

SERVICE AGREEMENT - MASTER TERMS

Last template update: 24 February 2020

This Agreement is made as of <EffectiveDate> between **Beanfield Technologies Inc.** (“Beanfield”, “we”), an Ontario corporation located at 67 Mowat Avenue, Suite 418, Toronto ON, M6K 3E3; and <LegalName> (“Subscriber”, “you”), a <jurisdiction> <form of organisation> located at <full address>.

The Subscriber wishes to subscribe to certain services offered by Beanfield set out in one or more “**Service Schedules**” annexed to this Agreement. Beanfield wishes to provide these “**Services**”, subject to availability, on the terms and conditions set out in this Agreement, including both these “**Master Terms**” and the Service Schedules executed by all of the parties to it. Beanfield and the Subscriber therefore agree to the following.

1. SUBSCRIBING

- 1.1. **Availability:** Whether a Service is available at a location may be hard to determine until provisioning. If a site visit or facilities check is positive, so that we pursue provisioning, but we then can’t provide the requested Service or a mutually-agreed-upon substitute within 30 days of the proposed installation date, you may terminate the Service without penalty by promptly notifying us.
- 1.2. **Substitutes:** Beanfield may migrate any Service to an alternative service or technology that provides equivalent functionality, reliability, and quality (“**Substitute**”), upon 90 days’ notice. If we do, you can either continue your Service subscription with the Substitute service, or provide at least 30 days’ notice prior to the cut-over date that you are entering into Early Termination (*see section 6.1*).
- 1.3. **Demarcation:** Beanfield will deliver Services to a mutually-agreed-on physical point of interconnection (“**POI**”; “**physically**”), over top of a lower network layer (“**logically**”), or both. In delivering a Service physically, we are responsible for all of our equipment and materials and all cabling, equipment, and configuration on our side of the POI which, except the POI itself in order to achieve interconnection, you have no right to physically access, alter, or tamper with. You are responsible for your side of the POI, including full control and responsibility - subject to this Agreement - for network and service configuration and design, routing configuration, regrooming, rearrangement, and consolidation of channels.

Delivering a Service logically, over top of a lower network layer, does not thereby entail our responsibility for that lower network layer. Whether physically or logically, we are not responsible for undertaking any work or for supplying any facilities, including optronic or electronic equipment or related facilities, except those specified in an applicable Service Schedule. Nor are we responsible for the back-up of any data stored in or moving through our equipment or network.

- 1.4. **Moves:** If you request relocation of a Service to another municipal address within Beanfield’s service area, we will do our best to advise you of the estimated move costs (including new installation costs). If the Service can be moved, you may do instruct us to do so and assume the move costs. Otherwise, you may either continue the Services at your present location, or bring them to an Abrupt End (*see section 6.2*).
- 1.5. **Credit:** Provision of a Service may be subject to a credit check: if so, Beanfield will require relevant Subscriber information that it will stipulate, such as a copy of your credit card, driver’s licence, or other personal information; and may require a security deposit. Any personal information collected will be used strictly in accordance with this Agreement (*see section 8.1*) and applicable privacy requirements.

- 1.6. **Off-net:** From time to time, Beanfield may source a third-party service to complete assembly of a Service. If so, this may entail additional installation charges - and, in the event of Abrupt End (*see section 6.2*), additional termination fees - that can only be determined after the third-party provider's own site visit or facilities check. We will inform you of any additional related installation charges, after which you may terminate the Service order within a week.

2. PAYMENT

- 2.1. **30 days:** In exchange for each Service, the Subscriber will pay "**Service Charges**", on the basis set out in the relevant Service Schedule (plus applicable taxes, like a 13 percent Harmonized Sales Tax, the combination of Goods and Services Tax with a provincial sales tax, or the sales tax applicable in the relevant jurisdiction, which are extra), within 30 days of issuance of your invoice. Service Charges not paid by then - whether one-time or monthly, and whether equipment rental charges, monthly service provision charges, or otherwise - are subject to 1 percent interest per month, compounded monthly on the overdue amounts only (12.7 percent annually), not in advance, from the due date until paid in full. Returned payments will be assessed a \$50 administrative fee as liquidated damages to compensate Beanfield's costs associated with such returned payment, or a higher amount in the event the related costs reasonably exceed these.
- 2.2. **Disputed invoices:** The Subscriber may dispute the content of an invoice within 90 days of its issuance, after which the Subscriber is deemed to have accepted an undisputed invoice.
- 2.3. **Price changes:** Beanfield may increase the price of a Service on 60 days' notice (*a*) in the event Beanfield's costs go up; or (*b*) after an indefinite Term has exceeded two years. The Subscriber may avoid such a price increase through Early Termination (*see section 6.1*) within the 30 days following receipt of a price increase notice.

3. USAGE REQUIREMENTS

- 3.1. **Physical access:** You agree to provide us, and take such measures—including securing written consent—as to cause any landlord or third-party access manager to provide us, with reasonable access to the Subscriber's location in order to perform necessary maintenance, repairs, and upgrades, subject to site-specific access and security regulations. Beanfield agrees that, unless the access is required for emergency repairs, it will provide at least 48 hours' advance notice that it requires such access.
- 3.2. **Subscriber's People:** The Subscriber takes responsibility for, and where appropriate agrees to bind to requirements similar to those set out in this Agreement, the acts and omissions of, and claims, damages, or costs resulting from, the Subscriber's "**People**", who include:
- a) everyone who, by means of the Subscriber or its subscription to a Service, is authorized to access a Service or a location at which it is delivered; who actually accesses either of these; or who interacts with Beanfield, and
 - b) without limiting the foregoing, the Subscriber and its directors, officers, employees, agents, and sub-contractors.
- 3.3. **Laws and hygiene:** The Subscriber agrees to use all Services, and to take reasonable steps to ensure its People use all Services, in compliance with applicable laws, regulations, codes, and policies of relevant governance bodies at all times ("**Legal Compliance**"), ensuring that its activity and inactivity do not harm the integrity of Beanfield's network and equipment, nor adversely affect their use by others ("**Network Hygiene**").

3.4. **Resale:** You agree not to license, resell, or in any way facilitate the use of a Service by another party without Beanfield’s prior written consent. If Beanfield grants such consent, then such resale customers are included among the People for which the Subscriber is responsible, which responsibility extends to providing technical support and applicable 9-1-1 services, preventing further resale onward without Beanfield’s prior written consent, and ensuring that any agreements with end-users or permitted resellers terminate automatically with termination of the related Service.

4. SERVICE LEVELS

4.1. **Services and equipment:** Beanfield will act with prudence, diligence, and good commercial practice in providing Services, but does not warrant uninterrupted or error-free services, nor warrant the content or availability of any data or information accessed or received using a Service. Rather, Services and related equipment are provided on an as-is, as-available basis. Any express or implied warranty or condition of merchantability, and any claim of fitness for a particular purpose, is expressly disclaimed.

4.2. **Credits:** Subject to the foregoing disclaimer and to delays and suspensions (*see sections 5.2 and 5.3*), Beanfield will make commercially reasonable efforts to ensure availability of each Service. To incentivize Beanfield to do so, certain Service Schedules provide for us to grant you service credits in relation to “Outages”:

- a) **Definition:** An Outage is the period during which a Service is unavailable for fulfilling its functionality, such as transmitting data between the “A End” and “Z End” locations at subscriber locations, Beanfield locations, or both, either wholly, or to the extent of any “Outage Conditions” set out in the relevant Service Schedule. However, an Outage excludes outage periods resulting from any one or more of:
- events for which there is a “Valid Excuse” (*see section 5.2*);
 - the Subscriber’s or its People’s actions or omissions, including network saturation; failures or errors in their equipment, software, or applications; material breach of this Agreement; or
 - Beanfield maintenance, repair, suspension, or upgrading (*see section 5.3*), other than emergency repairs.

The Outage period is deemed to begin when Beanfield opens a trouble ticket, subject to Beanfield’s Network Operations Centre’s reasonable confirmation of the Outage; and to terminate on the earlier of the downtime ending or the trouble ticket being closed. The time during which Beanfield waits for information or premises testing from the Subscriber is subtracted from the Outage period.

- b) **Credits:** The Service Credits to be awarded in respect of an Outage, if any, is based on the Outage’s duration, in hours, in a 30-day calendar month (“**Monthly Service Unavailability**”), using the monthly recurring service charge specified in the Service Schedule, up to a maximum subscriber Service Credits of 14 days in a month. No Service Credit will be given unless the Subscriber has cooperated in good faith with Beanfield in our efforts to diagnose the cause of the Outage, including requesting the opening of a trouble ticket, helping with circuit testing, providing Beanfield access to Subscriber premises as reasonably necessary, and assisting Beanfield with problem identification and resolution through the most effective available communications channels (mobile phone, email, etc.).

Service Credits are not applied automatically to your account following certain kinds of Outage. In order for Service Credits to be issued in relation to an eligible Outage, you must request them from us within 30 days of our closing the trouble ticket for the related Outage.

- c) *Chronic outages:* If cumulative Monthly Service Unavailability, as evidenced by Outages supported by trouble tickets, exceeds a threshold specified on the Service Schedule during three consecutive months, or six months in any 12-month period, then the Subscriber may proceed to Early Termination (*see section 6.1*) by notifying Beanfield within 24 hours of opening the related trouble ticket.

5. TERM AND SUSPENSIONS

- 5.1. **Start:** Unless otherwise set out, the “Term” for a Service starts on the earlier of two dates following execution of the relevant Service Schedule: when Beanfield completes any procurement, installation, and testing it deems necessary, and specifies that such Service is available to the Subscriber for use; and two weeks after Beanfield has requested access to Subscriber premises in order to complete such work but the Subscriber has, without Valid Excuse (*see section 5.2*), failed or refused to grant it.
- 5.2. **Delay:** A party’s delay in performing obligations under this for reasons and circumstances beyond such party’s reasonable control, and which do not relate merely to financial capacity, shall be excused for the period of such delay (“Valid Excuse”).
- 5.3. **Suspension:** Beanfield may at any time temporarily suspend, withdraw, or restrict a Service, or part of it, with the Subscriber’s responsibility to pay charges continuing unabated, if:
 - a) to carry out maintenance, repair, or upgrading, which Beanfield shall endeavor to undertake between 1 am and 7 am and upon at least 48 hours’ notice, to ensure that such activities do not create an inopportune moment;
 - b) failing to disrupt or suspend service or undertake emergency repairs would, in Beanfield’s reasonable opinion, materially impair Legal Compliance or Network Hygiene (*see section 3.3*);
 - c) the Subscriber is in material non-compliance with the Agreement without a Valid Excuse (*see section 5.2*); or
 - d) any of the Subscriber’s People harasses, threatens, or abuses a Beanfield employee or agent.

6. TERMINATION

- 6.1. **Three ways to terminate.** Either party may terminate a Service upon expiry of its Term by providing 60 days’ written notice (“Termination at Term”). Either party may terminate before expiry of its Term (“Early Termination”) if: the other party defaults by failing, within 10 days of notice in this regard, to cure material non-compliance for which there is no Valid Excuse (*see section 5.2*); or the other party is assigned into bankruptcy, becomes an insolvent person, or a receiver is appointed over a substantial portion of their property. Separately, Beanfield may terminate a Service, at its sole discretion, with 90 days’ advance notice (“Termination for Convenience”). In the event of Termination at Term, Early Termination, or Termination for Convenience,
 - a) the Subscriber will not pay liquidated damages paragraphs 6.2.a) or 6.2.b), and

- b) Beanfield will work in good faith to minimize any liquidated damages to be paid under paragraph 6.2.c).

6.2. Termination fees. If the Subscriber defaults, or terminates for any reason other than Termination at Term or Early Termination (“**Abrupt End**”), then until the Subscriber has paid in full liquidated damages invoiced to it, Beanfield has the right to (a) deny the Subscriber’s People access to the non-Subscriber location of the Subscriber’s equipment, (b) withhold access to such equipment or related data, and (c) within three months of non-payment, enforce Beanfield’s lien rights, or their hypothecary equivalent, to sell or otherwise dispose of Subscriber equipment, in accordance with applicable laws. Liquidated damages may, at Beanfield’s reasonable discretion but subject to the preceding section 6.1, include any of:

- a) 75 percent of the monthly fees for each terminated Service, multiplied by the number of months from the effective date of termination to the end of the Service’s Term;
- b) any discounts or waivers, including at installation, one-time, or recurring, that were provided in consideration of the Subscriber’s Term commitment; and
- c) any equipment costs the Subscriber has not yet fully paid for, and any third-party costs Beanfield must continue to incur during the remainder of the Term.

6.3. Expiry: If neither party terminates a Service by the end of its Term, and the parties have not agreed to an extension period or renewal, then such Term will continue during a “**Post-Expiry Term**” until termination upon 60 days’ written notice by one or the other party.

6.4. Post-Termination: In purchasing a Service that involves using or leasing someone else’s property, the Subscriber does not acquire any proprietary or ownership rights in that property. When a Service is terminated:

- a) You must return, in merchantable condition but allowing for ordinary wear and tear, any equipment we provided in respect of a Service, failing which Beanfield has the right to recover from you the cost of replacing, restoring, repairing, and cleaning the equipment, including any replacement costs specified in an applicable Service Schedule.
- b) You must remove your own equipment from any third-party location to which the Service was delivered within five days, after which Beanfield may remove the equipment without notice, charge a reasonable monthly storage fee and, after six months, sell or otherwise dispose of the items at our sole reasonable election.
- c) If you have requested in writing that data stored in your account in relation to the Service be returned, we will undertake good-faith efforts to do so, at your expense: otherwise, Beanfield has the right to delete any data stored in the Subscriber’s account in relation to the Service.
- d) Any Internet Protocol addresses or phone numbers that Beanfield assigned to you are for use only in conjunction with the Service, subject to Legal Compliance like the policies of the American Registry of Internet Numbers, in respect of IP addresses, and of the CRTC in respect of telephone numbers, including number portability. Within five days of termination of the related Service you must therefore relinquish to us any previously-assigned IP addresses or address blocks, and relinquish to us or validly port out any previously-assigned phone numbers.

Except provisions which survive afterwards (*see section 9.5*), this Agreement shall remain in force until 90 days after the Term of every Service.

7. LIABILITY AND INDEMNITY

7.1. **Liability:** Beanfield's liability for damages, costs, expenses, or losses under this Agreement shall not exceed an amount equal to six months of Subscriber fees for all Services to which the damages relate. However, damages caused by Beanfield's gross negligence or willful misconduct are excluded from this limitation.

7.2. **Indemnity:** Should a third-party claim arise from the Subscriber's People's acts or omissions in using a Service, or using the site where a Service is delivered, the Subscriber shall indemnify, defend, hold harmless Beanfield and its directors, officers, employees and authorized agents, or such site's owners, its directors, officers, employees and authorized agents, against such claims, and undertake to reimburse all legal fees and other expenses incurred in connection therewith, provided:

- a) Beanfield gives Subscriber reasonable written notice of the claim;
- b) the Subscriber has sole control of the defense and all related settlement negotiations, and sole discretion to settle such claim, but Beanfield may, at its own expense, participate through counsel of its own choosing;
- c) Beanfield provides the Subscriber with reasonable assistance, information, and authority the Subscriber needs to perform all of these obligations.

7.3. **Insurance:** The Subscriber shall, throughout the Term of a Service including any Post-Expiry Term, and unless otherwise specified in the Service Schedule, maintain the following insurance, evidence of which it shall provide to Beanfield on request, and whose failure to maintain as specified is a material breach of this Agreement:

- a) comprehensive general liability insurance of at least \$1 million, naming Beanfield as an additional insured;
- b) property damage insurance for the full replacement cost of equipment used by the Subscriber, and any data permitted to reside on such equipment, at each location to which the Services are delivered; and
- c) workers' compensation coverage for an amount no less than required by law.

7.4. **Economic loss:** Notwithstanding anything in this Agreement, in no event will any party be liable to the other for any indirect, incidental, special, punitive, or consequential damages whatsoever arising out of, or in connection with, this Agreement. That includes lost profits, anticipated revenue, loss of data or information systems, failure to realize expected savings, any commercial or economic loss, and any third-party claim. The way in which the claim arises - negligence, tort, statute, equity, case law, or any other legal theory - doesn't affect this exclusion.

8. DATA GOVERNANCE

8.1. **Privacy:** Each party certifies it will ensure that:

- a) personal information will not be collected, processed, or stored unless necessary to perform the gathering or receiving party's obligations under this Agreement, which purposes, corresponding internal access, and storage locations are to be made clear to the other party, always in compliance with applicable privacy legislation including *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5; provincial legislation deemed substantially similar to it; and the privacy and

confidentiality obligations required by the CRTC (“Canadian privacy law”), and that

- b) any transfers of personal information to foreign-based third-party service providers provide at least a comparable level of protection to that required by Canadian privacy law.

8.2. Confidentiality: Other than information publicly available through no breach of this Agreement, lawfully in a party’s possession before disclosure by the other Party, or obtained from a third party permitted to disclose it, this Agreement—and everything disclosed by either party to the other in preparing and performing it—is “**Confidential Information**” that each party agrees not to disclose without the other’s prior consent, except their respective employees and advisors who need to know it. If a party is legally compelled to disclose it, it shall provide the other party with written notice in time to facilitate seeking a protective order.

8.3. Intellectual Property: Nothing herein shall be construed as granting any present or future intellectual property rights, whether copyrights, trademarks, service marks, trade names, inventions, or patents. Accordingly, neither party shall use the other’s intellectual property in marketing, promotional, or advertising material without prior written consent.

9. INTERPRETATION

9.1. Assignment: The Subscriber may not transfer, assign, or delegate any of its rights or obligations hereunder without Beanfield’s consent, which shall not be unreasonably withheld. Such transfers, assignments, and delegations include, for instance, swapping, “condominiumizing”, exchanging, subleasing, licensing, or granting an indefeasible right of use in telecommunications facilities.

There are two exceptions in which Beanfield’s consent is not required, provided you give us 20 days’ prior notice, and all your rights and obligations in respect of all Services hereunder are transferred to the same person, from which obligations you are not released and remained severally liable with this person. Those exceptions are: an internal corporate reorganization with no change in control or beneficial ownership; and the sale of substantially all of the Subscriber’s assets or business to a single purchaser.

9.2. Law and forum: Except with respect to choice of laws, this Agreement is governed by the laws applicable in Toronto, Ontario, Canada, to whose courts the parties agree to submit any disputes exclusively.

9.3. Whole and valid parts: Except their titles and headers, which are provided only for convenience, these Master Terms, any Service Schedule executed by all parties to them, and any documents incorporated by them, are the Parties’ whole agreement, but the Master Terms prevail over anything in a Service Schedule that does not say otherwise. Invalid provisions are severable and don’t impair the rest of the Agreement’s validity; waiver of a provision is not a continuing waiver and, regardless, does not waive any other provision. The Agreement itself may be executed in any number of counterparts, all of which together form the same instrument.

9.4. Notices and amendments: Invoices, notices about this Agreement, and amendments to it, shall be in writing and delivered either by registered mail, to the addresses specified above, or by electronic communication. Written amendments must, in addition, be signed by each party, so any unwritten or unsigned representation by Beanfield’s representative is of no force or effect. It is each party’s responsibility to ensure the other has its updated contact details.

- 9.5. **Survival:** This Agreement’s provisions on limitation of liability, indemnity, data governance, and collection of fees owing survive termination, as do such other terms which, by their sense and context, are intended to so survive.
- 9.6. **Authority:** Each party represents and warrants to the other that entering into all of this Agreement, including every Service Schedule, is duly authorized by appropriate corporate action and the authority of the individuals signing it, does not violate its organizational documents or any law, regulation, or agreement to which it is subject, and is not impaired materially by any actual or pending litigation. *Les parties aux présentes reconnaissent que le présent accord, dont les annexes s’y rapportant, sont accessibles en français, mais ont convenu expressément qu’il soit rédigé en anglais.*

APPROVAL BY SUBSCRIBER:

Date: _____

Per: _____

Name:

Title:

I have the authority to bind the corporation.
corporation.

APPROVAL BY BEANFIELD TECHNOLOGIES INC.:

Date: _____

Per: _____

Name:

Title:

I have the authority to bind the corporation.