

# Upstream Internet Terms and Conditions of Service

version 0.1

Friday 8<sup>th</sup> of September 2006

Upstream Internet is an Internet Service Provider (ISP), a company registered in England and Wales No. 5783591, with a registered office of 50 Cambridge Road, Macclesfield, Cheshire, SK11 8JW. Wherever the words "we", "us" or "our" appear in this document they refer to Upstream Internet.

This document sets out Upstream Internet's terms and conditions under which our services are provided to the "Customer", which is the person or entity with whom we are entering into this Contract. The Customer is referred to as "you" in this document.

Upstream Internet provides various services to the customer, which include the provision of Asymmetric Digital Subscriber Line (ADSL) services through our wholesale agreement with British Telecommunications PLC. Where the words "service" or "services" are used in this document they refer to any service provided by us.

Our services do not come with any service level agreement. Upstream Internet makes no warranty, express or implied, relating to the fitness, purpose or quality of the service.

Upstream Internet will not be responsible for any delay in or failure of the service due to any occurrence beyond Upstream Internet's control. Upstream Internet shall not be liable for any incidental, special or consequential damages.

The customer acknowledges that the ADSL services supplied are contended and utilise a shared network. We make no guarantee as to the performance or speed of any of the services we provide.

Once service has commenced, this Agreement shall continue until terminated by either Party. Either Party can terminate this Agreement in writing, subject to the Minimum Contract Period and Notice Period associated with the service. Furthermore, notice of Termination is not deemed to have been served unless receipt of the notice is confirmed by Upstream Internet. Our standard ADSL Service Contract Period is 90 days, and our standard ADSL Service Notice Period is 30 days.

Charges for our services are set out on our website [www.upstreaminter.net](http://www.upstreaminter.net), and exclude Value Added Tax ("VAT"), and any other use or sales taxes, duties, or levies imposed by any authority, government, or government agency which may apply or be introduced from time to time which shall be charged thereon in accordance with the relevant regulations in force at the time of providing the Service and shall be paid by the Customer.

The customer will be charged for services provided on a monthly basis. Payment must be received in full before service is either commenced or continued, except where Upstream Internet agrees to invoice the customer on "account" terms. Where "account" terms are agreed by Upstream Internet, we shall send an invoice to the customer as soon as services are provisioned. Customers on "account" terms must settle all invoices in full within 15 days after the date of the invoice. We reserve the right to modify our charges upon 30 days written notice.

In the event of default which include failure by Customer to pay any amounts; or failure by either Party to cure any breach of a term or condition in this Agreement within 10 days after written notice; or if an interim order is made, or a voluntary arrangement approved, or if a petition for a bankruptcy order is presented, or a bankruptcy order is made by either

Party, or a voluntary arrangement is approved or an administration order is made, or a receiver or administrative receiver is appointed of any of either Party's assets or undertaking or a resolution or petition to wind up either Party is passed or presented (otherwise than for the purposes of reconstruction or amalgamation); or if any circumstances arise which entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order, the other party shall be entitled to terminate this Agreement without further liability, except that the Customer agrees to pay for all sums due both up to the time of such termination and for all sums due for the remainder of the minimum contract period.

All notices (save where otherwise provided in this Agreement or in applicable legislation) from either party to the other shall be sent by first class prepaid post or by e-mail. Upstream Internet shall send all notices to the Customer's billing address or to the e-mail account notified to it by Customer. The Customer shall send all notices to Upstream Internet's registered office address or to the email address [contact@upstreaminter.net](mailto:contact@upstreaminter.net) .

The Customer will indemnify and save Upstream Internet harmless from and against all loss, liability, damage and expense, including reasonable legal fees, caused by the negligent acts or omissions of the Customer or other user of Customer's service which result in claims for damage to property and/or injury or death to persons, claims for libel, slander, invasion of privacy or infringement of copyright, or any actions brought pursuant to the provisions of the Data Protection Act, including any amendment, replacement, or re-enactment thereof for the time being in force, and invasion and/or alteration of private records or data arising from any information, data or message transmitted by Customer or its users, and claims for infringement of patents arising from the use of apparatus and systems of the Customer in connection with the Service furnished by Upstream Internet.

The Customer shall comply at all times with all relevant statutory and licensing obligations in connection with accessing and using the Service.

We reserve the right to suspend the service if the provision of the Service might expose Upstream Internet to criminal or civil liability of any kind.

Upstream Internet shall only restore the Service to full operation if, on the information provided to it in relation to the reason for the suspension of the Service, it in good faith reasonably judges that there is no risk of the restoration of the Service exposing it to criminal or civil liability of any kind is fully complied with.

Upstream Internet reserves the right to suspend all or part of the service if payment is not received in accordance with the terms and conditions and such service will only be resumed, and then entirely at Upstream Internet's discretion, if all monies outstanding have been received by Upstream Internet. Daily interest shall be applied on any outstanding amounts at a rate equal to 4 per cent per annum above the Barclays Bank plc Base Lending Rate, until payment in full is received.

During any period of suspension the Customer agrees to continue to pay and to remain liable for all charges pursuant to these terms and conditions and the Customer's Order.

This Agreement may not be assigned, delegated, transferred or otherwise dealt with, without the prior written consent of Upstream Internet. Customer authorises Upstream Internet to assign or transfer this Agreement, including any and all billing and service provisioning activities, to any third party as necessary to enable Upstream Internet to provide the Service.

No action, regardless of form, arising out of this agreement may be brought by either party more than two years after the cause of action has arisen, unless otherwise provided by legislation.

Save as otherwise provided for in this agreement, this agreement may not be waived, altered, or modified, except by document in writing signed by authorised representatives of Upstream Internet and Customer.

Upstream Internet may change this agreement from time to time. This agreement shall be completely superseded by future revisions of the agreement. The latest version of this agreement can always be found at <http://www.upstreaminter.net/terms.shtml>

No agent, employee or representative of Upstream Internet or Customer has any authority to bind Upstream Internet or the Customer to any affirmation, representation or warranty unless such is specifically included in this written Agreement.

This Agreement shall be governed by and construed and interpreted in accordance with English law, and the parties submit to the jurisdiction of the English Courts.

If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be in any way affected or impaired thereby.

The parties further agree that this agreement constitutes the complete and exclusive statement of the agreement between them, and supersedes all proposals, oral, or written, and all other communications between them relating to the subject hereof. This order shall cumulatively contain the entire contract between the parties.