

BROADBAND - TERMS AND CONDITIONS

1. DEFINITIONS:-

"Talking Technology Ltd" means Talking Technology Ltd whose registered office is at 11 Palmerston Road, Sutton, Surrey, SM1 4QL.

"Customer" means the person who places the Order and uses the Services.

"Telephone Line" means the telecommunications circuit that the Customer uses to obtain telecommunications services over the public switched telephone network at the Site as notified by the Customer to Talking Technology Ltd.

"Agreement" means these Terms, together with the order form.

"BT" means British Telecommunications plc.

"Installation date" means the date when ADSL service is installed in the site.

"Consumer" means a person who enters into a contract other than in the course of a business

"Customer Equipment" means apparatus belonging to the Customer.

"Order Form" means the Talking Technology Ltd application form, written customer order or e-mailed customer order.

"Site" means the Customer Site where the Service is to be received.

"Service" means the installation, connection and supply of a telecommunications circuit capable of supporting ADSL services at the Site and the provision of telecommunication services over such circuit.

2. COMMENCEMENT AND DURATION:-

This Agreement will commence on the Commencement Date and shall continue for an initial period of 12 months and will automatically renew subject to termination under Clauses 12.

3. PROVISIONS OF SERVICE:-

3.1 Talking Technology Ltd shall provide or procure the provision of the Service to the Customer in accordance with the terms of this Agreement. The Customer acknowledges that it is technically impracticable to provide a fault free Service and Talking Technology Ltd does not undertake to do so.

3.2 The provision of the Service to the Customer will be subject to the characteristics of the Customers Access Connection and BT may determine that it is not possible to supply the Service over the Customers Access Connection. Where this is the case, Talking Technology Ltd will immediately terminate this Agreement, Talking Technology Ltd will not be liable to the Customer for such termination.

3.3 The Customer acknowledges that during the installation of the Talking Technology Ltd Equipment for the provision of the Service the Customer Access Connection may suffer a temporary loss of telephone service, and /or interference to any other Access Connection services, which shall be reinstated following installation. Talking Technology Ltd will not be liable for any loss, interruption or interference during installation. The Customer also acknowledges that any telephone socket extensions that are incorrectly wired may be disconnected during installation, without liability to Talking Technology Ltd.

3.4 Occasionally Talking Technology Ltd and/or BT may have to interrupt the Service or change the technical specification of the Service for operational reasons (such as maintenance or Service upgrades) or because of an emergency. In these circumstances where possible Talking Technology Ltd will give notice to the Customer of any such interruption however, the Customer shall have no claim against Talking Technology Ltd for any such interruption.

3.5 Except as otherwise expressly permitted under this Agreement, the Customer may not:

- modify the Service without Talking Technology Ltd's prior written consent;

- redistribute, copy or use the Service, or transfer rights to the use of the Service to any third party;

- disclose details of the Service, to any third party without Talking Technology Ltd's prior written consent;

- use the Service except in conjunction with Talking Technology Ltd's recommended operating guidelines;

3.6 Talking Technology Ltd shall use its reasonable endeavours to comply with the Customer's reasonable requests in respect of installation but Talking Technology Ltd or BT's decision on the routing of cables and wires and the positioning of outlets and other apparatus constituting the Talking Technology Ltd Equipment shall be final and binding.

3.7 Talking Technology Ltd shall use all reasonable endeavours to provide and install or procure the provision and installation of the Talking Technology Ltd Equipment at the Site so that the Service can be provided on or before any installation date specified or agreed to by Talking Technology Ltd. Any installation date is an estimate only and Talking Technology Ltd shall not be liable for any failure to meet such installation date.

3.8 Installation of the Service may be subject to a survey carried out by Talking Technology Ltd or BT and the Service may not be provided where the survey carried out, is incomplete or unsatisfactory.

3.9 The customer accepts that the service is rate adaptive and will run at the most reliable speed available up to 8Mbit/s. Speed can be affected by external conditions.

3.10 The customer accepts that peak and sustained throughput rates may be reduced by contention within the network the BT central or BT Central plus (as applicable) other components sourced by the customer to provide the customer service, end user speed control systems and the internet and by rate adaptation of modems and Line Rate for Max products.

4. USE OF SERVICE:-

4.1 The Customer must not use the Service:

- in a way that does not comply with the terms of any legislation or any license applicable to the Customer or that is in any way unlawful or fraudulent or has any unlawful or fraudulent purpose or effect;

- in connection with the carrying out of a fraud or criminal offence against Talking Technology Ltd, or any other public telecommunications operator;

- to send, knowingly receive, upload, download, use or re-use any material which is abusive, indecent, defamatory, obscene or menacing, or in breach of any copyright, confidence, privacy or any other rights;

- to send or procure the sending of any unsolicited advertising or promotional material other than in the case of the Customer to its own customers;

- in a way that does not comply with any instructions Talking Technology Ltd or BT has given; or

- in a way that in Talking Technology Ltd's reasonable opinion could materially affect the quality of any service, including the Service, provided by Talking Technology Ltd or BT.

- in a way that in Talking Technology Ltd's reasonable opinion could affect the experience of other users on the network; More specifically heavy download users affecting the performance of the network, in the case of homeworke ADSL products, may be asked to upgrade their product to office ADSL, or in extreme circumstances Talking Technology Ltd reserve the right to give a Migration Authority Code and ask the customer to leave. A heavy user is defined by Talking Technology Ltd as anyone downloading or uploading more than 50GB per calendar month.

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4.2 Talking Technology Ltd will be entitled to suspend the Service or terminate the Agreement where Talking Technology Ltd, in its absolute discretion, believes the Customer is in breach of any provisions of Clause 4.1.

4.3 The Customer acknowledges and accepts the following technical limits relating to the Service:

- transmission performance of some metallic local loops will mean it is technically impracticable to provide Service to all Customers within the Service Availability Area;
- currently, until such time as Talking Technology Ltd advises otherwise, the Service cannot be provided over the same Access Connection as certain other telecommunications services.
- the Service is not available to Sites where all or part of the Access Connection is provided over fibre optic cable or radio systems.
- that the Service may also affect the performance of some PSTN customer premises equipment.
- that some technical limitations may not become apparent until after the Service has been installed and working for some time. In such circumstances the Service for some individual may need to be withdrawn.
- that in the case of any rate-adaptive product, including Homeworker and Office 500, 1000, 2000 and MAX ADSL services, upload speeds (and download speeds for MAX services) are dependant on distance from the exchange, atmospheric conditions and quality of the metallic path and may vary without notice to the customer.
- Rate adaptation can occur several times a day and may cause the link to the DSLAM to reset.
- that in the case of any rate adaptive product, such as ADSL MAX services, throughput guarantees will relate only to the actual rated speed of an individual connection, not any implied speed of service.

4.4 In the circumstances referred to in Clause 4.3 Talking Technology Ltd will have no liability to the Customer relating to the provision of the Service (or Talking Technology Ltd's inability to provide the Service), the performance of the Service, its effect on other services or equipment or the withdrawal of the Service.

4.5 The Customer will co-operate with Talking Technology Ltd's reasonable requests for information regarding the Customer use of the Service and supply such information without delay.

5. CHARGES:-

5.1 The charges for the Service will be calculated in accordance with the Talking Technology Ltd Price List. Charging will begin on the Commencement Date for the Service. Charges will be calculated in accordance with details recorded by, or on behalf of, Talking Technology Ltd.

5.2 The Customer will pay the charges within 30 days of the date of Talking Technology Ltd's invoice. Talking Technology Ltd may charge daily interest on late payments at a rate equal to 4% per annum above the base-lending rate of Barclays Bank Plc and/or a £15 administration fee is applicable to late payments.

5.3 All charges exclude Value Added Tax (VAT) at the applicable rate, unless stated otherwise.

5.4 Talking Technology Ltd may also make an additional charge (on the basis of additional charges detailed in the Talking Technology Ltd Price List), on its own behalf or on behalf of a BT in the following circumstances: -

- an abortive visit charge may be incurred where incorrect information supplied by the Customer means it is technically impractical to provide the Service over the Customers Access Connection;
- where it is necessary to relocate the existing telephone master socket to provide the Service;
- where Talking Technology Ltd or BT are unable to gain access to the Site to carry out installation of the Service or the installation is aborted an abortive visit charge may be payable;

- where certain order information provided by the Customer is illegible, inaccurate or incomplete an administration fee will be charged;

- where Talking Technology Ltd or BT provide the support to the Customer outside its normal support times in supply of the Service;

- where a fault relates to equipment other than the supplied Equipment.

6. CUSTOMER OBLIGATIONS:-

6.1 To allow the installation and use of the Talking Technology Ltd Equipment at the Site, the Customer will at the Customer's own expense:

- obtain all necessary consents, including consents for any necessary alterations to buildings;
- take up or remove, any fitted or fixed floor coverings, ceiling tiles, suspended ceiling and partition covers, as Talking Technology Ltd or BT advises are necessary, and carry out afterwards any making good or decorator's work required; and provide any electricity and connection points required by Talking Technology Ltd or BT.

The criteria above must be completed in advance of any installation work.

6.2 A secure electricity supply is required at the Premises for the installation and with such connections as specified by Talking Technology Ltd. Unless otherwise agreed, this power supply is to be provided by the Customer. Talking Technology Ltd shall not be responsible for interruption or failure of the Services caused by a failure of such power supply.

6.3 Any Customer Equipment connected to or used with the Service must be connected and used in accordance with any instructions, safety and security procedures applicable to the use of that equipment. Any equipment which is attached (directly or indirectly) to the Service must be technically compatible with the Service and approved for that purpose under any relevant legislation or telecommunications industry standards.

6.4 To enable Talking Technology Ltd to carry out its obligations under this Agreement, the Customer will at all reasonable times provide Talking Technology Ltd employees, and anyone acting on Talking Technology Ltd's behalf including BT, who produces a valid identity card, with access to any Site and any other premises outside of Talking Technology Ltd's control. Talking Technology Ltd will normally only require access during its usual working hours but may, on reasonable notice, require the Customer to provide access at other times. Talking Technology Ltd may agree to work outside its usual working hours, but the Customer must pay Talking Technology Ltd's additional charges for doing so as detailed in Clauses and the Talking Technology Ltd Price List.

6.5 If through no fault of Talking Technology Ltd, Talking Technology Ltd is unable to carry out an installation at, or gain access to, the Site or the installation is aborted, Talking Technology Ltd will notify the Customer Nominated Contact and may raise an abortive visit charge.

6.6 The Customer hereby irrevocably gives permission to Talking Technology Ltd or BT and its employees, agents or contractors to:

- execute any works on the Premises for, or in connection with, the installation.

- keep and operate telecommunication apparatus installed on, under or over the Premises;

- enter the Premises to inspect any telecommunication apparatus kept on, the Site or elsewhere for the purposes of providing the Service.

6.7 The Customer shall be responsible for the repair and maintenance of any Customer Apparatus used in order to obtain or use the Service.

7. SUPPORT OF SERVICE:-

Support for the Service is available by sending an e-mail to broadband.support@talktech.co.uk or telephoning 01332 6466310. Support is available Monday to Friday between 08h00 – 20h00 and between 09h00 – 17h00 on Saturdays & Sundays.

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8. INTELLECTUAL PROPERTY RIGHTS:-

8.1 The Customer acknowledges that the Customer shall have no rights to any intellectual property rights arising as a result of any use of the Service.

8.2 Any and all intellectual property rights used or embodied in or in connection with the Service shall be and remain the sole property of Talking Technology Ltd or Talking Technology Ltd's licensors. No title or intellectual property rights therein or in any modification or extension thereof shall pass to the Customer unless specifically stated under the Agreement.

8.3 The Customer acknowledges such title, interest and rights and the Customer shall not take any action to jeopardize, limit or interfere in any manner with Talking Technology Ltd's (or any third party suppliers') title, interests or rights with respect to the Service, including but not limited to, using Talking Technology Ltd's or BT's trademarks or trade name.

8.4 Where software is provided to enable the Customer or to use the Service, Talking Technology Ltd grants the Customer, for the duration of this Agreement, a non-exclusive, non-transferable license to use the software for that purpose.

9. WARRANTIES:-

9.1 The service will be provided without warranty or representation of any kind, whether express or implied. Talking Technology Ltd disclaims and excludes all such warranties and representations including without limitation any warranty or representation that the Service is free of defects, of satisfactory quality, fit for a particular purpose or non-infringing of third party rights. The Customer accepts all risks and liabilities associated with the use of the Service.

10. LIMITATION OF LIABILITY:-

10.1 Nothing in this Agreement shall exclude or limit liability for death or personal injury resulting from the negligence of either party or their servants, agents or employees.

10.2 Neither party shall be liable in contract, tort, pre-contract or other representations (other than fraudulent or negligent misrepresentations) arising out of or in connection with this Agreement for:

- any economic losses (including, without limitation, loss of revenues, profits, contracts, or business); or
- any special, indirect or consequential losses or any destruction of data, arising out of or in connection with the provisions of this Agreement.

10.3 Subject to clauses 10.1 and 10.2 Talking Technology Ltd's liability to the Customer in contract, tort, negligence, pre-contract or other representations arising out of or in connection with this Agreement or the performance or observation of its obligations under this Agreement shall be limited in aggregate to the charges paid, by the Customer under this Agreement.

10.4 Each provision of this Agreement, excluding or limiting liability, operates separately. If any part is held by a court to be unreasonable or inapplicable, the other parts shall continue to apply.

10.5 The Customer indemnifies Talking Technology Ltd and its suppliers including BT against any claims or damages arising from the Customers access to or use of the Service and any information, data or material produced, transmitted or downloaded on the Service.

11. FORCE MAJEURE

11.1 If either party is unable to perform any obligation under this Agreement because of a matter beyond that party's reasonable control such as lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes (whether or not involving that party's employees), or acts of local or central Government or other Competent authorities or events beyond the reasonable control of that party's suppliers, the party will have no liability to the other for that failure to perform.

11.2 If any of the events detailed in paragraph 11.1 continue for more than 3 months either party may serve notice on the other terminating this Contract.

12. TERMINATION

12.1 The Customer may terminate this agreement after the initial term by giving 30 days written notice to Talking Technology Ltd and paying the £50 cancellation fee. If a 12 month contract is terminated early Talking Technology Ltd will charge the £60 ADSL set up fee in addition to the £50 cancellation fee.

12.2 Either party may terminate this Agreement or the Service provided under it immediately, on notice, if the other:

- commits a material breach of this Contract, which is capable of remedy, and fails to remedy the breach within 15 days of a written notice to do so;
- commits a material breach of this Contract which cannot be remedied;
- is repeatedly in breach of this Contract; or
- is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of their creditors, or goes into voluntary (otherwise than for reconstruction or amalgamation), or compulsory liquidation or a receiver or administrator is appointed over their assets.

12.3 If any of the events detailed in 12.2 occur as a result of Customer default, Talking Technology Ltd may suspend the Service without prejudice to its right to terminate this Contract. Where the Service is suspended under this paragraph 12.3 the Customer must pay the charges for the Service until this Contract is terminated.

12.4 Talking Technology Ltd may terminate this Agreement immediately upon written notice to the Customer if:

- Talking Technology Ltd is informed by BT supporting the Service that BT is required to cease the Service by a competent regulatory authority; or
- BT supporting the Service ceases to do so for whatever reason or changes the terms its provision of telecommunications services to Talking Technology Ltd for the Service beyond the reasonable control of Talking Technology Ltd;
- the Customer fails to comply with any of the material terms or conditions of the Agreement and the Customer does not remedy such failure within 15 days of a request to do so.

12.5 Upon termination of this Agreement the Customer shall immediately stop using the Service and the Customer right to use the Service shall immediately terminate.

12.6 If either party delays in acting upon a breach of this Agreement that delay will not be regarded as a waiver of that breach. If either party waives a breach of this Agreement that waiver is limited to that particular breach.

13. CONFIDENTIALITY:-

13.1 The parties will keep in confidence any information (whether written or oral) of a confidential nature (including software and manuals) obtained under or in connection with this Agreement or the Service and will not without the written consent of the other party disclose that information to any person (other than their employees or professional advisers, or in the case of Talking Technology Ltd the employees or their suppliers, who need to know the information).

13.2 This Clause 13.1 will not apply to:

- any information, which has been, published other than through a breach of this Agreement;
- information lawfully in the possession of the recipient before the disclosure under this Agreement took place;
- information obtained from a third party who is free to disclose it; and
- information, which a party is, requested to disclose and, if it did not, would be required by law to do so.

13.3 This Clause 13.1 will remain in effect for 2 years after the termination of this Agreement.

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14. DATA PROTECTION:-

14.1 Talking Technology Ltd and the Customer each agree to comply with their respective obligations under applicable data protection legislation and maintain all relevant registrations, including (in relation to the Customer) such registrations and consents as the Customer should obtain and maintain to enable Talking Technology Ltd to process personal data in connection with the performance by Talking Technology Ltd of its obligations under this Contract.

14.2 The Customer agrees that Talking Technology Ltd may put their name and other details obtained from the Order Form into a computerized directory for internal use and to enable Talking Technology Ltd to provide the Service.

14.3 Rights of subject access will be in accordance with the Data Protection Act 1998 and upon request in writing and payment of the appropriate fee.

15. CONSUMERS:-

Where you are purchasing the Service as a Consumer the exclusion of the implied terms in Clause 9 and the provisions of Clause 14.1 will not apply.

16. NOTICES:-

16.1 Notices given under this Agreement must be in writing and may be delivered by hand, or by courier or first class post to the following addresses:

16.1.1 To Talking Technology Ltd at the address of the Talking Technology Ltd office shown on the Order Form or any alternative address which Talking Technology Ltd notifies to the Customer;

16.1.2 To the Customer at the address to which the Customer asks Talking Technology Ltd to send invoices, the address of the Customer's premises, or, if the Customer is a limited company, its registered office.

17. GENERAL PROVISIONS:-

17.1 The Agreement will constitute the entire agreement between the parties and will supersede all prior and contemporaneous agreements, communications and representations (except for fraudulent or negligent misrepresentations) whether oral or written, between the parties.

17.2 A person who is not party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

17.3 In the event of a dispute between the parties, the parties will attempt in good faith to resolve the dispute or claim arising out of or relating to the Agreement promptly through negotiations between the respective representatives of the parties who have authority to settle the same.

17.4 If any provision of the Agreement (whether in part or in whole) is held by a court of competent jurisdiction to be illegal, invalid or unenforceable the remaining provisions of the Agreement shall remain in full force and effect.

17.5 Any waiver of any breach of any provision of the Agreement will not constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions of the Agreement.

17.6 The Customer may not assign or otherwise transfer, by operation of law or otherwise, the Agreement or any rights or obligations therein without the prior express written consent of Talking Technology Ltd.

17.7 The headings to the sections of this Agreement are for convenience only.

18. LAW:-

The Agreement shall be governed by the laws of England and the parties submit to the non-exclusive jurisdiction of the Courts of England.