

Beanstalk General Terms and Conditions

These General Terms apply to all Order(s) for Services accepted by us. These General Terms together with the relevant Order(s) will form the Contract between us once they have been signed by both of us. References in this Contract to 'us' and 'we' will mean Martin Dawes Switched Services Limited (trading as Beanstalk Telecom) or any assignee of ours and references to 'you' will mean the customer named in the relevant Order(s).

1. Defined Terms

In this Contract:

"**Acceptable Use Policy**" means our policy for the use of the internet related Services set out on our Website, as may be revised by us from time to time by posting any updated version on our Website.

"**Agreed Usage**" means the monthly minimum call traffic, if any, specified in the Order.

"**Charges**" mean the charges payable by you to us for the provision of the Services as set out in the Order or any revised version of the Order notified to you in accordance with Clause 8.2, together with all applicable taxes and any interest due in accordance with Clause 8.5.

"**Committed Period**" means, in respect of each Service, the minimum period of time (if any) that you have committed to receive and pay for that Service as set out in the Order.

"**Contract**" means these General Terms and Conditions, the Order and any other document specifically incorporated into this contract in writing.

"**Customer Equipment**" means any hardware and/or software owned, controlled or licensed by you which is to be provided to us by you or otherwise made available for the purposes of providing the Services.

"**Equipment**" means any hardware and/or software used by us to provide the Services.

"**Facility Limit**" means the usage, webspace, bandwidth or other capacity or volume measure indicated in the Order as the applicable Facility Limit for a Service.

"**Beanstalk Licences**" means the licences issued by the Secretary of State under the Telecommunications Act 1984 to Core Telecommunications Limited, an Affiliate of ours.

"**Beanstalk Service Helpdesk**" means the helpdesk support to be provided by us as notified to you from time to time.

"**Beanstalk Site**" means the premises owned or controlled by us at which any of our Equipment and/or your Equipment is located or is to be located for the purpose of providing the Services.

"**Beanstalk Website**" means the website located at Beanstalkcomms.co.uk or such other website as may be notified by us.

"**Order**" means a schedule which sets out the scope of the Service, the relevant Charges and any special terms which are particular to that Service.

"**Service Credits**" means the amounts payable, if any, by us to you in accordance with Clause 3 and the Order.

"**Service Failures**" means any failure, error or defect in the provision of the Services by us but excludes failures, errors or defects arising from, caused by or contributed to by your acts or omissions or third parties including other providers of telecommunications, computers or other equipment or services including internet services or any failure, error or defect arising as a result of causes beyond our reasonable control.

"**Service Level**" in relation to a service means the performance standard, if any, set out in the order.

"**Service**" means any one of the services described in a Order and

"**Services**" means any combination of two or more such services.

"**Software**" means the software provided by us to you for the purposes of enabling you to use the Services including all associated documentation.

"**Start Date**" means the target date for the commencement of the provision of the Services to you.

2. Provided Services

2.1 We will provide the Services in accordance with the terms of this Contract.

2.2 We will use reasonable skill and care when providing the Services.

2.3 The Services are provided for use by you in the course of your business.

3. Service Levels

3.1 We do not guarantee that the Services will be continuously available to you or free from Service Failures.

3.2 Where you believe that you are experiencing a Service Failure you must immediately report this to us via the Beanstalk Service Helpdesk, providing sufficient information to enable us to investigate the problem. We will log the time of receipt of all such reports.

3.3 Where we spend time investigating a fault reported by you and conclude that there has been no Service Failure we reserve the right to charge you for all reasonable costs and expenses incurred in investigating the report and you agree to pay such charges.

3.4 Where, as a result of a Service Failure, an applicable Service Level specified in the Order is not achieved we will, subject to Clause 8.6, pay to you a Service Credit by issuing a credit note to you for a sum equivalent to the amount of the Service Credit.

3.5 The duration of any Service Failure, for the purposes of calculating Service Credits, will be measured from the time your fault report is logged by the Beanstalk Service Helpdesk to the time we can demonstrate that the Service has been restored.

3.6 Service Credits will be the maximum extent of our liability and your exclusive remedy in respect of any failure to achieve Service Levels, and all other rights, remedies and liabilities are excluded to the maximum extent permitted at law.

4. Service Usage by You

4.1 You agree that you will not use the Services in a way which would-

a) contravene or cause us to contravene any laws or regulations including, but not limited to, the Telecommunications Act 1984 ("the Act");

b) contravene our Acceptable Use Policy (where applicable);

c) compromise the security of our Equipment or other systems, including by introducing viruses or failing to employ appropriate security procedures;

d) enable or permit unauthorised access by you or third parties to data stored on our network;

e) cause a degradation of service to any of our other customers;

f) involve the sending of unsolicited marketing or advertising materials;

g) result in the transmission or storage of any material of a pornographic, obscene, defamatory, menacing or offensive nature or which would result in the breach of any third party's intellectual property rights, confidential information or privacy;

h) breach or cause us to breach any applicable data protection legislation including, but not limited to, the Data Protection Act 1998;

i) exceed your Facility Limit or cause an overload of the network;

j) breach or cause us to breach the agreement we have with third parties.

4.2 You will indemnify us against any claims, proceedings or threatened proceedings from third parties and against any loss or damage suffered by us arising from any breach of your obligations under this Contract, including this Clause 4, and for all costs and expenses reasonably incurred by us in investigating and defending ourselves in relation to any such claims, proceedings or threatened proceedings.

4.3 You will ensure that your usage of the Services does not exceed the Facility Limit or cause congestion or otherwise disrupt our network. You will give us not less than 2 days written notice of any advertising, promotion or other campaigns which may result in abnormal demands being placed in our network.

4.4 You are solely responsible for safeguarding your data by taking backup copies, maintaining a disaster recovery process and through any other means you believe appropriate.

4.5 To enable us to perform our obligations under this Contract, you will obtain all requisite licences, consents and permissions and permit or procure permission for us or our agents to have access to your premises and will provide such reasonable assistance and information as we request from time to time. We will routinely work during normal office hours. Any request by us to carry out work at other times may be refused by you. Any request by you that we carry out work at other times may be refused by us, but if accepted such work will be charged to you at our then current standard rates.

5 Our Equipment

5.1 Our Equipment is owned by us, or our suppliers or licensors, and no title in any of our Equipment will pass to you under this Contract. We grant you a nonexclusive license to use the Equipment at the premises specified in the Order whilst the Services to which the Equipment relates are being provided to you under this Contract.

5.2 Where our Equipment is being provided for use at your site you will be responsible for its maintenance and prompt return to us on the termination of the Services. Unless we agree otherwise, you will be responsible for the installation of any Equipment. Where we are to install Equipment you grant us and our agents a right of access to your site, on reasonable notice, to install our Equipment and in all cases to inspect, test, maintain or otherwise deal with our Equipment and to recover it in the event that you fail to return it on request.

5.3 Risk in respect of Equipment will pass to you on delivery of the Equipment to you and you will obtain and maintain all risks insurance cover sufficient to protect our interests in relation to the Equipment.

5.4 You will indemnify us against any claims, proceedings or threatened proceedings from third parties (including our customers) and against any loss or damage suffered by us arising from the your use of our Equipment where such claims and/or losses arise from the acts or omissions of you or your agents or subcontractors, and for all costs and expenses reasonably incurred by us in investigating and defending ourselves in relation to any such claims, proceedings or threatened proceedings.

6 Customer Equipment

6.1 Except as expressly set out in this Contract, you will be responsible for providing all necessary hardware, software, network facilities and telecommunications services to access and make use of the Services provided by us.

6.2 You will ensure that your telecommunications equipment conforms at all times with the relevant standard designated by all relevant legislation, including the Act and all applicable regulations, instructions and orders. We will not be under any obligation to connect or keep connected any Customer Equipment if it does not so conform or if in our reasonable opinion it is liable to cause death, personal injury or damage to property or to impair the quality of the Services provided by us or to put us in breach of our obligations to any third party.

6.3 Where Customer Equipment is located at a Beanstalk Site you will remain fully responsible for the risk to the Customer Equipment. You undertake to obtain and maintain the following insurance in respect of the Customer Equipment:-

a) cover in an amount equal to the full replacement value of the Customer Equipment against fire, theft, accidental damage and all other risks; and
b) public liability insurance with cover in an amount not less than £10,000,000 per annum.

6.4 On request you will provide us with certificates of cover in respect of the required insurance and evidence of payment of premiums.

6.3 You are responsible for:-

a) ensuring that the Customer Equipment meets the minimum technical specifications as notified by us required to be compatible with the Services;

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b) ensuring that the Customer Equipment is supplied and maintained in a safe condition, in good working order and that it complies with all applicable legislation or regulations;

c) obtaining all required licenses or other consents to enable us to have access to and use of the Customer Equipment for the purpose of providing the Services including, but not limited to, any license rights in respect of software which forms a part of the Customer Equipment. You are solely responsible for any costs associated with obtaining such licenses and consents; and

d) delivering the Customer Equipment to the Beanstalk Site prior to the Start Date and promptly removing it from the Beanstalk Site on the termination of this Contract. You are solely responsible for transportation, installation and de-installation costs associated with the Customer Equipment.

6.6 We have a lien over any Customer Equipment to secure all sums due and unpaid under this Contract and you will not be entitled to remove the Customer Equipment from the Beanstalk Site unless and until we have received all outstanding sums owing to us.

6.7 We reserve the right to relocate the Customer Equipment to an alternative Beanstalk Site on giving you reasonable notice.

6.8 You will indemnify us against any claims, proceedings or threatened proceedings from third parties and against any loss or damage suffered by us arising from our possession or use of the Customer Equipment or from the location of the Customer Equipment at the Beanstalk Site, and for all costs and expenses reasonably incurred by us in investigating and defending ourselves in relation to any such claims, proceedings or threatened proceedings.

7 Telephone Numbers Allocation and Usage

7.1 Where we allocate you any telephone numbers or codes as part of the Services, you acknowledge that you will not acquire any legal, equitable or other rights in relation to any numbers or codes. We may on giving you notice withdraw or change any such numbers or codes. You may not sell or transfer or seek to sell or transfer any numbers or codes allocated by us. You may port numbers to us and may also port numbers to other carriers with whom we have porting agreements. All intellectual property rights or other rights in any numbers or codes allocated by us shall at all times, as between ourselves and you, remain vested in us.

8 Payment and Charges

8.1 You will pay us the Charges as specified in the Order or as subsequently notified to you in accordance with Clause 8.2. Charges will be payable with effect from the date that a Service or any part of a Service is first made available to you for commercial use.

8.2 We may change the Charges for any Service by giving you 30 days notice of such change. The revised Charges will apply to all Services provided after the effective date of the notice of change.

8.3 All Charges are stated exclusive of value added tax (VAT) or other applicable taxes. You will be responsible for paying VAT and other applicable taxes which will be included in our invoices at the applicable rate(s).

8.4 We will issue invoices for the Services in accordance with the payment terms specified in the Order.

8.5 You will pay invoices within 14 days of the date of the invoice by direct debit unless otherwise agreed with us in writing, unless otherwise agreed in writing. We may charge interest on all overdue amounts from time to time on a daily basis at a rate of 4% above the base rate of the National Westminster Bank plc, to run from the due date of payment until receipt by us of the full amount (including any accrued interest) whether before or after judgement in respect of the overdue amount.

8.6 Where under this Contract a Service Credit or other sum of money becomes payable by us to you, we shall be entitled to deduct that sum from Charges due from you to us from time to time. We will show any such deductions as a credit in the invoice issued by us following the due date for payment of the sum owed by us to you.

8.7 Where the Service comprises or includes services in respect of which rebates are payable by us to you, we will notify you of the amount of rebate due for each calendar month or other applicable period within 15 days of the end of each billing period. It is then your responsibility to issue an invoice to us for payment of the rebate due. We will pay the rebate 45 days following the date of your invoice or (if later) within 7 days of the date of receipt by us of sums from British Telecommunications plc (or other relevant carrier) paid to us in respect of the applicable Service. You do not have the right to deduct rebates payable by us to you from the payment of Charges due from you to us.

9 Contract Alterations

9.1 We may at any time on 30 days written notice to you vary any of the General Terms and Conditions, the Charges or any other provisions of this Contract including the technical specification of the Services.

10 Security and Backup Services

10.1 You are responsible for the security of your use of the Services including, but not limited to, protecting all passwords, backing-up all data, employing appropriate security devices, including virus checking software, and having disaster recovery processes in place.

10.2 Where as part of a Service we provide our Equipment or services which have the principal purpose of safeguarding the security of the Services received by you, we will use reasonable efforts to ensure that, as at the date of installation of our Equipment or the provision of the services, our Equipment and/or services comply with the agreed specifications for our Equipment and/or services. However, we provide no guarantee or warranty with respect to the security of the Services.

10.3 Where you are or become aware of any matters which you know or ought reasonably be expected to know constitute a threat to the security of the Services you will immediately advise us of such matters.

11. Commencement and Term of Contract

11.1 This Contract will commence on the date when both parties have executed the

Order and will continue for the Committed Period (if any) and thereafter until terminated in accordance with its terms.

11.2 We will use our reasonable efforts to begin providing the Services by the Start Date, if any, stated in the Order. However, the Start Date and any other dates given in this Contract are estimates and are provided for planning purposes only. We will have no liability for any failure to meet the Start Date or any other date as time is not of the essence in relation to any matter under this Contract.

12 Termination

12.1 If you fail to pay any Charges or fail to comply with your obligations under Clause 8 these failures will be deemed to be material breaches for the purposes of Clause 12.2.

12.2 We may terminate this Contract with immediate effect by notice in writing if you:

a) fail to pay any sums due to us within 7 days of receiving written notice from us indicating the sums due and demanding payment;

b) fail to reach the Agreed Usage for a period of 90 consecutive days;

c) are in material breach of this Contract which breach is capable of remedy and fail to remedy that breach within 30 days of receiving the notice specifying the breach;

d) are in material breach of this Contract and that breach cannot be remedied;

e) commit persistent breaches of the Contract;

f) have any licence under which you have the right to run your telecommunication system and connect it to our system revoked or amended, or such licence otherwise ceases to be valid;

g) make any voluntary arrangements with your creditors or become subject to an administrative order or go into liquidation, whether voluntary or compulsory (other than for the purposes of reconstruction or amalgamation), or an encumbrancer takes possession of or a receiver is appointed in respect of any of your assets.

12.3 In the event of termination by us in accordance with this Clause during the Committed Period you will, in addition to paying any unpaid Charges due as at the date of termination, be liable to pay us the cancellation charges as specified in the Charges Schedule.

We may terminate this Contract if the agreements we have with third parties are terminated or expire or are modified in any way which has a material impact on our ability to provide the Services or any of them.

12.4 On termination of the Contract each party will return to the other party any Confidential Information which it has in its possession.

13 Cancellation and Suspension

13.1 You may cancel any individual Service or this Contract at any time by giving us 90 days written notice of cancellation, unless a fixed term period is stated within the contract. If early termination is requested then the customer will be liable for any outstanding charges up to the point when the committed period is reached.

13.2 Subject to Clause 13.3, where you cancel a Service during the Committed Period for that Service or cancel the Contract during the Committed Period for any Service, you will pay the charges applicable to the unexpired portion of the Committed Period(s).

13.3 Where you cancel a Service or the Contract as a result of changes made to this Contract or to the Services by us in accordance with Clauses 8.2 and 9, and where the changes have a material adverse effect on your enjoyment of the relevant Services, you will not be liable for any charges arising as a direct result of such cancellation, but you will remain liable to pay any charges due and payable.

13.4 We may suspend the provision of any Services if:

a) you fail to meet any of your obligations under this Contract including your obligations in relation to the Facility Limit and notice requirements concerning abnormal demands on our network;

b) we have reasonable cause to believe that you or any third party is acting in breach of the Acceptable Use Policy;

c) technical limitations exist or arise which make the provision of the Services impossible or materially limit the functionality or performance of the Services;

d) if and to the extent that in our opinion your conduct is likely to result in the breach of any law or is otherwise prejudicial to our interests;

e) necessary for operational reasons such as upgrades to the Services or regular or emergency maintenance; and

f) we are obliged to comply with any order, instruction or request of a competent governmental, regulatory or other authority.

We will, where practical, give you notice of our intention to suspend the Services and, in relation to suspension for the reasons stated in Clauses 13.4 (c) - (f) above, will restore the Services as soon as we are reasonably able to do so. If we exercise our right to suspend the Services this will not restrict our rights to terminate the Contract.

14 Force Majeure

14.1 Neither party will be liable to the other for any delay in performing or failure to perform any of its obligations under this Contract (other than the obligation to pay the Charges) which occurs as a result of circumstances beyond a party's reasonable control. For the avoidance of doubt, circumstances beyond our reasonable control include, but are not limited to, power failures, non availability of any third party telecommunication services, breakdown of any equipment not supplied by us.

15 Intellectual Property

15.1 Except as expressly set out in this Contract, all intellectual property rights in our Equipment will remain with us or our suppliers or licensors.

15.2 Where Software is provided to enable you to make use of the Services, we grant to you a non-exclusive non-transferable licence to use the Software solely for the purpose of receiving the Services. Where any

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additional terms and conditions apply to your use of Software we will make these known to you and you will, if requested, sign any agreement reasonably required to protect the owner's rights in the Software.

15.3 You will not copy, decompile or modify the Software without our prior written

consent (except as permitted by law) and will not distribute or disclose the Software to any third party.

15.4 You acknowledge that we have no obligation to review or edit any of your information or third party information which you store on or transmit through our Equipment or use in connection with the Services. However, we reserve the right to access, retain and disclose copies of such information for the purposes of:-

- a) Correcting, maintaining and improving the Services;
- b) Complying with any applicable laws, regulations, statutory instruments or the terms of our licences and contracts;
- c) Observing the performance of the Services including for Service Level monitoring;
- d) Retaining a record of activity on our Equipment or systems;
- e) Complying with any request for information or disclosure from a court or other appropriately authorised body;
- f) Ensuring that you are complying with our Acceptable Use Policy.

16 Confidentiality

16.1 Neither party will disclose to any third party without the prior written consent of the other party any confidential information which is received from the other party as a result of this Contract. Both parties agree that any confidential information received from the other party will only be used for the purposes of providing or receiving services. These restrictions will not apply to any information which:

- a) is or becomes generally available to the public other than as a result of a breach of an obligation under this Clause 16; or
- b) is acquired from a third party who owes no obligation of confidence in respect of the information; or
- c) is or has been independently developed by the recipient.

16.2 Notwithstanding Clause 16.1, we will be entitled to disclose your confidential information to a third party to the extent that this is required by any court of competent jurisdiction or by a governmental or regulatory authority, or where there is a legal right, duty or requirement to disclose such confidential information.

17 Limitation of Liability

17.1 We accept liability without limit for death or personal injury arising from our own negligence or for any fraudulent pre-contractual misrepresentation on which you can be shown to have relied.

17.2 Our liability to pay Service Credits in accordance with Clause 3 will be the maximum extent of our liability and your sole remedy for any Service Failures.

17.3 Subject to Clauses 17.1 and 17.2, we are not liable to you whether under this Contract, tort (including negligence) or otherwise for direct or indirect loss of profits, anticipated profits, business, goodwill or anticipated savings, or for any indirect or consequential loss or damage including, but not limited to, claims against you from third parties and loss of or damage to your data even if such loss was reasonably foreseeable or we had been advised of the possibility of you incurring the loss.

17.4 Subject to Clause 17.1, our liability to you in contract, tort (including negligence) or otherwise in relation to or arising out of this Contract is limited to the greater of £25,000 (twenty five thousand pounds) or 50% of the annual aggregate Charges arising under this Contract for all events, claims, losses however arising during the term of this Contract. Service Credits paid or credited by us to you will be taken into account for the purposes of calculating the limitation amounts set out in this Clause 17.

17.5 Except as expressly set out in this Contract and to the extent permissible by law all other warranties, terms and conditions whether express or implied by law, custom or otherwise are excluded.

17.6 We are not liable to you in contract or tort (including negligence) for any acts or omissions of you or any party other than us, including other providers of telecommunications, computers or other equipment or services including internet services.

17.7 Each provision of this Contract excluding or limiting our liability operates separately. If any provision of this Contract is held to be invalid in whole or part

such provision will be deemed not to form a part of the Contract. In any event the enforceability of the remainder of the Contract will not be affected.

17.8 You must bring any legal proceedings against us arising from this Contract within 3 years from the date when you first become aware or ought reasonably to have become aware of the facts giving rise to the liability or alleged liability or within the relevant statutory limitation period whichever is the earlier.

17.9 Subject to Clause 17.8, no delay in enforcing any of the provisions of this Contract will affect or restrict either party's rights arising under this Contract. No waiver of any provision of this Contract will be effective unless made in writing.

18 Assignment

18.1 We may assign, sub-contract or otherwise transfer this Contract or any part of it to any third party in our absolute discretion.

18.2 You may not assign, sub-licence or otherwise transfer this Contract or any of your rights or obligations arising under it without our written consent.

19 Entire Agreement

19.1 This Contract supersedes all prior agreements, undertakings and representations between the parties and constitutes the entire agreement between the parties relating to its subject matter (except that neither party excludes liability for any fraudulent pre-contractual misrepresentations on which the other party can be shown to have relied).

19.2 A third party which is not a party to this Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

19.3 In the event and to the extent of any conflict between the General Terms and the

Order then these General Terms will take precedence.

20 Law and Disputes

20.1 This Contract will be construed in accordance with and governed by the laws of England.

20.2 In the event of any dispute relating to or arising from this Contract the parties agree to submit to the non-exclusive jurisdiction of the English Courts.

21 Notices

21.1 Notices must be in writing and delivered by pre-paid first class post, or registered post, or recorded delivery addressed to the other party at the address shown in the Services Agreement or any other address as notified in accordance with this Clause.

21.2 Notices will be deemed to be served on the second day after sending.