcy laws with a trustee, or receiver appointed in respect of a substantial portion of the property of the other Party, or in the event the other Party liquidates or winds up its daily operations for any reason whatsoever.

b) Subject to any express provisions in the applicable Service Order (including any Service Level Agreement forming a part thereof), Customer may terminate the Services upon thirty (30) days written notice to 3T, provided that Customer pays 3T upon demand, in one lump sum, as a genuine pre-estimate of liquidated damages, an amount equal to one hundred percent (100%) of the monthly service charges set out in the applicable Service Order for such terminated Services for the balance of the term.

c) 3T may suspend delivery of the Services, or terminate any or all Service Order(s), at its option and without penalty if:

i) Customer fails, within the time set forth in any written notification to Customer by 3T, to make full payment of any invoice that remains unpaid in accordance with the terms of payment set out in a Service Order or the Terms of Service (other than charges which are being disputed by Customer in good faith); or

ii) Customer has failed within five (5) days following written notification to Customer by 3T to remedy any breach of a material term or condition of a Service Order or the Terms of Service to be performed or fulfilled by Customer.

d) If 3T has terminated any or all Service Order(s) in accordance with Section 8 (c), then 3T shall cease providing the applicable Services and Customer shall pay to 3T forthwith upon demand, in one lump sum, as a genuine pre-estimate of liquidated damages, an amount equal to one hundred percent (100%) of the monthly service charges for the Services connecting Customer’s location(s) which would otherwise have been payable by Customer to 3T had the applicable Service Order(s) not been terminated and had the Services been provided as contemplated in the Service Order(s) for the balance of the applicable term.

## **9. GENERAL**

- a) **Governing Law:** Any dispute between 3T and Customer, with respect to a Service Order, shall be governed by, and construed in accordance with, the laws in force in Manitoba, and the laws of Canada applicable therein. Customer agrees to attorn to the jurisdiction of the courts of Manitoba, and agree that any action or proceeding brought by either 3T or Customer to enforce any provision of a Service Order shall be commenced in Manitoba.
- b) **Successors and Assigns:** A Service Order may not be assigned by Customer without the prior written consent of 3T, such consent not to be unreasonably withheld. 3T may, without consent, assign any Service Order(s) in connection with a corporate reorganization or merger or to any entity that controls, is controlled by or is under common control with 3T or to a purchaser of all or substantially all of its assets or business, and in any such event, 3T shall be released from its obligations hereunder to the extent they are assumed by the assignee.
- c) **Force Majeure:** Any delay or failure of either Party to perform its obligations under a Service Order or the Terms of Service shall be excused, to the extent that the delay or failure is caused by an event or occurrence beyond the reasonable control of the Party and without its fault or negligence, such as by way of example and not by way of limitation, acts of God, action by any governmental authority, fires, floods, war, acts of terrorism, insurrection, revolution, nuclear reaction, windstorms, explosions, riots, natural disasters, inability to obtain power, material, labour, Equipment or transportation, or court injunction provided that, written notice of the delay shall be given by the affected Party to the other Party within ten (10) days.
- d) **Purchase Orders:** Notwithstanding any contrary language in any purchase order or similar document issued by the Customer to 3T with respect to the Services, any such purchase order or similar document shall be deemed for the Customer's internal use only and the provisions thereof shall have no effect whatsoever upon the provisions of the applicable Service Order or the Terms of Service.
- e) **Severability:** Each provision of any applicable Service Order(s) or the Terms of Service shall be severable. If any provision of a Service Order or the Terms of Service is illegal or invalid, the illegality or invalidity shall not affect the validity of the remainder of such Service Order or the Terms of Service. In the event that a Service Order is a tripartite agreement, then such Service Order shall be divisible in relation to the Parties insofar as the Service Order can be performed without the collaboration of the excluded Party.
- f) **Rights Arising from Service Order(s):** Nothing herein expressed or implied is intended nor shall be construed to confer on or to give any person, other than the Parties and their respective successors and permitted assigns, any rights or remedies under or by reason of any Service Order(s) or the Terms of Service.
- g) **Agency Limitations:** Any Service Order(s) does not constitute any Party a partner, employee, agent or legal representative or joint venturer with the other, and no Party may act on behalf of the other



in any manner nor assume or create any obligation of any kind express or implied, on behalf of the other Party nor bind the other Party in any respect whatsoever, except in accordance with such Service Order(s).

h) **Waiver and Indulgence:** Waiver by any Party of any violation or breach of a Service Order or the Terms of Service in any instance shall not be taken or held to be a waiver of any subsequent violation or breach or as a waiver of the provision itself that is breached, nor shall any delay or omission on the part of any Party to exercise any right arising from such violation or breach alter or impair that Party's right as to the same or any future violation or breach. Similarly, no indulgence or goodwill of any kind by a Party not contemplated by a Service Order or the Terms of Service shall be taken or construed as a right that can be enforced against such Party by the other.

i) **Notices:** Any notice or other written communication provided or permitted hereunder shall be in writing and given by personal delivery (against receipt), or sent by registered mail (against receipt) postage prepaid, or transmitted by facsimile, or sent by email, addressed to the other Party as set out on the applicable Service Order(s). Any notice so given shall be deemed to have been received on the date on which it was delivered in person, or, if transmitted by facsimile during the regular business hours of the party receiving the notice, on the date it was transmitted, or if transmitted after business hours, on the next business day, or if sent by registered mail on the fifth business day thereafter, or if sent by email upon confirmation of delivery sent by the receiving Party.

j) **Confidentiality:** Each Party (the "Receiving Party") agrees to protect the confidentiality of any information disclosed by the other Party (including the existence and terms of this Agreement) and shall not disclose, copy or use any such confidential information except as contemplated by this Agreement. Without limiting the generality of the foregoing, no public announcement, advertising or any other form of public release (including any disclosure to obtain financing) regarding the existence or the contents of this Agreement shall be made by any Party without the prior written consent of the other Party. The foregoing shall not apply to information which is or becomes publicly known otherwise than by reason of a breach of this Agreement by the Receiving Party or has been independently developed outside the scope of this Agreement. Notwithstanding the above, the Parties acknowledge that disclosure of this Agreement will be required to certain of their respective employees, agents or representatives to effectuate the purposes hereof, or as is necessary to comply with federal, provincial or local regulatory requirements, including disclosure requirements of public corporations, in Canada and/or the USA, as applicable, and any such disclosure shall not require the prior written consent of the other Party. Each Party shall be entitled to all remedies available at law, including the right to injunctive relief and specific performance.

k) **Regulatory Approval:** In the event that a Service Order or the Terms of Service become subject to regulatory approval by various local, provincial, federal or other governmental agencies, as applicable, the Parties shall cooperate, to the extent reasonable and lawful, in providing such information as is necessary to complete any required filing or in obtaining any required regulatory approval.

l) **Legality:** Nothing contained in any Service Order or the Terms of Service shall be construed so as to require the commission of any act or the payment of any compensation which is contrary to law, which may, from time to time, be in effect and by its terms controlling of the applicable Service Order(s). If there is any conflict between any provision of Service Order and any such applicable law the

latter shall prevail and the provisions of such Service Order affected shall be modified to the extent (but only to the extent) necessary to remove such conflict and permit such compliance with the law.

m) **Cumulative Remedies:** No remedy conferred upon or reserved in favour of a Party shall exclude any other remedy herein or existing in law or in equity or by statute, but each shall be cumulative and in addition to every other remedy given hereunder or now hereafter existing.

n) **Non-Variation:** No amendment or consensual cancellation of a Service Order or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in connection with a Service Order shall be binding unless recorded in a written document signed by a duly authorized representative from all Parties. The Parties acknowledge having read and understood each Service Order and are not entering into such Service Order on the basis of any representations not expressly set forth in it. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded in a Service Order or the Terms of Service whether it induced the contract between the Parties or not.