

Talk Internet - Terms and conditions for "Internet Services"

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 2011

**BETWEEN:**

**Talk Internet [Limited]** of Suite 12, Xpdia, Crab Lane, Fearnhead, Warrington, WA2 0XP ("Talk Internet"); and

**Customer**

**WHEREAS:-**

- (A) Talk Internet provides Talk Internet services and the Customer wishes to become a Customer of Talk Internet.  
 (B) The parties have agreed to enter into a relationship on the terms and conditions hereinafter contained.

**WHEREBY IT IS AGREED:-**

**1. DEFINITIONS**

In this Agreement, the following expressions shall have the following meanings: -

"Confidential Information"	Information which is identified as confidential or proprietary by either party or the nature of which is clearly confidential or proprietary.
"Contract Period"	The initial term of this Agreement as specified in the Order which may be extended or terminated in accordance with the provisions of this Agreement.
"Fees"	The fees (including any VAT) due for the provision of the Services as calculated in accordance with the Price List.
"Inappropriate Material"	Material that under the laws of any jurisdiction where the material can be accessed is any of the following:- unlawful, threatening, abusive, harmful, obscene, pornographic, malicious, profane, libelous, defamatory, infringes any Intellectual Property Rights, constitutes or encourages a criminal offence or contains a virus, worm, trojan horse or other harmful code.
"Intellectual Property Rights"	Copyrights, patents, domain names, database rights, registered and unregistered design rights, topography rights, trademarks and service marks and applications for any of the foregoing, together with all trade secrets, know-how, rights to confidence and other intellectual and industrial property rights in all parts of the world.
"Material"	Text, graphics, images, sound, video or any combination thereof.
"Netiquette"	Generally accepted standards of conduct relating to use of the Internet including, without limitation, not sending SPAM (unsolicited mass e-mail), not impersonating another person, and not misrepresenting oneself to have authorisation from another person when one does not.
"Order Form"	An order on the electronic form provided by Talk Internet and placed with Talk Internet and completed by Customer to indicate which Services it requires and its agreement to these terms and conditions governing such provision.
"Price List"	A list of Talk Internet's prices for each of the Services as available on Talk Internet's Website or from Talk Internet by post or fax on request.
"Relevant Legislation"	Laws relating to data protection and any laws governing Inappropriate Material.
"Server"	The computer server equipment operated by Talk Internet in connection with the provision of the Services.
"Services"	The services identified on an Order Form to be provided by Talk Internet to Customer pursuant to these terms and conditions and any others specified by Talk Internet on such Order Form.
"Software"	Software provided by Talk Internet to the Customer in connection with the provision of the Services.
"Talk Internet's Website"	The Website located at <a href="http://www.talkinternet.co.uk">www.talkinternet.co.uk</a>

## 2. PAYMENT AND SERVICES

- 2.1 In consideration for the payment of the Fees calculated correctly in accordance with the Price stated on the Order Form completed by the Customer, Talk Internet agrees to provide the Services.
- 2.2 The Customer agrees to make payment for the services by payment at the time of the order being placed as per the payment terms and frequency on the order form
- 2.3 If Customer fails to pay any invoice which is due and payable under this Agreement, Talk Internet shall be entitled to charge interest on a daily basis on the overdue amount and on outstanding interest from the date of such failure until payment (both before and after judgment) at an annual rate 4% above the base rate for the time being in force of Barclays Bank plc.
- 2.4 Non-delivery or non-performance of services by any third party other than Talk Internet's sub-contractors shall not give Customer any right to delay any payment to Talk Internet or to make any claim whatsoever against Talk Internet.
- 2.5 If Talk Internet does not receive payment in full within 30 days of the date of the invoice, it may terminate this Agreement as regards any Service without further obligation to Customer.
- 2.6 For the purposes of this Agreement, time of payment is of the essence.

## 3. INDEMNITY

- 3.1 Customer hereby agrees fully to indemnify, keep indemnified and hold harmless Talk Internet, its officers, employees, agents, sub-contractors and affiliated companies from and against any and all costs, claims, losses, damages and expenses (including, but not limited to, legal fees) sustained or incurred by Talk Internet or its any of its officers, employees, agents, sub-contractors or affiliated companies directly or indirectly and in any jurisdiction as a result of:-
  - 3.2 Any breach of any of the warranties given by the Customer in this Agreement;
  - 3.3 Otherwise howsoever arising out of the provision by Talk Internet of any Service hereunder unless on account of breach of contract or negligence by Talk Internet; and/or
  - 3.4 Any breach by Customer of any of its obligations in this Agreement.

## 4. SERVICE OBLIGATION, WARRANTIES AND LIABILITY

Talk Internet will use all reasonable endeavors to provide a prompt and continual service, but will not be liable for any loss of data or service resulting from delays, non deliveries, missed deliveries, or service interruptions caused by events beyond the control of Talk Internet, or by errors or omissions of the Customer

- 4.1 Talk Internet shall not be liable for any interruptions to the Services or outages arising directly or indirectly from:-
  - i. Interruptions to the flow of data to or from the internet;
  - ii. Changes, updates or repairs to the network or software which it uses as a platform to provide the Services subject to Talk Internet striving to minimize the interruptions/outages that may be caused by such change;
  - iii. The effects of the failure or interruption of services provided by third parties;
  - iv. Factors outside of Talk Internet's reasonable control;
  - v. Any actions or omissions of Customer (including, without limitation, breach of Customer's obligations set out in the agreement) or any third parties;
  - vi. Problems with Customer's equipment and/or third party equipment;  
Customer requested interruptions to the Services.
- 4.2 Talk Internet will not be liable for any indirect loss, consequential loss, loss of profit, revenue, data or goodwill howsoever arising suffered by the Customer or for any wasted management time, failure to make anticipated savings or liability of the Customer to any third party arising in any way in connection with this Agreement or otherwise whether or not such loss has been discussed by the parties pre-contract or for any account for profit, costs or expenses arising from such damage or loss.
- 4.3 **Offsite Storage and Retrieval**

The transmission, storage, viewing and retrieval of data and files through the world wide web is subject to a variety of conditions that make such transmission, storage, viewing and retrieval potentially unreliable. Accordingly, the Customer's use of the Customer's account and the Services is at the Customer's sole risk. The Customer's account and the Services are provided to the Customer on an "as is" and "as available" basis.
- 4.4 Talk internet makes no representation or warranty that:
  - (A) The Customer's account or the Services will meet the Customer's needs;
  - (B) Access to the Customer's account or the Services will be timely, error-free, uninterrupted, virus-free or secure;
  - (C) The data and files the Customer stores in the Customer's account will not be lost or damaged;
  - (D) The data on the Customer's desktop or server will not be lost or damaged; or

(E) Defects in the Services will be corrected.

- 4.5 The Customer acknowledges that its retrieval of any material or data through the use of the Services is effected at the Customer's choice and risk and that the Customer will be solely responsible for any damage to the Customer's computer system or loss of data that results from the retrieval of such material or data. Save as expressly stated in this Agreement, all conditions and warranties whether express or implied, statutory or otherwise, which relate to the condition or fitness for any purpose of the software provided by Talk Internet or to the care or skill with which the Services are provided are hereby expressly excluded.
- 4.6 None of the clauses above shall apply so as to restrict liability for death or personal injury resulting from the negligence of Talk Internet or its appointed agents.
- 4.7 No matter how many claims are made and whatever the basis of such claims, Talk Internet's maximum aggregate liability to the Customer under or in connection with this Agreement or any other agreement between the parties or any software related to this Agreement, in respect of any direct loss (or any other loss to the extent that such loss is not excluded by the provisions of this clauses 4 or otherwise) whether such claim arises in contract or in tort shall not exceed a sum equal to once the amount of the monthly fee paid by the Customer for the Services.
- 4.8 The Customer agrees that it is in a better position to foresee and evaluate any loss it may suffer in connection with this Agreement and that the Fees have been calculated on the basis of the limitations and exclusions in this Clause 6 and that the Customer will effect insurance as is suitable having regard to its particular circumstances and the terms of this Clause 4.
- 4.9 None of the clauses above shall apply so as to restrict liability for death or personal injury resulting from the negligence of Talk Internet or its appointed agents.
- 4.10 Talk Internet excludes any warranty as to the quality or accuracy of information received through the Services.

## 5. SERVICE LEVEL AGREEMENT

- 5.1 **Service Availability**  
Talk Internet's services covered under this SLA provide a guaranteed uptime of 99.7% uptime measured over a 12 month period.
- 5.2 **Network Latency**  
Latency is the delay in traffic between any start and end point on the Talk Internet service provide d. It is measured from core node to core node in milliseconds (ms) and is averaged as a one-way delay (not round trip delay) over any calendar month. The following table outlines the target service levels for latency based on one-way route averages for the service that is being provided:

Service	Latency
Transit US	25 ms
Transit Europe	15ms
Transit	10 ms
Customer Direct Internet Access Ethernet Circuit	30ms

- 5.3 **Service Targets and credits**  
Talk Internet technical support operates 24 hours a day, 7 days a week, 365 days a year for the management and restoration of service. Talk Internet treats all service affecting faults as critical and is targeted to respond to faults within 1 hour of notification by the Customer and restoration of service within a target time of 4 hours after diagnosis.

Failure to meet the above Target the end user can claim a service credit on a pro rata basis at the rate of one days rental refund per hour of downtime.

- 5.4 **Fault Escalation**  
Fault escalation procedures can be invoked in the following situations:
  - Where a fault condition is serious enough to cause significant impact, or presents a significant threat, to the services provided by Talk Internet
  - If a reported fault exceeds the target time for repair
  - Where an individual fault condition is particularly sensitive and is deemed to be business critical a quicker escalation may be necessary.

The Customer may at any time during the fault condition request immediate escalation. All requests must clearly state the reason for escalation, and the request and any subsequent actions are to be recorded by both parties on their respective fault logging systems. Talk Internet will respond to all such requests, and will advise if a request is deemed to be invalid. A response is to be provided within 30 minutes of the request being made.

- 5.5 **Service Monitoring**

Talk Internet continuously monitors all elements in its network and can thus detect service failures, and calculate availability, from its own network management systems. For the avoidance of doubt, the Customer will still be required to notify Talk Internet should they experience any difficulties with any services they have.

#### 5.6 General

The SLA does not apply to any ADSL/SDSL service. If an on-site visit reveals that there is no fault with the Service or the Fault is an Excluded Outage, We may charge an engineer call-out fee to cover Talk Internet or third party engineers cost in attending site. In all cases, SLA credits will only be issued if the customer's credit account complies to Clause 2 of this agreement.

#### 5.7 Claiming Service Credits

Service credit claims must be submitted in writing to Talk Internet within 5 working days of the event (not including bank holidays or public holidays).

You agree that service credits shall be Your sole and exclusive financial remedy for failure to meet the agreed SLA.

#### 5.8 Planned Outage and network maintenance

Except in an emergency or in circumstances beyond Our control, We will endeavour to give You at least 5 working days' notice of any maintenance or upgrade work on Our network or systems which will affect the availability of your service. Such notice will include:

- a. a brief description of the Planned Outage;
- b. date and time of the Planned Outage; and
- c. Estimated duration of the Planned Outage.

Such notice will be sent to the nominated account contact and associated partner (if assigned) via email. In the case of an emergency, we may give you a shorter notice by way of a telephone call.

All maintenance notifications are also listed under the Technical support notifications website:

[www.talkinternet.co.uk/notifications/](http://www.talkinternet.co.uk/notifications/)

#### 5.9 Reporting a Fault

You must comply with any fault reporting format as advised by Us. This includes carrying out our specified pre-check documentation.

For the avoidance of doubt, if there is a dispute on any Fault commencement or duration, the times recorded on the Talk Internet fault system shall be final.

Any faults or suspected faults on the Services must be reported to Our Technical Support Team on 0845 310 1012 or email [support@talkinternet.co.uk](mailto:support@talkinternet.co.uk) This line is open 24x7 365 days a year.

5.10 Talk Internet may, without liability, elect to suspend the Services immediately on breach of any of the terms and conditions of this agreement, including without limitation late or non-payment of sums due.

5.11 From time to time the whole or part of the network may be closed down for routine repair or maintenance work. Talk Internet shall give as much notice as possible in the circumstances, and shall endeavour to carry out such works during the scheduled maintenance periods as published from time to time. Loss of service due to down time for maintenance after notice has been given (minimum of 24 hours) will not form part of the guaranteed 99.7% uptime calculation.

5.12 In the event of suspension of the Services pursuant to Clause 5.2 and the subsequent re-connection of the Services to the Customer, Talk Internet shall be entitled to charge the Customer a sum equal to 20% of the most recently levied annual fee for the provision of the Services.

5.13 Talk Internet's right to suspend the Services shall be without notice and without any liability whatsoever on the part of Talk Internet and without prejudice to the Customer's obligation to pay for the Services in their entirety.

#### 5.14 **Network Bandwidth Policy**

Whilst Talk Internet uses its best endeavors to provide a fast and reliable service for all users, the Customer should note that "contended" services such as ADSL, resources are shared between many users. Traffic shaping is performed during busy periods to ensure all users have fair access to resources. Talk Internet requires all users not to make unreasonable demands on its network. If the Customer is found, in Talk Internet's reasonable discretion, to be making excessive use of the Services, Talk Internet may without any liability to the Customer restrict or suspend the Services.

### **6. ACCEPTABLE AND IMPROPER USE**

6.1 The Customer acknowledges that it may only use the Services for lawful purposes. The Customer warrants that:-

- b. it shall not knowingly use the Services to receive or transmit material that is obscene, threatening, menacing, offensive, defamatory, in breach of confidence, in breach of any Intellectual Property Right, or otherwise unlawful or in breach of Netiquette.

- c. its account is to be used by a single user only (unless otherwise agreed) and that it will not allow simultaneous access using the same login;
  - d. the registered user of the account will keep the username and password secure and not let them become public knowledge and that the password will not be stored anywhere on a computer in plain text;
  - e. if the password becomes known to any other unauthorised user the registered user will inform Talk Internet immediately.
- 6.2 Any breach of these warranties or obligations shall entitle Talk Internet immediately to terminate the Services to the Customer.
- 6.3 The Customer hereby indemnifies and agrees to keep Talk Internet fully and effectually indemnified from and against any and all losses, costs, actions, proceedings, claims, damages, expenses, including reasonable legal costs and expenses, or liabilities whatsoever suffered or incurred directly by Talk Internet in consequence of the Customer's breach or non-observance of these terms and conditions.
- 6.4 The Customer shall defend and pay all costs, damages, awards, fees (including any reasonable legal fees) and judgments, awarded against Talk Internet arising from the above claims and shall provide Talk Internet with notice of such claims, full authority to defend compromise or settle such claims and reasonable assistance necessary to defend such claim, at the Customer's sole expense.
- 6.5 Use by others: The Customer acknowledges that Talk Internet is unable to exercise control over the material sent via the Services and that Talk Internet hereby excludes liability of any kind for the reception by the Customer of viruses, offensive, threatening or obscene material.
- 6.6 The Services may be used by the Customer to link into other networks worldwide, and the Customer agrees to conform to the acceptable use policies of such networks.

## **7. ASSIGNMENT, AGENCY, SUB-LEASING AND RESELLING**

- 7.1 The rights granted to the Customer pursuant hereto are personal and the Customer undertakes that it will not assign the Agreement, sub-lease in any other way, transfer the Services, or Software without prior written agreement from a director of Talk Internet. Actual or attempted contravention of this restriction in any way, whether successful or not, will result in the Services being terminated by Talk Internet without notice and without any liability whatsoever on the part of Talk Internet and without prejudice to the Customer's obligation to pay for the Services in their entirety.
- 7.2 Talk Internet shall be entitled to assign this Agreement either in whole or in part. This Agreement shall be personal to the Customer who shall not be entitled to assign this Agreement in whole or part.

## **8. DATA PROTECTION, RELEVANT LEGISLATION AND INDUSTRY REGULATIONS**

- 8.1 Talk Internet reserves the right to put the names and other information from the registration form relating to the Customer into a computerised directory for internal use only, unless specific written instructions are received from the Customer.
- 8.2 In the event of an acquisition of Talk Internet or of a liquidator, administrator or receiver being appointed over Talk Internet or all or any part of Talk Internet's assets, the Customer's information will only be passed to the acquiring or appointed third party of the business providing that such third party undertakes to use the Customer's information for the same purposes as set out in this Agreement. The Customer's information will not be disclosed to government or local authorities or other government institutions save as required by law or other binding regulations.
- 8.3 Talk Internet will use the Customer's information for the purpose of fulfilling orders placed by the Customer, processing any other transactions authorised or made by the Customer with Talk Internet, informing the Customer of new products, updates, offers and providing other marketing information to the Customer which Talk Internet thinks the Customer may find of interest or for the purposes of undertaking Customer research.
- 8.4 The Customer warrants that it complies and will remain throughout the course of the Agreement compliant with Relevant Legislation as well as relevant industry regulations, including without limitation those issued by OFCOM and OFTEL.

## **9. SOFTWARE AGREEMENT**

- 9.1 Customer's right to use the Software and the documentation provided with the Agreement, both of which are protected by copyright laws, is limited to the terms and conditions described below.
- 9.2 The Customer may use the Software as per the license agreement of the manufacturer and will confirm acceptance of such terms by clicking the associated box on the Website. The Customer may not (a) distribute copies of the Software or associated documentation to others, (b) rent, lease, sub-license or otherwise grant any rights to the Software, (c) except to the extent dictated in the associated documentation or instructions for use or as permitted by law translate, reverse engineer, de-compile or disassemble, or otherwise alter the Software or associated documentation without the prior written consent of Talk Internet or the software manufacturer; or (d) ship or transmit (directly or indirectly) any copies of the Software, or any technical data in the Software or its media, or any direct product thereof, to any entity or place.

9.3 The Customer's license to use the Software remains in effect until terminated. The Customer's license will terminate without notice if the Customer fails to comply with any of Talk Internet terms and conditions, and or breaches the software manufacturer's license. Upon any termination, the Customer must remove all copies of the Software in any form from its systems, and this is without prejudice to the Customer's obligation to pay for the Software in its entirety.

9.4 **Limited Warranty**

Talk Internet warrants the media on which the Software is provided will be free from defects in materials and workmanship under normal user for a period of thirty (30) days after purchase. Defective media may be returned, with proof of purchase, for replacement without charge during the thirty (30) day warranty period. Neither Talk Internet nor any other provider of the Software warrants that the Software is error-free, will operate without interruption or is compatible with all equipment and software configurations. In addition, the security mechanism implemented by the Software has inherent limitations and the Customer must determine that the Software meets the Customer's needs. This warranty does not cover any Software that has been subjected to damage or abuse or which has been altered or changed in any way. Talk internet is not responsible for problems caused by computer hardware, computer operation systems or the use of the Software in conjunction with non-Talk Internet software.

Except as provided in this Clause 9, Talk Internet gives no other warranties, express or implied, with respect to the Software, its merchantability or fitness for a particular purpose.

**Limitation of Liability regarding the Software**

**Clause 9.5 and 9.6 are without prejudice to the general application of Clause 4**

9.5 Repair, replacement or refund at the option of Talk Internet is the exclusive remedy if there is an inherent defect. In no event shall Talk Internet or the manufacturer of the Software or the Software providers be liable for any indirect loss, consequential loss, loss of profit, revenue, data or goodwill howsoever arising suffered by the Customer or for any wasted management time, failure to make anticipated savings or liability of the Customer to any third party arising in any way in connection with this Agreement or otherwise whether or not such loss has been discussed by the parties pre-contract or for any account for profit, costs or expenses arising from such damage or loss.

9.3 In no event shall the liability of Talk Internet or the provider or manufacturer of the Software provider exceed the amount paid by the Customer for the Software at issue. The Customer shall not use the Software in any case where damage or injury to person, property or business may occur if any error occurs. The Customer expressly assumes all risk for such use.

**10. TERM AND TERMINATION**

10.1 This Agreement to provide the Services will continue for the Contract Period and thereafter unless terminated by either party giving at least 30 days' written notice to the other party, such notice not to expire prior to the end of the Contract Period or any anniversary thereof. All Ethernet and server hosting,

10.2 and co-locationservices require a 60 days' written notice period.

10.3 Either party may terminate this Agreement immediately by written notice to the other in the event that any of the following occur:-

a. the other fails to pay any amount due hereunder within 30 days of its due date or breaches any term of this Agreement and such breach is incapable of remedy or continues for a period of 30 days after notice requiring the same to be remedied has been given by the terminating party to the other party; or

b. an order is made or a resolution is passed for the winding up of the other party, or if a provisional liquidator is appointed in respect of the other party, or if an administration order is made in respect of the other, or if a receiver is appointed in respect of the other or all or any of its assets or if the other is unable to pay any of its debts within the meaning of Section 123 of the Insolvency Act 1986, or if any voluntary arrangement is proposed under Part 1 of the Insolvency Act 1986 in respect of the other.

10.4 Upon termination of this Agreement for whatever reason all due or outstanding fees and expenses owed by the Customer to Talk Internet shall forthwith become due and payable.

10.5 In the event of early termination permitted by this Agreement, customer shall pay Talk Internet the remaining fees of the Agreement from the date of termination.

**11. GENERAL**

11.1 Subject to Clause 11.2, this written Agreement together with any schedules, constitutes the entire agreement between the parties hereto relating to the subject matter hereof and neither relied on any representation made by the other party unless such representation is expressly included herein. Nothing in this Clause 11.1 shall relieve either party of liability for fraudulent misrepresentations and neither party shall be entitled to any

remedy for either any negligent or innocent misrepresentation except to the extent (if any) that a court or arbitrator may allow reliance on the same as being fair and reasonable.

- 11.2 No change, alteration or modification to this Agreement shall be valid unless in writing and signed by duly authorised representatives of both parties.
- 11.3 If any provision of this Agreement or part thereof shall be void for whatever reason, it shall be deemed deleted and the remaining provisions shall continue in full force and effect.
- 11.4 Any notice given pursuant hereto may be served personally or sent by pre-paid registered letter or recorded delivery to the addresses given here above. Such notice shall be deemed to have been duly served upon and received by the addressee, when served personally, at the time of such service or, when posted, 48 hours after the same shall have been put into the post correctly addressed and pre-paid.
- 11.5 Neither party shall be liable for any loss suffered by the other party or be deemed to be in default for any delays or failures in performance hereunder (other than in relation to payment) resulting from acts or causes beyond its reasonable control or from any acts of God, acts or regulations of any governmental or supra-national authority.
- 11.6 Any delay or forbearance by either party in enforcing any provisions of this Agreement or any of its rights hereunder shall not be construed as a waiver of such provision or right thereafter to enforce the same.
- 11.7 This Agreement shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.

**IN WITNESS WHEREOF** the parties by their duly authorised representatives have executed this Agreement as of the date first above written

**Talk Internet [Limited]**

Signature .....

Name (please print) .....

Position .....

Date .....

**Customer**

Signature .....

Name (please print) .....

Position .....

Date .....