

Terms & Conditions TalkTalk Business

This Contract sets out the terms on which TalkTalk Ireland Limited (registered in Ireland with number 360017) trading as TalkTalk Business will provide telecommunication and broadband services to You, the customer with whom we make this Contract ("You"). By using the Service(s) (as defined below) You agree to the following terms and conditions.

1. Definitions

1.1 In this Contract:

"Affiliate" means a holding company, group company or subsidiary, direct or indirect, or a company which is under the common control with the company concerned.

"Authorisation" means the authorisation to act as a public electronic communications operator or to operate an electronic communication system under the Legislation.

"Broadband Plan" means the monthly tariff which you select at the time you sign this Contract;

"Broadband Service" means the high speed "always on" network access to the internet provided in accordance with the particular type of Broadband Plan chosen by you and supplied to your Premises via the Network and which is provided in accordance with the terms of the Contract;

"Call Discounts" means the discounts or rebates given to You against our Charges as set out in our service literature from time to time.

"Charges" means the charges payable by You to us for the provision of the Services as set out in the Contract (which includes charge for units of time costed at the rates set out in the Price List, Connection Charges, Monthly Charges) or any revised charges notified to You, together with all applicable taxes and any interest due in accordance with Clause 7.

"Committed Period" means, in respect of each Service, the minimum period of 24 calendar months (or if longer the number of calendar months specified overleaf) for which a Contract for each Service will run commencing on the Connection Date.

"COMREG" means Commission for Communications Regulation, the National Regulatory Authority for the telecommunications industry in Ireland.

"Connection" means the connection of the Services to the relevant Network.

"Connection Charge" means the sum to be charged for Connection as set out in the Price List.

"Connection Date" means the date of the Connection.

"Contract" means this contract between TalkTalk Business and You for the provision of the Services subject to these terms and conditions, as agreed over the telephone, completed in person or on our website by You or on Your behalf.

"Credit Limit" means a monthly financial limit applied for Charges incurred under this Contract.

"Customer Services" means the customer services facility provided by TalkTalk Business for You to report any faults with the Services or make general or account enquiries, details of which are set out on the TalkTalk Business Website. All calls may be monitored and recorded for training and security purposes.

"Denial of Service Attacks" means any attacks to the network on which the Broadband Service is provided or any other third party's network, the purpose of which are to attempt to prevent legitimate users from using or enjoying the benefit of the Broadband Service or any other similar service (as the case may be), including but not limited to, attempts to "flood" the network or to disrupt users from connecting to, accessing or using the Broadband Service.

"Eircom" means Eircom Limited of 114 St. Stephen's Green West, Dublin 2.

"Equipment" or **"Hardware"** means the high speed modem/router and ancillary equipment that we or our authorised distributors may supply to you.

"Fixed Line Services" means the fixed line services provided to You by us under the terms of this Contract enabling You to make and receive calls over the Network.

"Inclusive Calls" means calls made by a Customer from its registered fixed line that are rated at zero in return for a fixed monthly fee. Unless otherwise stated, Inclusive Calls may not be carried over to subsequent months.

"Legislation" means any applicable legislation, authorisations, permissions, rules, regulations, orders and guidelines relating to the provision and/or marketing of the Services and includes without limitation the European Communities Act 1972, the Telecommunications (Miscellaneous Provisions) Act 1996, the ICSTIS Code and/or any directives or other requirements issued by COMREG from time to time.

"Line Rental Service" means the Service we may agree to provide You to allow You to rent access to each telephone line and shall include any other facilities that we agree to provide to You under this Contract that are additions to the Line Rental Service (such as call divert) where we agree to provide these to You.

"Network" means the electronic communications network(s) over which we provide the Service(s).

"Personal Data" means the Data Protection Act 1988, the Data Protection (Amendment) Act 2003 and any amendment, replacement or supplement thereto, from time to time.

"Premises" means the Republic of Ireland premises that we agree with You where we shall provide You with the Service(s);

"Price List" means a list of our current prices including details of Connection Charges, charges for monthly access and related services and calls which is available on request by calling Customer Services.

"Service" means any one of the services described in the Contract and "Services" means any combination of two or more such services.

"Service Credits" means the amounts payable, if any, by us to You in accordance with clause 5 and the Contract.

"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 and/or hardware or services including internet services or any failure, error or defect arising as a result of causes beyond our reasonable control.

"Service Levels" in relation to a Service means the performance standards, if any, set out in the Contract.

"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 date upon which You either sign this Contract or if You have ordered the Services over the telephone or via the internet, 14 days after the date of order or, if earlier, the date upon which we start providing Services.

"TalkTalk Business" means TalkTalk Ireland Limited (trading as TalkTalk Business) of 39/40 Upper Mount Street, Dublin 2, Ireland.

"we" "us" or "our"

"TalkTalk Business Website" means the website located at www.talktalkbusiness.ie or such other website as may be notified by us.

"Tariff Plan" means the monthly Tariff (that may include some elements which are not chargeable) which You select for the Services at the time You place Your order for the Services and which You may change from time to time by agreement with us.

"Technical Support Helpline" means the technical support helpline for Broadband Services contactable by telephone (details of which are on the TalkTalk Business Website) and available between the hours of 9am and 9pm, Monday to Friday and 10am to 6pm Saturday and Sunday (except certain public holidays). Calls to the Technical Support Helpline are charged at lo-call rates. All calls may be monitored and recorded for training and security purposes.

"Transmission Speed" means either the rate in kilo bits per second (kbps) or millions of bits per second (Mbps) that data is transferred between two modems. Your transmission speed is that specified in your Broadband Plan.

"You" "Your" or "Customer" means the person or entity with whom we are entering into this Contract and whose details are included in the contract application forming part of this Contract.

1.2 Words in the singular shall include the plural and vice versa and references to legal persons shall include natural persons and vice versa.
1.3 The headings in these conditions are intended for reference only and shall not affect their construction.

2. When this Contract Begins and How Long it Lasts

2.1 This Contract will commence on the Start Date and will continue for the Committed Period the Contract will automatically continue for subsequent periods of the same duration (a "Subsequent Contract Period") unless terminated otherwise in accordance with clause 10.

2.2 The Connection Date and any other dates given in this Contract regarding our provision of the Services to You are estimates and are provided for planning purposes only. We will have no liability for any failure to meet the Connection Date or any other date as time is not of the essence in relation to our provision of the Services to You.

3. Your Right to Cancel the Contract

3.1 Services

3.1.1 If You want to cancel Your Contract, You will be subject to the cancellation fees in accordance with clause 10.

3.1.2 If You elect to use another provider for some or all of Your calls we may at our sole discretion decide to (i) bar Your use of indirect access codes, (ii) charge You a higher fee for Your use of the Line Rental Service or (iii) disconnect the Line Rental Services, in which case You will be liable for the cancellation fees in accordance with clause 10.

4. What Services We Will Provide to You

4.1 Fixed Line Services

4.1.1 We will provide the Fixed Line Services in accordance with the terms of this Contract.

4.1.2 We will use reasonable skill and care when providing the Fixed Line Services.

4.1.3 If You already receive line rental services from another provider, this other service will continue until the transfer to our Fixed Line Service is complete unless Your other provider agrees that it can be done earlier.

4.1.4 It is Your responsibility to ensure the compatibility of the Fixed Line Services with any monitored alarm system You may have and You should check this with Your monitored alarm system provider. If there is an interruption to the provision of the Fixed Line Services under this Contract we do not accept any liability in connection with Your use of a monitored alarm system with the Services, except for liability for death or personal injury caused by our negligence or that of our agents.

4.1.5 Certain services which are provided by Third Party Operators may not be compatible with the Fixed Line Services. You should be aware that such services may be automatically removed from Your line during set up and may no longer be available to You.

4.1.6 If You have given us Your permission, we will register Your telephone number on the National Directory Database ("NDD") registry. The NDD is a central register of individuals and businesses who have indicated that they do not wish to receive unsolicited sales and marketing calls. Registering Your telephone number on the NDD will stop telemarketing calls from all companies, including those who regard You as a Customer unless You have previously told them You have no objection to them calling You.

- 4.1.7 You recognise that the Fixed Line Services may from time to time be adversely affected by local geography, topography and/or atmospheric conditions and other causes of interference and may fail or require maintenance without notice. You further acknowledge that we shall have no liability for failure of the Fixed Line Service or the Equipment and/or Hardware unless and to the extent caused by our negligence or fraudulent misrepresentation.
- 4.2 **Broadband Services**
- 4.2.1 We will provide you with the Broadband Service with the reasonable care and skill of a competent internet service provider and in accordance with the terms of this Contract.
- 4.2.2 To place a Contract to receive and use the Broadband Service you will need: an existing Eircom or any other non-cable network telephone line;
- 4.2.2.1 a personal computer of minimum specification; and
- 4.2.2.2 compatible cables and extension leads between your PC, modem and telephone socket. Other than the Equipment/and or Hardware that we may supply to you and which you may use in accordance with Clause 16 of these terms and conditions, the Broadband Service does not include the provision of any line rental, telephones or other equipment and/or hardware and we do not provide a maintenance service. You will need to continue paying us or your existing telephone service provider for the rental of your line and all call charges and other relevant telecommunications services supplied to you.
- 4.2.3 Before we can confirm that we will provide you with the Broadband Service: your telephone line will need to be tested and checked to ensure that the Broadband Service is available in your area;
- 4.2.3.1 your telephone line will also need to be checked to see whether the Broadband Service can be activated. If any work needs to be done to your telephone line at your Premises to enable you to receive the Broadband Service, you must arrange for us, Eircom or, where applicable, the other non-cable network to do this work for you. This work must be done before we can accept your Contract and you will be responsible for any and all costs, charges or expenses payable to us, Eircom or, where applicable, the other non-cable network in respect of this work; and
- 4.2.4 Despite the line tests carried out on your Eircom or, where applicable, other non-cable network telephone landline referred to at Clause 4.2.3.2 above, in certain limited circumstances that are beyond our control this line test may prove false. As a result we will not be able to provide the Broadband Service to you. We will notify you as soon as possible if this occurs and the Contract between us will end. In such circumstances, we will provide you with a full refund for any charges you have already paid us.
- 4.2.5 In certain limited circumstances, we may not be able to provide you with the Broadband Service for technical reasons. If this happens we will do our best to let you know promptly.
- 4.2.6 We will operate a Technical Support Helpline to provide information and advice to you on any technical issues relating to your use of the Broadband Service.
- 4.2.7 Upon activation of your Broadband Service you may experience a temporary loss of your Eircom or, where applicable, other non-cable network line for which we shall have no liability to you.
- 4.3 **General**
- 4.3.1 We may select and at any time change any carrier or other service provider for the purposes of providing the Service(s), and You authorise us to give all notices, nominations and other authorisations that are necessary for us to provide, the Service(s) to You.
- 4.3.2 Whilst we provide the Service(s) to You, You authorise us to act on Your behalf in all dealings with any Third Party Operator in connection with any matter that enables us to provide or to continue to provide You with the Service(s).
- 4.3.3 The Service(s) are provided for use by You in the course of Your business and on the condition that You do not resell or otherwise make the Service(s) available to any other person.
5. **What Level of Service We Give to You**
- 5.1 We do not guarantee that the Services will be continuously available to You or free from Service Failures.
- 5.2 Where You believe that You are experiencing a Service Failure You must immediately report this to us via the TalkTalk Business Customer Services, providing sufficient information to enable us to investigate the problem. We will log the time of receipt of all such reports.
- 5.3 Where we spend time investigating a fault(s) that is being persistently 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.
- 5.4 The duration of any Service Failure, for the purposes of calculating any Service Credits which may be due, will be measured from the time Your fault report is logged with Customer Services to the time we can demonstrate that the Service has been restored.
- 5.5 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.
6. **Your Use of the Services - General**
- 6.1 You agree that You will not use or allow others to use any of the Services: to contravene or cause us to contravene any Legislation;
- 6.1.1 to be for any improper, immoral or unlawful purpose;
- 6.1.2 to enable or permit unauthorised access by You or third parties to data stored on the Network;
- 6.1.3 to cause a degradation of service to any of our other customers;
- 6.1.4 to involve the sending of unsolicited marketing or advertising materials;
- 6.1.5 in any way which would result in the transmission or storage of any material of a pornographic, obscene, defamatory, menacing or offensive nature or material which is a nuisance, hoax, abusive, racist or indecent which would result in the breach of any third party's intellectual property rights, confidential information or privacy;
- 6.1.7 to breach or cause us to breach any applicable data protection legislation including, but not limited to, the Data Protection Acts 1998 and 2003;
- 6.1.8 to cause an overload of the Network;
- 6.1.9 to injure or damage any persons, annoyance, inconvenience or needless anxiety to any other person, company or organisation, property or Network or howsoever cause the quality of the Services to be impaired;
- 6.1.10 which may cause us to lose or breach our Authorisation;
- 6.1.11 knowingly, recklessly or negligently act or omit to act in such a way that the operation of the Network may be jeopardised or impaired in TalkTalk Business' reasonable opinion;
- 6.1.12 do anything (or allow anything to be done) which we think in our reasonable opinion may damage or affect the operation of the Network or those of our agents (including Eircom); or
- 6.1.13 as a means of communication, the purpose of which is other than that for which the Service is provided, or which is carried out in an unauthorised way or for fraud or criminal activities.
- 6.2 You agree that in respect of the Service(s), You will only use the Services in good faith and not so as to artificially increase or create revenues for electronic communications services supplied by You.
- 6.3 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 6, 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.
- 6.4 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 the Network.
- 6.5 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 the 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 out of hours rates.
- 6.6 **Broadband Services**
- 6.6.1 You must comply with any instructions we give you about the Broadband Service.
- 6.6.2 To prevent spam from entering and affecting the operation of our systems and the Broadband Service, we may take any reasonable measures or actions necessary to block access to or delivery of any email which appears to be of an unsolicited nature and/or part of a bulk email transmission. We may also use within our systems virus screening technology that may result in the deletion or alteration of email and or email attachments. However, we do not warrant that such technology will be effective against all virus attacks or unsolicited emails.
- 6.6.3 You acknowledge that the Broadband Service is provided to other users and we owe a duty to them as a whole to preserve our network integrity and to avoid network degradation. If, in our reasonable opinion, we believe that your use of the Broadband Service has or may adversely affect such network integrity or may cause network degradation we may change your Transmission Speed or manage your use of our Broadband Service as we see fit in the circumstances. This includes, but is not limited to, any circumstances where you are running an application or program that places excessive bandwidth demands on the Broadband Service for continued periods. If your usage is affecting or may affect other users' enjoyment of the Broadband Service, then we may apply a cap or fixed limit to the amount of data that you may download and/or upload, at any time at our sole discretion. In the event you exceed the limit we apply, you will be charged for the usage over and above the limit. The Broadband Service is intended for business use and is available to sole traders, partnerships and companies.
- 6.6.5 In the event that rental of your telephone line is terminated by Eircom or, where applicable, any other non-cable network or you change the services on your line such that the Broadband Service is unable to operate normally, the Broadband Service will be terminated and you will be liable to us for the charges that remain due for the Committed Period.
- 6.6.6 During the Contract you may request a re-grade at any time provided that it is only once in every thirty (30) days. Re-grades are subject to availability and payment of any applicable charges (for details please see the TalkTalk Business Website).
- 6.6.7 From time to time during the Contract we may also at our discretion make certain promotional offers available to you. If you accept any of these offers, any special conditions relating to such offers shall apply in addition to these Conditions.
- 6.6.8 We do not warrant or guarantee the accuracy or completeness of any content provided with the Broadband Service, including without limitation, any information, sound, data, software or other materials (in whatever form). You agree that any use that you make of any such content is at your sole risk and is subject to any third party terms and conditions applicable to that content.

- 7 How We Charge and How You Pay**
- 7.1 Services
- 7.1.1 You will pay us the Charges. 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. The basis upon how we Charge You for the Services will be set out in the literature we send You on commencement of Service(s).
- 7.1.2 We may vary our Charges at any time by posting the resulting changes on the TalkTalk Business Website or otherwise giving You notice. The revised Charges will apply to all Services provided after the effective date of the notice of change.
- 7.1.3 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 bills at the applicable rate(s).
- 7.1.4 We will issue bills for the Services in accordance with the payment terms specified in the Contract.
- 7.1.5 You will, subject to clause 7.1.7 and unless otherwise agreed, pay bills within 14 days of the date of the invoice.
- 7.1.6 Payments will be by Direct Debit only. If a direct debit is dishonoured or cancelled we shall be entitled to pass on to You any administration fee which may include third party charges. We shall also be entitled to charge You a monthly administration fee for each month in which Your direct debit is dishonoured or not reinstated following cancellation. Details of applicable fees are set out on the TalkTalk Business Website. We may charge interest on all overdue amounts from time to time on a daily basis at a rate of 2% above the base rate of the Barclays Bank, 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.
- 7.1.7 Any bills which are disputed must be done so within one 10 days of the date of issue otherwise the bills will be deemed to be correct. If You wish to dispute a bill You must write to us and provide us with (i) nature and reason for dispute, (ii) amount in dispute, (iii) any evidence to support the disputed amount.
- 7.1.8 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.
- 7.1.9 If your Tariff Plan includes Inclusive Calls and usage is not consistent with normal usage for that Tariff Plan, we reserve the right to suspend or disconnect the Service or to switch you to a different Tariff Plan without notice. TalkTalk Business may in its absolute discretion determine what constitutes normal usage for each Tariff Plan.
- 7.1.10 We shall be entitled to withdraw any Inclusive Calls at any time and in our absolute and sole discretion.
- 7.1.11 Within thirty (30) days of the Start Date, we shall prepare and send to you a bill in respect of the Broadband Services which shall include a pro-rated charge for the remainder of the initial Billing Period in which your account is activated and the charge for the following Billing Period and, if applicable any costs for Hardware you have purchased. Thereafter we shall prepare and send to you at the end of every Billing Period a bill detailing the charge for the following Billing Period.
- 8 Credit Limit/Security Payment**
- 8.1 We may at our sole discretion and at any time during the lifetime of the Contract impose a Credit Limit on Your account and/or require payment of a security deposit or interim payment by You.
- 8.2 Any Credit Limit imposed can be amended without prior notice. If You exceed such Credit Limit (i) we may demand immediate payment of the Charges and/or suspend the Services; and (ii) You will still be responsible for all Charges incurred including those exceeding the Credit Limit.
- 8.3 If at any time we require You to pay a security deposit under clause 8.1 above we may (i) suspend provision of the Service(s) until we receive payment of the security deposit and (ii) at any time apply the security deposit (once paid) to meet any cost, loss or liability incurred as a result of any failure by You to comply with these terms or to pay any amount You owe to us.
- 9 Changing the Contract**
- 9.1 This clause 9 applies to all changes to this Contract, except changes to Charges which are dealt with in clause 7.1.2 above.
- 9.2 Subject to clause 9.1 above, we may vary these terms and conditions at any time by posting the changes on the TalkTalk Business Website and, where reasonably practicable, giving You prior notice. We will only do this if we have a valid reason, for example to reflect changing arrangements with any Third Party Operator or changing legal, regulatory or business requirements. If any variation of these terms and conditions is likely to cause material detriment to You: (i) we will also notify You of the variation in writing or by Your chosen method of contact; and (ii) You shall have the right to terminate this Contract with immediate effect by giving us written notice. You agree that, if You decide to use the Services after any variation(s) to these terms and conditions have been posted on the TalkTalk Business Website or, in the case of a variation which is likely to cause material detriment, notified to You, You will be bound by the terms and conditions as varied for the remainder of the Committed Period.
- 10 Ending the Contract**
- 10.1 You may end this Contract for any of the Services by giving us 30 days' notice in writing, such notice not to expire before the end of the Committed Period or a Subsequent Contract Period. In the event You seek to cancel the Contract before the end of the Committed Period You will pay all charges due for the duration of the Committed Period.
- 10.2 Notwithstanding clause 2.1, we may terminate this Contract with immediate effect by notice in writing if:
- 10.2.1 You fail to pay any sums due to us within 14 days of receiving written notice from us indicating the sums due and demanding payment;
- 10.2.2 You are in material breach of this Contract which breach is capable of remedy and fail to remedy that breach within 14 days of receiving the notice specifying breach;
- 10.2.3 You are in material breach of this Contract and that breach cannot be remedied;
- 10.2.4 You commit persistent breaches of the Contract;
- 10.2.5 You have any Authorisation under which You have the right to run Your telecommunication system and connect it to our system removed, revoked or amended;
- 10.2.6 You 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;
- 10.2.7 You do or You allow to be done, anything which in our reasonable opinion will or may have the effect of impairing the operation of a particular Service(s);
- 10.2.8 if any licence to operate or use the Network under the Relevant Legislation is revoked or terminated for any reason;
- 10.2.9 if the operation of the Network is terminated;
- 10.2.10 if information supplied to us by You is false or misleading;
- 10.2.11 if at any time Eircom ceases to provide services to us such that we are unable to continue to provide any Service to You, we may immediately terminate our Contract with You;
- 10.2.12 we cease to be Authorised or if our Authorisation is revoked or modified in any way which has a material impact on our ability to provide the Services or any of them or if we are prohibited from providing or restricted in our entitlement to provide the whole or any part of the Services;
- 10.2.13 for the purposes of this clause 10.2 "material breach" shall include any failure by You to pay the Charges and any failure to comply with Your obligations under this clause 10.
- 10.3 In the event of termination by us in accordance with Clause 10.2 during the Committed Period we reserve the right to invoke the charges referred to at clause 10.1 above in addition to any other unpaid charges due at the date of termination.
- 10.4 On termination of the Contract:
- 10.4.1 each party will return to the other party any Confidential Information which it has in its possession;
- 10.4.2 all outstanding Charges and other sums due to us shall be paid by You immediately.
- 10.5 Termination of this Contract howsoever arising shall be without prejudice to the rights, duties and liabilities of the parties accrued prior to termination. Those Clauses in this Contract which are intended (expressly or by implication) to have effect after termination shall remain binding on the parties notwithstanding termination.
- 11 Our Rights to Suspend the Services**
- 11.1 Subject to Clause 2.1 You may cancel any individual Service or this Contract at any time by giving us 30 days written notice of cancellation.
- 11.2 We may suspend the provision of any Services without prejudice to Your liability to continue to pay the Monthly Charges without compensation if:
- 11.2.1 You fail to meet any of Your obligations under this Contract;
- 11.2.2 technical limitations exist or arise which make the provision of the Services impossible or materially limit the functionality or performance of the Services;
- 11.2.3 necessary for operational reasons such as repairs, upgrades to the Services or regular or emergency maintenance;
- 11.2.4 we are obliged to comply with any Contract, instruction or request of a competent governmental regulatory or other authority;
- 11.2.5 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;
- 11.2.6 if the Credit Limit for this Contract is exceeded;
- 11.2.7 if You allow to be done anything which in our reasonable opinion may have the effect of impairing the operation of the Services;
- 11.2.8 during any period in which access to the Network is denied or restricted to TalkTalk Business by the Third Party Operator;
- 11.2.9 if we become aware or reasonably suspect or believe that the Equipment and/or Hardware is being used for fraud or the use is fraudulent;
- 11.2.10 in the event of notification of loss or theft of the Equipment and/or Hardware
- 11.3 If we in our sole discretion reinstate the Services following suspension You may be liable for an administration fee if suspension is due to Your default.
- 11.4 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 11.2.2 to 11.2.5 above, will restore the Services as soon as we are reasonably able to do so.
- 11.5 If we exercise the right to suspend the Service this shall not affect our right to terminate the Contract under clause 10.
- 12 Events Outside Our Reasonable Control**
- 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 act of God, war or riot, civil disobedience, national emergency, strikes and other labour disputes, fire, flood, act of terrorism, power failures, non-availability of any third party telecommunication services, breakdown of any equipment and/or hardware not supplied by us, acts of government or other competent authority.

13 Confidentiality

- 13.1 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:
- 13.1.1 is or becomes generally available to the public other than as a result of a breach of an obligation under this clause 13; or
- 13.1.2 is acquired from a third party who owes no obligation of confidence in respect of the information; or
- 13.1.3 is or has been independently developed by the recipient.
- 13.2 Notwithstanding clause 13.1, 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.

14 Our Liability to You

- 14.1 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.
- 14.2 Our liability to pay any Service Credits in accordance with clause 5.4 will be the maximum extent of our liability and Your sole remedy for any Service Failures.
- 14.3 Subject to clauses 14.1 and 14.4, 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.
- 14.4 Subject to clause 14.1, our liability to You in Contract, tort (including negligence) or otherwise in relation to or arising out of this Contract is limited to €100 for one single incident in any twelve (12) month period and €500 for a series of incidents in any twelve (12) month period 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 14.4.
- 14.5 Except as expressly set out in this Contract and to the extent permissible by law all other warranties, terms and conditions guarantees as to quality or fitness for a particular purpose of the Services or any other conditions or guarantees whether express or implied by law, custom or otherwise are excluded.
- 14.6 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 and/or hardware or services including internet services.
- 14.7 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.
- 14.8 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.
- 14.9 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.
- 14.10 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.
- 14.11 Nothing in this Contract shall impose any liability on us in respect of non-performance of the Service(s) where the performance claimed is not in accordance with the Contract or where such non-performance is directly due to Your acts, omissions, negligence or default.

15 Use and Disclosure of Your Personal Information

- 15.1 Information You provide or we hold about You (whether or not under our Contract(s) with You) may be used by us or our agents to:
- 15.1.1 identify You when You contact us;
- 15.1.2 help identify accounts, services and products which You could have from us from time to time (we may do this using an automatic scoring system, which uses the information provided by You, any information we hold about You and information from other agencies, including credit-reference agencies);
- 15.1.3 help run any accounts, services and products we provided before now or in the future;
- 15.1.4 carry out marketing analysis and customer profiling and create statistical and testing information;
- 15.1.5 help to prevent and detect fraud or loss; and
- 15.1.6 contact You in any way (including mail, email, phone, visit, text or multimedia messages) about products and services offered by us. We will only contact You in this way if You have previously shown Your consent.
- 15.2 We may allow other people and organisations to use information we hold about You:
- 15.2.1 to provide services You have asked for;
- 15.2.2 as part of the process of selling one or more of our businesses;
- 15.2.3 to provide information for legal or regulatory purposes; or

- 15.2.4 as part of current or future legal proceedings.
- From time to time, these other people and organisations may be outside the European Economic Area in countries that do not have the same standards of protection for Personal Data as the Republic of Ireland.
- 15.3 We may also allow Your information to be used by our Associates for them to carry out any of the above purposes.
- 15.4 We may monitor and record communications with You (including phone conversations and emails) for quality assurance and compliance.
- 15.5 We will hold information on Your phone use, including the numbers called, date, time, duration and cost of calls, together with information about Your location. We will use this information to manage the phone service and provide You with any other services You may ask for. Where You have previously shown Your consent, we may use this information to provide You with information about other products and services that we believe will be of value or interest to You. We will keep information for as long as is necessary to provide services You have asked for and until charges for the service cannot be lawfully challenged.
- 15.6 This clause 15.6 applies to personal information held about individuals (including, if You are a corporate body, any key individuals involved in that body), sole traders and partnerships. We may check Your details with one or more licensed credit-reference and fraud-prevention agencies. We and they may keep a record of this search and the payment details from Your account, and share it with other organisations. If a person provides false or inaccurate information and we suspect fraud, this is also recorded. This information may be used by us, and other organisations may search these records to:
- 15.6.1 help make decisions about credit and credit-related services for You and members of Your household;
- 15.6.2 help make decisions on motor, household, credit, life and other insurance proposals and insurance claims for You and members of Your household;
- 15.6.3 trace debtors, recover debt, prevent fraud, and manage Your accounts or insurance policies;
- 15.6.4 check Your identity to prevent money laundering, unless You give us other satisfactory proof of Your identity; and
- 15.6.5 carry out statistical analysis about credit, insurance and fraud.
- We, and other credit and insurance organisations, may also use technology to detect and prevent fraud. If You need details of those credit agencies and fraud-prevention agencies from which we get, and with which we record, information about You, please write to us at TalkTalk Ireland Limited, 39/40 Upper Mount Street, Dublin 2, Ireland.
- 15.7 If You give us information on behalf of someone else, You confirm that You have given them the information set out in this clause, and that they have not objected to their personal information being used in the way described in this clause. If You give us sensitive information about Yourself or others (such as special needs details for bills), You agree (and confirm that the relevant subject of the information has agreed) to us processing this information in the way set out in this clause.
- 15.8 If You are making a joint application or You have told us about some other financial association with someone else, a 'financial association' between You and that other person (or people) will be made at credit-reference agencies. This will link Your financial records with that other person (or people) so that both (or all) of Your records will be taken into account in all future applications by either or both (or all) of You. This will continue until one of You successfully files a notice with the credit-reference agencies asking for the financial association with that person to be removed.
- 15.9 If You would like us to tell You what information we hold about You, please write to us c/o The Data Controller, TalkTalk Ireland Limited, 39/40 Upper Mount Street, Dublin 2, Ireland. We may charge a €6.35 administration fee; please quote Your full name, address, phone number and account number on all requests. You can also call Customer Services to correct or update any inaccurate or incomplete information and to advise us of any preferences You may have concerning how You can be contacted for marketing purposes or to indicate Your preferences for directory enquiries.

16 Equipment and Hardware

- 16.1 Equipment and/or Hardware supplied by us shall be at your risk immediately on delivery to your premises (or into custody on your behalf, if sooner) and should be insured accordingly.
- 16.2 We reserve the right to charge carriage in cases where you refuse to accept delivery of goods supplied by us in response to a duly authorised Contract received from you.
- 16.3 Equipment and/or Hardware shall be signed for on receipt and shall be deemed to have been checked and accepted by you on the date of such signature. You must inspect and inform us of any damaged or missing items within seven (7) days by telephoning Customer Services. If you receive faulty Hardware we will provide a replacement provided that you return the faulty Hardware to us in accordance with Clause 18.5 below.
- 16.4 We shall not replace any Equipment and/or Hardware that becomes faulty as a result of any damage caused to it through your negligence or willful default and in such circumstances, you will be responsible for the cost of any replacement supplied by us.
- 16.5 In the event that we provide you with replacement Hardware as a result of a fault notified to us by you and verified by us, you must return the faulty Hardware (including all the relevant cables and appropriate ancillary equipment and/or hardware or software supplied to you with the Equipment and/or Hardware) to us or our appointed agent by registered post or special delivery, within fourteen (14) days of receipt of the replacement Hardware. If you fail to return the faulty Hardware to us within fourteen (14) days, we reserve the right to charge you the full replacement cost for such Equipment and/or Hardware (details of which are set out on the TalkTalk Business Website) unless actual proof of the registered post or special delivery can be provided to us.

- 16.6 The Equipment and/or Hardware shall remain our property until paid for in full by you. Until such time as the ownership of the goods has passed to you, you shall hold it on our behalf and keep it safe, insured and identified as our property. We shall be entitled to ask you to return the goods at any time until the goods are paid in full.
- 16.7 We agree that we will not exercise our rights under clause 16.6 where you are duly performing your obligations as to payment under it and there are no outstanding monies owing to us.
- 16.8 If you wish to use a modem supplied by a third party to receive our Broadband Service rather than that supplied by us, we shall as far as reasonably practicable try to assist you to use that modem. However, we cannot guarantee that modem will work with our Broadband Service or that we will be able to reconfigure it, nor can we guarantee that Customer Services will be able to provide any advice or assistance to enable you to do so.
- 16.9 If you return the Equipment and/or Hardware to us in accordance with Clause 16.5 and have either failed to take reasonable care of the Hardware while it remained in your possession or fail to return all the relevant cables and appropriate ancillary equipment and/or hardware or software supplied to you with the Hardware, we shall be entitled to debit your account (using the details that you provided to us with your Contract) for the full replacement cost of such Hardware. To take reasonable care of the Equipment and/or Hardware you shall retain and keep the original box and packaging for the Equipment and/or Hardware in good condition and shall ensure that the Equipment and/or Hardware is stored in accordance with the manufacturer's recommendations.
- 16.10 There shall be no liability under any such warranty or guarantee if the total price for the Equipment and/or Hardware has not been paid by the due date for payment.
- 16.11 We exclude all conditions, terms, representations (other than fraudulent or negligent representations) and warranties relating to the Hardware, whether imposed by statute or by operation of law or otherwise, that are not expressly stated herein, including without limitation, the implied warranties of satisfactory quality and fitness for a particular purpose.
- 16.12 If a valid warranty claim is made within the warranty period, we will replace or repair (at our discretion) the Hardware free of charge. After the expiry of the warranty period, we may make a charge for either of these remedies. If the exact same Hardware is not in stock then we will loan you similar Hardware where possible until it becomes available. We shall (at our or the manufacturer's option) have the right to refund you the price you paid (or a proportionate part thereof, depending upon age and condition). That will be the extent of our liability to you.
- 16.13 Other than as set out above, we shall be under no other obligation to exchange, repair or replace the Hardware or provide any refunds. You accept that you are solely responsible for backing up any important data stored on the Hardware prior to the commencement of any repairs and you hereby acknowledge that any such data may be lost during the repair and will be lost if the Hardware is exchanged. We are not liable for this and it is therefore your responsibility to back up any such data stored on your Hardware.
- 17 Additional Broadband Provisions**
- 17.1 Your email Account and Address Hosting and Website
- 17.1.1 As part of the Services we may offer you a service to set up your own website(s). TalkTalkBusiness.net domain names will be subject to availability and we cannot guarantee the availability of any specific domain name. The number of email addresses and the amount of email storage and website that we provide to you depends on the type of Broadband package that you subscribe to. It is your responsibility to save your emails in the event that your email storage is approaching its limit and we will not be responsible for information lost or deleted due to our management of your email storage.
- 17.1.2 You will be responsible for any material that you or anyone else places on your web sites. We may require you to reimburse us for any reasonable and foreseeable losses, costs and expenses which we incur as a result of the material which you retain or place on our servers or as result of the material displayed on your website.
- 17.1.3 You must ensure that you are the owner of, or that you are authorised by the owner of, any trademark or name that you wish to use as part of your email or web site address. We may reject or remove names that we believe may infringe someone else's trade mark. In addition we may reject or remove names that we believe are offensive.
- 17.1.4 Your web site must not include any material that is unlawful or is likely to cause offence, anxiety or harm to others or in a way that is inconsistent with the letter and spirit of our acceptable use policy. In particular, you must ensure that you have the correct permissions in place to use any material that is subject to copyright. Common examples of material subject to copyright are music, sound clips, video clips, pictures and downloadable software.
- 17.1.5 Where we provide you with one or more email addresses as part of providing the Broadband Service you acknowledge that such email addresses are not your property and that we are entitled to alter them in our sole discretion. We shall only change your email addresses where reasonably necessary after providing you with reasonable notice of such change.
- 17.1.6 You acknowledge that you have no right to sell (or to agree to transfer) or dispose of in any way, any email addresses provided to you by us.
- 17.1.7 If we receive a complaint about your web site we may suspend it immediately without notifying you beforehand. We will ask you to either agree with the person making the complaint that the material can remain or can be altered or ask you to agree to remove it permanently. However, if we believe that the material on your web site is sufficiently harmful, unlawful or offensive, is illegal or we receive further complaints about your web site after we have already issued you with a warning, we may end the contract between us immediately without further notice to you. In such circumstances we will be under no obligation to provide you with any refund.
- 17.2 Security, Username, Passwords
- 17.2.1 You will be allocated a username and password in order to access the Broadband Service. You will be responsible for keeping this username and password confidential and agree to take all necessary steps to ensure their confidentiality and that they are not disclosed to any unauthorised third parties. You will inform us if you become aware of or suspect any unauthorised use of your username and password and agree to take all necessary steps (or such steps as may be requested by us) to prevent such use.
- 17.2.2 To ensure that the Broadband Service remains secure, you must not change or attempt to change a username without our written permission.
- 17.3 Broadband Connection
- 17.3.1 We will endeavour to provide the Broadband Service to you up to the data transmission speed you request. However, we cannot guarantee this and the speed of your connection and download times is dependant on your distance from the exchange, and may be slower if our network or the internet is congested.
- 17.3.2 We will indemnify you against all claims and proceedings arising from the infringement of any intellectual property rights by reason of our provision of the Broadband Service to you. As a condition of this indemnity you must:
- 17.3.2.1 notify us promptly in writing of any allegation of infringement;
- 17.3.2.2 make no admission relating to the infringement;
- 17.3.2.3 allow us or our agents (including Eircom) to conduct all negotiations and proceedings and give us or our agents (including Eircom) all assistance in doing so (we will pay your reasonable expenses for such assistance);
- 17.3.2.4 allow us or our agents (including Eircom) to modify the Broadband Service, or any item provided as part of the Broadband Service, so as to avoid the infringement provided that the modification does not materially affect the performance of the Broadband Service.
- 17.3.3 The indemnity in Clause 17.3.2 does not apply to infringements caused by your use of the Broadband Service in conjunction with other equipment and/or hardware or software not supplied by us or our agents (including Eircom), or to infringements caused by designs or specifications made by you, or on your behalf. You will indemnify us and our agents against all claims, proceedings and expenses arising from such infringements or alleged infringements.
- 17.3.4 You agree that you will enter into any licence or agreement reasonably required by the owner of any intellectual property rights in any software supplied to you for the purpose of accessing the Broadband Service. You also agree that all intellectual property rights in the Broadband Service (including the Hardware and any related software) are and shall remain vested in us, our agents (including Eircom), the Hardware manufacturer or their licensors as applicable.
- 17.3.5 If you move Premises and want to access the Broadband Service at your new address you will need to set up a new account for that location by calling Customer Services. You will have to provide us with proof of your new address. If you do not, your existing account will not be terminated and you will be liable for any charges that remain due in respect of the Committed Period relating to that account. You will also have to pay an administration fee for setting up a new account when you move Premises and if you have purchased Hardware from us and such Hardware is lost or damaged when you move Premises, you will have to purchase new Hardware from us.
- 17.3.6 When you have moved Premises, a telephone line test will need to be carried out. If it is not possible to connect you, you may terminate this Contract provided: (i) it is no earlier than the date you move Premises; (ii) you give us ten (10) days notice; and (iii) you send us proof of your change of address. Any charges due in respect of your existing account to the date of cancellation will remain payable. If it is possible to connect you at your new address, your connection will be at the same Transmission Speed as that at your old address prior to your move. However, if it is not possible to connect you at the same Transmission Speed, we shall connect you at whatever Transmission Speed we may determine to be possible.
- 17.3.7 In consideration of you paying us the Charges, we shall provide the Broadband Service to you in accordance with these terms and conditions. You acknowledge that our provision of the Broadband Services to you is dependent upon Eircom. You also agree that there may be technical limitations that inhibit the activation and provision of the Broadband Service. We shall notify Eircom of any issues concerning the Broadband Service that you notify to us, but we cannot guarantee rectification of these issues by Eircom.
- 17.3.8 You will remain responsible for all rental charges made by Eircom or where applicable any other non cable network relating to your telephone line (together with any repair and maintenance charges (unless caused by our negligence) and all call charges from your fixed line telephony service provider.
- 17.3.9 We will endeavour to connect you to the Broadband Service by the date we have agreed with you, but we do not guarantee to do so. If you place a Contract for an additional service or otherwise instruct us to change the Broadband Service (ie a Re-grade) we will use reasonable endeavours to complete your Contract as soon as possible, but our ability to do so may be affected by circumstances outside our control and there may be a delay in your Contract being completed. We will not be liable to you for any costs, expenses or claims arising directly or indirectly out of such delay.
- 17.3.10 You acknowledge that as part of your wish to receive and enjoy the full benefits of the Broadband Service some minor modifications may need to be made to your computer to make it operate with the Broadband Service. It is your responsibility to ensure that such modifications do not invalidate the terms of any warranty that you may have concerning your computer. We will not be liable for any claim that your warranty has been invalidated (if applicable) as a result of work carried out by you, us, our agents (including Eircom) in order to make your computer operate with the Broadband Service.

18 Third Party Rights

A third party which is not a party to this Contract has no rights to enforce any term of this Contract.

19 Assigning the Contract

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

19.2 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.

19.3 We are a subsidiary company of The Carphone Warehouse Group plc and therefore the Contract may be administered in whole or part by another company within the CPW Group.

20 Entire Contract

The Contract sets out the whole agreement between You and us for the provision of the Service and supersedes all prior arrangements, understandings and agreements between You and us.

21 Notices

21.1 Notices must be in writing and shall be served by hand delivering it or sending it by pre-paid first class post, or registered post, or prepaid recorded delivery or prepaid international recorded airmail addressed to the other party at the address shown on the contract application or any other address as notified in accordance with this Clause or fax to the number notified by each party to the other or email to the address notified by each party to the other.

21.2 Any such notice shall be deemed to have been received:

21.2.1 if hand delivered or sent by prepaid recorded or registered post or international recorded airmail at the time of delivery;

21.2.2 if sent by post (other than by recorded or registered post) two days from the date of posting;

21.2.3 if sent by airmail (other than prepaid recorded airmail) five days from the date of posting;

21.2.4 in the case of fax, at the time of receiving a successful transmission report; and

21.2.5 in the case of email, a copy of the email must also be sent by first class post.

22 Waiver

The failure or delay by us in exercising any of our rights, powers or remedies under this Contract shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by us of any right, power or remedy under this Contract shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy. Any waiver of a breach of, or default under, any of the terms of this Contract shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Contract.

23 Enforceability

If any particular clause of the Contract shall be or be held to be invalid or unenforceable by any court or other competent body or authority, the enforceability of any other clauses in this Contract shall not be affected and they shall continue in full force and effect.

24 Law

24.1 This Contract will be construed in accordance with and governed by the laws of the Republic of Ireland.

24.2 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 Irish Courts.