



TALK AMERICA DSL TERMS AND CONDITIONS

1. AGREEMENT

This agreement with Talk America Inc. ("Talk America") governs your DSL services and DSL equipment (the "Agreement"). By using the DSL service or DSL equipment (collectively "DSL Service"), you agree to be bound by the Agreement and to use the DSL Service in compliance with Talk America's Acceptable Use Policy (which can be found at <https://www.talk.com/web.cgi/user/footer-legal.htm>). Talk America may revise this Agreement for DSL Services from time to time by posting the revisions to Talk America's website at <https://www.talk.com/web.cgi/user/footer-legal.htm> at least 15 days in advance of the change and such changes will be incorporated by reference into your Agreement. It is your responsibility to review the on-line terms and conditions. By continuing to use the DSL Service after revisions are posted, you agree to accept and abide by them.

2. TERM

The initial term of your DSL Service begins on your account billing start date (which will appear on your telephone bill) and continues on a month-to-month basis ("Term"). Your account billing start date is determined by Talk America and is not dependent on whether or not you have completed installation or used the DSL Service.

3. PAYMENT

You will be billed on your telephone bill for your DSL Service as Talk America DSL, and utilize the payment method of your choice. Changes to your local service plan may result in changes to your DSL pricing. Your local services will not be disconnected for nonpayment of charges for DSL Service. However, Talk America may suspend or cancel the DSL Service if charges are not paid.

4. CANCELLATION

You will be provided DSL Equipment at no cost. However, should this Agreement be cancelled at any time during the Term by either you or Talk America, you will be assessed an equipment charge of \$99.00. If you return the DSL Equipment, in good working condition, to Talk America within 30 days of cancellation of your DSL Services, you will be credited the \$99.00 charge. You must pay for shipping, except where not permitted by applicable law. Insurance is recommended. You must contact us at 1-800-291-9699 for the shipment address.

Upon your receipt of the DSL Equipment you will be deemed to have accepted DSL from Talk America. Once you have accepted DSL Service, if you are dissatisfied with it in any way, your sole remedy is to cancel your DSL Service. To cancel your DSL Service you must call 1-800-291-9699.

Talk America reserves the right to suspend or to terminate the DSL Service to you, or to suspend or terminate any user ID, email address, URL or domain name used by you in the event that it is used in a manner which violates any law, regulation, tariff or the Talk America Acceptable Use Policy or which endangers the Talk America network, the DSL Service or the use and enjoyment of other users. You understand and agree that any attempt to break security or to access an account that does not belong to you shall be considered a material breach of this Agreement, and may result in suspension or cancellation of the DSL Service. You agree to immediately notify Talk America of any unauthorized use of your account and/or any breach or attempted breach of security of which you are aware. Should Talk America terminate the DSL Service for the above reasons at any time, you will be assessed an equipment charge of \$99.00. If you return the DSL Equipment, in good working condition, to Talk America within 30 days of termination of your DSL Service, you will be credited the \$99.00 charge. You must pay for shipping, except where not permitted by applicable law. Insurance is recommended. You must contact us at 1-800-291-9699 for the shipment address.

DSL Service is for your home use only. You may not allow others to connect to your DSL Service and you may not resell your DSL Service. Any such actions will result in the immediate cancellation of your account.

5. DSL SERVICE

To receive DSL Service, DSL Service must be available to your location. You must also keep your telephone service active for the DSL Service to work. Your local phone company must be Talk America for you to receive DSL Service. If you change your local telephone company, your DSL Service will be cancelled, and you will be assessed the equipment charge of \$99.00. This equipment charge will be credited if you return the DSL Equipment, in good working condition, within 30 days of cancellation.

Talk America will use best efforts to provide the DSL Service. DSL Service is not always able to be provided. Talk America shall have no liability for claims arising out of its failure or refusal to complete installation or provisioning of your DSL Service.

Your DSL Service is a best efforts service. The actual speed you experience may vary depending on several factors including customer location, destination on the Internet, traffic on the Internet, line quality, and other factors beyond Talk America's control.

Talk America may interrupt the DSL Service for scheduled or emergency maintenance or as otherwise set forth in the Agreement. Also, your DSL Service may be interrupted in the normal course of business.

Talk America reserves the right to apply commercially reasonable spam, fraud and abuse prevention methods to inbound and outbound e-mail.

If you have a home alarm system and DSL installed on the same telephone line, you may experience trouble with your alarm service. Talk America suggests that you test your home alarm system once DSL is installed. You should check with your home alarm company for the test procedure. If your test reveals that your security system is not working, you will need to contact your home alarm company for assistance.

TALK AMERICA MAKES NO WARRANTY THAT THE DSL SERVICE WILL MEET YOUR REQUIREMENTS, OR THAT THE DSL SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. TALK AMERICA PROVIDES NO GUARANTEE WITH REGARD TO THROUGHPUT SPEEDS WITH THE DSL SERVICE.

Talk America's liability for damages, including, but not limited to, damages in regards to interruptions of the DSL Service, for mistakes, omissions, delays, errors and defects in the provision of the DSL Service shall in no event exceed an amount equal to the pro-rata charges to you for the period during which the DSL Service is affected. TALK AMERICA SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF INCOME OR COST OF REPLACEMENT SERVICES.

Talk America's liability for willful misconduct, if established as a result of judicial, administrative, or arbitration proceedings, is not limited by this Agreement.

6. DSL SERVICE REQUIREMENTS

Your computer must meet the following minimum requirements:

Minimum Hardware / Software Requirements:

Pentium II 133Mhz

32MB RAM

An available USB port or an Ethernet 10BaseT/100BaseT network interface card (NIC)

Additional 5MB Free Disk Space

Internet Explorer Version 4.0, Netscape 4.0 or Safari

Supported Operating Systems:

Windows 95b (requires Winsock) XP Professional

Windows 98 XP Home Edition

Windows NT MAC OS X

Windows ME MAC OS 8

7. DSL EQUIPMENT AND INSTALLATION

You will be provided with DSL Equipment, which will be subject to additional terms and conditions. If the DSL Equipment does not work, and DSL Service is otherwise available to you, you must contact Talk America at the following toll free number 1-800-291-9699.

The installation, use, inspection, maintenance, repair and removal of the DSL Equipment may result in service outage or potential damage to your computer. You are solely responsible for backing up all of your existing computer files and data. You are solely liable for impacts to or loss of any warranty associated with the opening of your computer for installation of the DSL modem.

This is a self-installation product. If you have questions during your installation, please call the number noted above.

TALK AMERICA DOES NOT REPRESENT, WARRANT, OR COVENANT THAT INSTALLATION OF THE DSL EQUIPMENT WILL ENABLE YOU TO SUCCESSFULLY ACCESS, OPERATE, OR USE THE DSL SERVICE, NOR THAT SUCH INSTALLATION WILL NOT CAUSE DAMAGE TO YOUR COMPUTER, DATA, SOFTWARE, FILES OR PERIPHERALS. TALK AMERICA SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE, OR FOR THE FAILURE TO PROPERLY INSTALL, ACCESS, USE OR OPERATE THE DSL EQUIPMENT OR DSL SERVICES BECAUSE OF YOUR INSTALLATION. THIS LIMITATION OF LIABILITY IS IN ADDITION TO AND SHALL IN NO WAY BE CONSTRUED TO LIMIT ANY AND ALL LIMITATIONS OF LIABILITY SET FORTH ELSEWHERE IN THE AGREEMENT.

8. ACCOUNT, PASSWORD AND SECURITY

You will receive a user name and password. You are solely responsible for the use of your DSL Service. Keep your password confidential. You must notify Talk America immediately upon discovering any unauthorized use of your account.

You will be allocated a dynamic IP address. Talk America reserves the right to timeout inactive connections.

9. CREDITS

To be eligible for Service outage credits, you must report an outage within 30 business days of the incident with a request for credit. For any given month, the maximum credit available to you is an amount equal to the allocated cost for the DSL portion of your plan fee.

10. CONTENT DISCLAIMER

Use of the DSL Service may involve access to the Internet, including information and services provided thereon. Talk America specifically denies any responsibility for the accuracy or quality of data, information, images, audio and video ("Content") obtained on the Internet and or through Talk America's network, your equipment, facilities or systems. You assume total risk and responsibility for any and all access to the Internet or use, alteration or transport of any Content or information thereon.

11. MONITORING

Talk America has no obligation to monitor the DSL Services or your email or web space but may do so and disclose information regarding use of the services to third parties for any reason if Talk America, in its sole discretion, believes that it is reasonable to do so, including to: satisfy laws, regulations, or governmental or legal requests, operate the service properly, or protect itself and its users. By accepting the DSL, you agree to waive all rights you may have to receive any notice of Talk America's disclosure of your information for these reasons. Talk America may immediately remove your material or information from the servers, in whole or in part, which Talk America, in its sole and absolute discretion, determines to infringe another's property rights or to violate our Acceptable Use Policy.

12. PRIVACY POLICY

Talk America will treat your personal information in accordance with our current Privacy Policy, which may be found at <https://www.talk.com/web.cgi/user/footer-privacy.htm>. You agree to the terms of the Privacy Policy, which describes Talk America's use and disclosure of information about your account and your use of the DSL Service. You consent to Talk America providing personally identifiable information, as defined in the Privacy Policy, to partners or vendors necessary to the provisioning or service of your bundled product.

13. INDEMNIFICATION

You agree to defend, indemnify and hold harmless Talk America from and against all liabilities, costs and expenses, including reasonable attorneys' fees, related to or arising from (a) any violation of applicable laws, regulations, tariff or this Agreement by you (or anyone who uses your account, with or without your permission); (b) the use of the DSL Service or the Internet or the placement or transmission of any message, information, software or other materials on the Internet by you (or anyone who uses your account, with or without your permission); (c) negligent or intentional acts, errors or omissions by you (or anyone who uses your account, with or without your permission); (d) injuries to or death of any person and damages to or loss of any property, which may in any way arise out of or result from your obligations under this Agreement or your use of the DSL Service or the Internet, except to the extent that such liabilities arise from the willful misconduct of Talk America; or (e) claims for infringement of any intellectual property rights arising from your use of the DSL Service or the Internet.

14. VENUE

You agree to submit to the personal and exclusive jurisdiction of the state and federal courts located within the Commonwealth of Pennsylvania. The failure of Talk America to exercise or enforce any right or provision shall not constitute a waiver of such right or provision. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the terms of the DSL Service must be filed within one (1) year after such claim or cause of action arose or be forever barred. Any dispute will be decided on an individual basis and will not be consolidated in any action with the disputes or claims of other consumers or customers. You agree that you may not bring any dispute or claim as a class action or as a private attorney general, and you agree not to act as a class representative or participate as a member of a class of claimants with respect to any dispute or claim relating to this Agreement or the DSL Services.

15. CHOICE OF LAW

This Agreement is governed by and construed under the laws of the Commonwealth of Pennsylvania and applicable federal law, without regard to choice of law principles.

16. NO CHANGES

You may not modify or assign this Agreement. Talk America may assign this Agreement in its sole discretion.

17. SEVERABILITY

If any part or provision of this Agreement is finally determined to be invalid or unenforceable under applicable law by a court of competent jurisdiction, then that part or provision will be ineffective only to the extent of such invalidity or unenforceability, without in any way affecting the remaining parts or provisions of this Agreement.

18. THE FOLLOWING ADDITIONAL TERMS AND CONDITIONS APPLY:

Your DSL Service includes:

- DSL access on a single telephone number
- DSL Modem and Installation Kit
- Up to 5 Email addresses with 10 MB storage
- Personal web space - 10 MB

Cancellation of your DSL Service will result in the cancellation of email service and the deletion of all files stored in or for your account.

Email accounts exceeding 10MB in size may be inactivated until you reduce the size of the mail being stored.



6211-A2-GK10-00