

Broadband Agreement Terms and Conditions

BACKGROUND

The parties have agreed that TTL will supply the Service, defined below and that the Customer will pay for and use the Service in accordance with the terms of this Broadband Agreement

AGREED TERMS

1. DEFINITIONS

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:
- "Agreement" means this agreement between TTL and the Customer for the supply of the Service by TTL to the Customer;
 - "Call Charge" means the charges payable by the Customer for telephone calls made using the Service;
 - "Line Rental Charge" means the periodic rental charges specified in the Particulars;
 - "Particulars" means the details of the Customer's order set out in an TTL order form signed on behalf of the Customer and TTL;
 - "Service" means the telephony service specified in the Particulars;
 - "TTL" means Talk Telecom Limited means us and any of our Affiliates.

1.2 Clause headings shall not affect the interpretation of this Agreement;

1.3 Words in the singular include the plural and vice versa. A reference to one gender shall include a reference to the other genders.

1.4 References to clauses are to clauses in this Agreement.

2. COMMENCEMENT

2.1 TTL will be bound contractually to supply and provide the Service only when this Agreement and the Particulars have been signed by both the Customer and TTL.

2.2 TTL will supply and provide the Service subject to the terms of this Agreement. No additions or modifications to this Agreement or to the Particulars shall be effective unless accepted by TTL in writing.

3. CUSTOMER ACKNOWLEDGEMENTS

3.1 The Customer acknowledges that:

- 3.1.1 the Customer is liable for all Line Rental Charges and Call Charges howsoever arising under this Agreement including call charges incurred as a result of fraudulent use of this Service.
- 3.1.2 whilst TTL will take reasonable steps to protect the confidentiality of transmissions via the Service, TTL does not warrant that transmissions made via the Service are confidential.
- 3.1.3 any telephone number allocated by TTL to the Customer under this Agreement is licensed to the Customer for the duration of this Agreement and for the purpose of using the Service only.

4. TIME

4.1 Any periods or times stated for delivery or for compliance with any contractual obligations by TTL in the Particulars or otherwise are estimates only and TTL accepts no responsibility for loss or damage resulting from delay or any failure to notify the Customer of any delay.

5. PAYMENT

5.1 The Customer will pay to TTL in each case within fourteen (14) days of the date of invoice:

- 5.1.1 the Line Rental Charges for each month of this Contract;
- 5.1.2 all Call Charges for each month of this Contract;
- 5.1.3 any additional charges at TTL's standard rates from time to time in force in respect of any additional services which TTL may from time to time provide at the request of the Customer.

5.2 Subject to clause 5.4 the Line Rental Charges are payable by the Customer monthly in advance within fourteen (14) days of the date of invoice.

5.3 Subject to clause 5.4 the Call Charges are payable by the Customer monthly in arrears within fourteen (14) days of the date of invoice.

5.4 TTL shall be entitled from time to time to amend the billing periods and the invoice dates applicable to any charges referred to in clause 5.1.

5.5 Any sums payable by the Customer will if unpaid for more than seven (7) days after the date for payment bear interest at the rate of four (4) per cent above the base rate of Barclays Bank PLC from the date payment was due until the date of payment (whether before or after judgment).

5.6 The Customer will pay the charges referred to in clause 5.1 and any other amounts due to TTL by direct debit or such other method of payment as TTL may specify.

5.7 TTL will only consider invoice queries from the Customer if they are made in writing within three (3) months of the date of invoice.

5.8 Unless otherwise stated in writing the amount of any charge quoted is exclusive of VAT which is payable by the Customer in addition at the appropriate rate.

5.9 Monthly invoices are to be paid by direct debit. You will be charged £5.00 + VAT administration fee for any monthly payments tendered by other means. Subject to clause 5.5, any unpaid invoices will be liable to a £10.00 late payment administration charge that will be included on the customer's next monthly invoice.

6. DURATION OF AGREEMENT

6.1 This Agreement shall commence on the date of acceptance by TTL and unless terminated in accordance with clause 12 shall continue for the period stated in the Particulars (the "Initial Period") and shall continue thereafter until terminated by either party giving to the other party not less than thirty (30) days written notice to expire at any time after the expiry of the Initial Period.

7. WARRANTIES

7.1 TTL warrants that the service will be provided using reasonable care and skill.

7.2 TTL does not warrant that the Service will meet the Customer's needs, or that the Service will be free from any interruption, delay, incident or error.

7.3 Any performance figures quoted or referred to in any document used in concluding the Agreement are estimates only.

8. LIABILITY

8.1 This clause 8 sets out the entire financial liability of TTL (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:

- 8.1.1 any breach of this Agreement;
- 8.1.2 any use made by the Customer of the Service;
- 8.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

8.2 Except as expressly and specifically provided in this Agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

8.3 Nothing in this Agreement excludes the liability of TTL:

- 8.3.1 for death or personal injury caused by TTL's negligence; or
- 8.3.2 for fraud or fraudulent misrepresentation; or
- 8.3.3 under the Consumer Protection Act 1987 (but to the extent only TTL is prohibited by law from seeking to restrict or exclude its liability); or
- 8.3.4 for breach of the obligations arising under Section twelve (12) of the Sale of Goods Act 1979 (as amended from time to time).

8.4 TTL will be responsible for physical damage to or loss of the property of the Customer which results from the negligence or wilful misconduct of TTL or its employees provided that TTL's total liability shall not exceed £2,000 in respect of any one event or series of connected events and provided also that TTL is notified of any alleged damage or loss within seven (7) days of the date on which the damage or loss occurred.

8.5 Except as set out in clause 8 TTL shall have no liability for damage to or loss of the property of the Customer however caused.

8.6 Subject to clauses 8.3, 8.4 and 8.5;

- 8.6.1 TTL shall not be liable for any loss of profits, loss of business, loss of use, loss of operating time, depletion of goodwill and/or similar losses or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising; and
- 8.6.2 TTL's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited an amount equal to the charges paid for the Service during the twelve (12) months preceding the date on which the claim arose or £2,000 (two thousand pounds) (whichever is the lesser).

9. USE OF THE SERVICE

The Customer shall:

- 9.1.1 not use, or allow others to use, the Service for any improper, immoral or unlawful purpose;
- 9.1.2 not use, or allow others to use, the Service for the purpose of causing annoyance, inconvenience or needless anxiety to any person;
- 9.1.3 comply with all instructions issued by TTL in relation to use of the Service;
- 9.1.4 not by any act or omission, cause the quality of the Service to be impaired.

10. SUSPENSION/DISCONNECTION

10.1 TTL may from time to time and without notice, suspend the services and (at TTL's discretion) disconnect the Customer telephone number from the Service in either of the following circumstances:

- 10.1.1 during the period of any technical failure, repair, expansion, maintenance Improvement or notification of the services; or
- 10.1.2 If the customer commits a breach of any terms of this agreement (including failure to pay charges due) until the breach (if capable of remedy) is remedied, or does, or allows to be done, anything which in TTL's reasonable opinion may have the effect of Jeopardising the quality of the services.

10.2 The customer will remain liable to pay all charges due under this or any other agreement notwithstanding any suspension or disconnection under clause 10.1.2 above

11. FORCE MAJEURE

11.1 TTL shall have no liability to the Customer if the Service is interrupted or disrupted or if TTL is prevented from or delayed in performing its obligations under this Agreement or from carrying out its reasonable business by any acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lockouts or other industrial disputes (whether involving the workforce of TTL or any other party) failure of a utility, commotion, malicious damage, compliance with any law or breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

12. TERMINATION

12.1 Without prejudice to any other rights or remedies it may have, TTL may terminate this Agreement immediately without liability by written notice to the Customer if:

- 12.1.1 the Customer fails to pay any charges payable under this Agreement within seven (7) days of the due date for payment;
- 12.1.2 the Customer commits a material breach of any of this Agreement and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days of being requested to do so in writing; or
- 12.1.3 the Customer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Customer (within the meaning of the Insolvency Act 1986); or
- 12.1.4 an encumbrancer takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of the Customer; or
- 12.1.5 the Customer ceases, or threatens to cease, to carry on business; or
- 12.1.6 TTL reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

12.2 Upon termination of this Agreement TTL shall cease immediately to provide the Service and the Customer shall pay a £50.00 cancellation fee and all charges outstanding at the date of termination. In addition (and without prejudice to any other rights or remedies of TTL) the Customer shall pay to TTL the Line Rental Charge which would have become due had the Agreement continued for the period specified in the particulars.

12.3 Upon termination of this Agreement, the customer agrees to return any equipment supplied by Talk Telecom to the customer in good working order, or replacement equipment on a new like for like basis within 7 days (seven) from the date that the services terminated. If the customer is not able to return the equipment within 7 (seven) days from the date of termination, the customer accepts and agrees that Talk Telecom will invoice them for the full replacement cost of any equipment broken, or not returned to Talk Telecom Head office in good working order.

13. ASSIGNMENT

13.1 This Agreement is personal to the Customer and may not be assigned without the prior written consent of TTL.

14. DATA PROTECTION

14.1 The information the Customer provides will be used by TTL to supply the Services and will not be otherwise disclosed without the Customer's prior written permission, except as set out in Clause below, or if required by law.

14.2 TTL does not share Customer information with other organisation's for marketing purposes, however TTL may invite the Customer to take part in market research and inform the Customer of other goods and services provided by TTL which may be of interest unless the Customer informs TTL that they do not wish to receive this information.

14.3 The Customer has the right to ask for a copy of the data held about them by making application in writing to the Customer Services Manager at TTL's registered office address. Any information held by Talk Telecom will be provided to the customer, 30 days from when the written application request was received.

14.4 The Customer agrees that TTL may disclose any information in connection with the Customer's accounts to anyone who correctly quotes their password or who has satisfied TTL that they are the Customer or the Customer's authorised contact.

14.5 The customer accepts that by signing this Agreement they explicitly provide consent to Talk Telecom Ltd and any of Talk Telecom LTD's suppliers to retain the customers data, solely for the purposes of fulfilling and delivering the services of the contract, including but not limited to;

- 14.5.1 electronic emails, received and sent
- 14.5.2 customer contact details, including email addresses and telephone numbers
- 14.5.3 contracts and or any documents and customer information which pertains to the services supplied to the customer by Talk Telecom
- 14.5.4 SMS, short message service, texts and call recordings

15. VARIATIONS

15.1 TTL may adjust all or any of its charges on giving the Customer at least seven (7) days prior written notice provided that the Customer may within seven (7) days of receiving any such written notice terminate this Agreement by written notice to TTL.

15.2 TTL may at any time or from time to time make reasonable changes to this Agreement and/or the Service. TTL shall notify the Customer in writing of any proposed changes, which shall take effect thirty (30) days after notification to the Customer.

16. EMERGENCY CALLS

16.1 The Service supports 999 public emergency call services and such calls will be routed to the national emergency call handling agents.

17. INDEMNITY

17.1 The Customer shall indemnify and hold harmless TTL from and against any and all actions, claims, proceedings, losses, damages, expenses and costs (including without limitation court costs and legal fees) arising out of or in connection with the Customer's use of the Service.

18. INTELLECTUAL PROPERTY

18.1 The Customer acknowledges that all intellectual property rights in the Service are owned by TTL or its licensors and that nothing in this Agreement shall operate as an assignment or licence to the Customer of any such intellectual property rights.

19. GENERAL

19.1 If any part of this Agreement is unenforceable, the enforceability of any other part of this Agreement will not be affected.

19.2 Failure by TTL at any time to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor shall it affect the validity of this Agreement or any part thereof.

19.3 Where the Customer is more than one person; all of the Customer's obligations under this Agreement shall be joint and several.

19.4 No third party shall be entitled to enforce any provision of this Agreement under the Contracts (Rights of Third Parties) Act 1999.

19.5 This Agreement is governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.

19.6 Any notice required to be given under this Agreement shall be in writing and shall be delivered in person or sent by fully prepaid first class recorded delivery post or sent by facsimile to the respective addressee at its usual place of business or to such other address or facsimile number as it may have notified for such purpose. Any notice given in accordance with this clause 19.6 shall be deemed to have been received on the next working day following delivery (when delivered by hand or sent by facsimile) or (where sent by prepaid first class recorded delivery post) seven (7) working days after posting.