Terms of Service: outline and instructions to counsel

What TeamTalk's master subscription terms must contain, why each clause is there, and suggested wording to start from. This is a brief for a solicitor qualified in England and Wales. It is not a contract and must not be issued to a customer in this form.

HOW TO USE THIS DOCUMENT

Do not draft a UK master subscription agreement from scratch, and do not adapt a US template. Start from a published, neutral form that both sides' counsel already recognise, which itself removes redlines: **Bonterms Cloud Terms** (bonterms.com) or **Common Paper Cloud Service Agreement** (commonpaper.com). Then instruct a UK solicitor once, against this brief, to produce the England and Wales version and the order form that references it. Budget [£1,500 to £3,000]. Everything below is a starting position, not settled drafting.

Document architecture

LAYER	WHAT LIVES THERE	CHANGES PER CUSTOMER?
Order form (1 to 2 pages)	Parties, plan and tier, counted unit and quantity, term dates, price, invoicing, notice period, named contacts, onboarding scope, signature. Incorporates the two documents below by reference and by URL.	Yes, every deal
Terms of service / MSA	Everything in this brief. Published at a stable URL and versioned.	No, except for enterprise
Data processing agreement	UK GDPR Article 28 terms and annexes. Separate document, signed or incorporated.	No
Service level schedule	Availability target, credits, exclusions, support targets. Referenced from the MSA so it can be updated without reopening the MSA.	Enterprise only
Acceptable use policy	Kept short and separate so it can be updated on notice.	No

Keep one set of terms. Negotiating bespoke terms per customer is the single biggest hidden cost in early enterprise sales. If a customer wants a change, the answer is either "no" or "yes, at a price", and the change goes on the order form, never into the master document.

Clause by clause

1. Definitions and interpretation

Define the counted unit precisely. Most disputes at renewal are arguments about what was being counted, not about the price.

SUGGESTED WORDING

"**Enrolled Worker**" means a natural person with an active login on the Customer's tenant whose recorded leaving date has not passed. Administrators who are not site-based are not counted. "**Site**" means a place of work, or a team, under one manager, as recorded on the Customer's tenant. "**Customer Data**" means all data, content and personal data uploaded to or generated on the Customer's tenant. "**Service**" means the TeamTalk platform made available at the Customer's tenant address, as described in the Documentation.

FOR THE SOLICITOR

- Confirm the definition of Enrolled Worker cannot be read to include a person whose account is suspended but not dated, and that the counting date for banding is stated (recommend: the highest count on any day in the term, assessed at renewal only).
- Define "Documentation" by URL and provide that TeamTalk may update it, but not so as to materially reduce functionality during a paid term.

2. Subscription and licence grant

A software as a service subscription is a right of access, not a licence to a copy. Say so, or a customer's IT department will ask for source code escrow.

> **SUGGESTED WORDING**
>
> "Subject to payment of the Fees and to these terms, TeamTalk grants the Customer a non-exclusive, non-transferable, revocable right to access and use the Service for the Customer's internal business purposes during the Term, for the number of Sites and Enrolled Workers stated on the Order Form. The Customer may permit its own workers, agency workers and subcontractors working at the Sites in scope to use the Service as end users, and is responsible for their compliance with these terms."
>
> "No source code, copy or escrow right is granted. TeamTalk retains all right, title and interest in the Service."

FOR THE SOLICITOR

- The subcontractor point matters commercially: the whole product case is that subcontracted and agency crews are covered. Make certain the licence extends to them and that the Customer, not TeamTalk, carries responsibility for their conduct.
- Add an affiliates clause: which group companies may use the Service, and who is liable for their use.

3. Term, renewal and notice

Sixty days is the commercial position: long enough to run a renewal conversation, short enough that a buyer's procurement team does not object to it as an unfair auto-renewal.

> **SUGGESTED WORDING**
>
> "The initial term is 12 months from the Start Date stated on the Order Form. It renews automatically for successive 12-month periods unless either party gives written notice of non-renewal **at least 60 days before the end of the then-current term**. TeamTalk will send the Customer a renewal notice not less than 90 days before the end of each term, stating the renewal price."

FOR THE SOLICITOR

- The 90-day reminder is deliberate: it makes the 60-day notice period defensible if a customer later complains it was locked in. Keep it.
- Confirm the clause works where the Order Form is signed by a division of a plc and notice is served by group procurement.
- Add a mid-term expansion mechanic: new sites added mid-term are co-terminous with the existing term and charged pro rata.

4. Fees, invoicing, Bacs and price changes

Bacs rather than card is worth real money at this contract size, and re-banding only at renewal is what stops every renewal becoming a discount negotiation.

> **SUGGESTED WORDING**
>
> "Fees are as stated on the Order Form, are exclusive of VAT, and are invoiced annually in advance. Payment is due within 30 days of the date of invoice **by Bacs credit transfer or Bacs Direct Debit** to the account stated on the invoice. TeamTalk is not obliged to accept payment by credit or debit card, and may pass on card processing charges where it does. Monthly invoicing is available at a premium of 15% on the annual fee."
>
> "Where the Fee is banded by Enrolled Workers, the band is fixed for the term and is reassessed only at renewal, on the basis of the highest number of Enrolled Workers recorded on any day in the preceding term."
>
> "TeamTalk may increase the Fee on renewal by giving written notice at least 60 days before the end of the then-current term. Where the increase exceeds [8%], the Customer may terminate with effect from the end of the then-current term by written notice given within 30 days of TeamTalk's notice."

> "Interest on late payment accrues under the Late Payment of Commercial Debts (Interest) Act 1998. TeamTalk will give 10 days' written notice before charging it."

FOR THE SOLICITOR

- The uplift cap with a walk-away right is the version procurement accepts. An uncapped "TeamTalk may increase fees" clause is routinely struck out by plc procurement and costs weeks.
- Confirm whether the Customer will demand a CPI-linked cap instead. A cap of "the greater of CPI and 5%, not exceeding 8%" is a reasonable landing spot.
- SMS delivery of posts is metered at 8p per message. Draft it as a separate metered charge with a customer-set monthly cap, invoiced in arrears, so a busy month cannot produce a surprise invoice.
- Check the Customer's own payment performance on `check-payment-practices.service.gov.uk` before agreeing anything longer than 30 days.

5. Acceptable use

This is the clause that lets TeamTalk switch off a tenant that is being used to harass workers or to send marketing, without arguing about whether it was a material breach.

> **SUGGESTED WORDING**
>
> "The Customer will not, and will not permit any user to: publish content that is unlawful, defamatory, obscene, harassing or discriminatory; use the Service for direct marketing to individuals or for any purpose other than communication with its own workforce; upload malicious code; attempt to access another customer's tenant or any part of the Service it is not authorised to access; probe, scan or load-test the Service without TeamTalk's prior written consent; resell, sublicense or make the Service available to any third party; or use the Service in breach of applicable law, including the UK GDPR, the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003."
>
> "The Customer is responsible for content it publishes. TeamTalk does not pre-moderate content and is not the author, editor or publisher of it."

FOR THE SOLICITOR

- The last sentence matters: TeamTalk carries employee-generated content, including direct messages and hazard reports with photographs. Consider whether hosting defences apply and how they interact with the Online Safety Act 2023 for a closed workplace service. **CONFIRM**
- Add a right to remove specific content on notice where TeamTalk is required to by law or by a court.

6. Customer Data, data protection and retention

> **SUGGESTED WORDING**
>
> "As between the parties, the Customer owns all Customer Data. The Customer grants TeamTalk a non-exclusive licence to host, store, transmit, translate, display and back up Customer Data to the extent necessary to provide the Service and to comply with the DPA."
>
> "For personal data processed through the Service, the Customer is the controller and TeamTalk is the processor. The parties' data processing agreement at [URL], as it may be updated from time to time on not less than 30 days' notice, is incorporated into this agreement. In the event of conflict between this agreement and the DPA on any matter of data protection, the DPA prevails."
>
> "TeamTalk will retain Customer Data for the retention period configured on the Customer's tenant, with a default of [24] months for posts and confirmations of receipt. On expiry or termination TeamTalk will make Customer Data available for export in a machine-readable format for 30 days, after which it will be deleted in accordance with the DPA."
>
> "TeamTalk may use aggregated, anonymised data derived from use of the Service to operate, secure and improve it, provided such data does not identify the Customer, any Site or any individual."

FOR THE SOLICITOR

- The aggregated data clause is the one enterprise buyers redline hardest. Keep the anonymisation qualifier and be prepared to drop the clause rather than lose a deal over it.
- Confirm the incorporation-by-URL mechanic is enforceable and that the update-on-notice right does not let TeamTalk unilaterally weaken the Article 28 terms.

7. Availability and service credits

Publish a level that can always be held. An SLA breached quarterly is worse than a modest one that is never breached. Measure monthly: a 99.9% annual commitment permits nearly nine hours of downtime in a single outage, while 99.9% monthly caps it at about 43 minutes.

TIER	COMMITTED AVAILABILITY	CREDIT
Site and Company plans	**99.5%** per calendar month	10% of that month's fee below 99.5%; 25% below 99.0%; 50% below 95.0%
Enterprise (optional, priced)	**99.9%** per calendar month	10% below 99.9%; 25% below 99.0%; 50% below 95.0%

SUGGESTED WORDING

"TeamTalk will use commercially reasonable endeavours to make the Service available at least [99.5%] of the time in each calendar month, measured as Platform Availability. **Platform Availability** means the availability of the TeamTalk application to accept requests, measured by TeamTalk's monitoring at not less than one-minute intervals. It does not mean delivery of any individual message to any individual device."

"If TeamTalk fails to meet the committed level, the Customer may claim a service credit by written notice within 30 days of the end of the affected month. Credits are applied against the next invoice, are capped in aggregate at 100% of one month's fee in any month, and are the **Customer's sole and exclusive remedy** for failure to meet the committed availability level."

Exclusions. "Availability is measured excluding: scheduled maintenance in a published window notified at least 48 hours in advance; emergency maintenance; the Customer's own networks, devices, browsers and site connectivity; mobile network coverage; third-party push notification services including APNs and FCM; SMS carrier and aggregator delivery; app store and operating system availability; suspension under clause 9; features labelled beta or preview; and force majeure."

FOR THE SOLICITOR

- **The most important line in the document** is that credits are the sole and exclusive remedy. Without it, publishing an SLA increases exposure rather than limiting it.
- The "Platform Availability, not message delivery" definition is not lawyerly caution, it is the product reality: no supplier can control mobile signal in a site cabin. Do not let it be negotiated away.
- Consider a chronic-failure right to terminate (for example, three months in any rolling twelve below the committed level) rather than raising the committed percentage. Buyers accept this trade.
- Benchmarks to cite if a buyer pushes for 99.99%: Microsoft 365 commits 99.9% monthly; Salesforce publishes no uptime commitment in its standard terms. VERIFY ON EACH VENDOR'S CURRENT LEGAL PAGE BEFORE QUOTING

8. Support

SUGGESTED WORDING

"TeamTalk provides support by email to [support@team-comms.com] between **08:00 and 18:00 UK time, Monday to Friday, excluding England and Wales public holidays**. Target response times, measured in business hours, are:"

PRIORITY	DEFINITION	TARGET FIRST RESPONSE
P1	Service unavailable to all users of the tenant	2 business hours
P2	Major function unavailable or materially degraded; no workaround	1 business day
P3	Minor fault, question or change request	4 business days

FOR THE SOLICITOR

- These are response targets, not resolution targets, and must say so. Do not offer resolution times.
- Do not offer 24 hours a day, seven days a week cover that a solo founder cannot staff. If an enterprise buyer insists, price it and state the on-call rota. CONFIRM WHAT CAN ACTUALLY BE STAFFED BEFORE SIGNING

9. Suspension

SUGGESTED WORDING

"TeamTalk may suspend all or part of the Service where: (a) an invoice is more than 30 days overdue and TeamTalk has given 10 days' written notice; (b) continued provision would breach applicable law or expose TeamTalk or its other customers to material security risk; or (c) the Customer is in material breach of clause 5. TeamTalk will limit any suspension to what is necessary, will tell the Customer the reason in writing at the time, and will restore the Service promptly once the cause is resolved. Suspension does not relieve the Customer of the obligation to pay the Fees."

FOR THE SOLICITOR

- Carve out safety-critical notices if a customer asks: consider a commitment not to suspend an active must-read post already in flight. This is a cheap concession that reads well to an HSEQ buyer.

10. Termination and exit

SUGGESTED WORDING

"Either party may terminate immediately by written notice if the other commits a material breach not remedied within 30 days of written notice requiring remedy, or becomes insolvent, has an administrator, receiver or liquidator appointed, or ceases or threatens to cease to carry on business."

"On expiry or termination: the Customer's right to access the Service ends; TeamTalk will make Customer Data available for export for 30 days; TeamTalk will then delete Customer Data in accordance with the DPA and will certify deletion in writing on request; and fees for the remainder of the current term become immediately due, save where the Customer terminated for TeamTalk's material breach, in which case TeamTalk will refund fees paid for the unexpired period."

FOR THE SOLICITOR

- Enterprise buyers will ask for a transition assistance period. Offer 30 days of export access plus paid assistance at a day rate rather than an open-ended obligation.
- Confirm the survival list: definitions, fees accrued, confidentiality, data protection, IP, liability, governing law.

11. Warranties, indemnities and IP

SUGGESTED WORDING

"TeamTalk warrants that it will provide the Service with reasonable skill and care and in accordance with the Documentation, and that it has the right to grant the rights it grants. TeamTalk will indemnify the Customer against sums awarded by a court, or agreed in settlement with TeamTalk's consent, for a third-party claim that use of the Service in accordance with these terms infringes that third party's UK intellectual property rights, provided the Customer notifies TeamTalk promptly, gives TeamTalk conduct of the claim, and does not admit liability."

"Translation of content is performed by machine translation. TeamTalk does not warrant that any translation is accurate, complete or fit for use where legal or contractual precision is required. The Customer remains solely responsible for the content it publishes and for discharging its own statutory duties, including those under the Health and Safety at Work etc. Act 1974 and the Management of Health and Safety at Work Regulations 1999."

"Except as expressly set out, all warranties, conditions and terms implied by statute or common law are excluded to the fullest extent permitted by law."

FOR THE SOLICITOR

- The machine translation carve-out is essential and must be drafted so that it survives a buyer who is purchasing precisely because of the translation feature. Consider whether it needs to be flagged separately on the order form to satisfy the UCTA 1977 reasonableness test.
- Consider a customer indemnity back to TeamTalk for content published on the tenant and for the lawfulness of the worker data uploaded.
- Cap the IP indemnity at the general liability cap or a stated multiple, and add the standard replace, modify or refund options.

12. Limitation of liability

This is the clause most likely to be tested and the one most likely to be drafted badly. Because TeamTalk contracts on its own written standard terms, section 3 of the Unfair Contract Terms Act 1977 subjects the limitation to a reasonableness test. A cap set implausibly low relative to the fees and the risk can be struck out entirely, leaving TeamTalk uncapped.

SUGGESTED WORDING

"Nothing in this agreement limits or excludes either party's liability for: death or personal injury caused by negligence; fraud or fraudulent misrepresentation; breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 where applicable; or any other liability that cannot lawfully be limited or excluded."

"Subject to the paragraph above, neither party is liable, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for: loss of profit; loss of revenue; loss of business or business opportunity; loss of contracts; loss of goodwill; loss of anticipated savings; loss, corruption or destruction of data (other than TeamTalk's obligation to restore from its most recent backup); wasted expenditure; or any indirect or consequential loss."

"Subject to the two paragraphs above, each party's total aggregate liability arising out of or in connection with this agreement in any 12-month period is limited to **the total Fees paid or payable by the Customer in the 12 months immediately preceding the first event giving rise to the claim**."

Optional super-cap, if conceded: "The limit for claims arising from a breach of the DPA or of the confidentiality obligations is **200% of the Fees** paid or payable in the 12 months immediately preceding the first event giving rise to the claim."

Note the pilot agreement does this differently, on purpose. At £2,500 a fee-based super-cap is meaningless to a plc legal team, so pilot agreement clause 14.3 sets the data-protection super-cap at **the cyber policy limit** instead and offers a certificate. Whichever formulation is used, the rule is the same: **the cover must exist before the cap is written, and the cover must exceed the cap.** Buy the cyber policy first.

FOR THE SOLICITOR

- Confirm the cap is defensible under UCTA 1977 s.3 at the contract values in question (annual fees from about £2,160 to £31,200). A cap at 100% of annual fees on a £19,200 contract is defensible; a flat low-value cap on the same contract may not be.
- List the excluded heads of loss explicitly, as above. English courts read generic "consequential loss" exclusions narrowly and a bare exclusion may achieve nothing.
- Enterprise buyers will push for uncapped liability on data breach, confidentiality, IP indemnity and gross negligence. **Concede a bounded super-cap, never anything uncapped**, and check that the cyber and professional indemnity limits exceed the super-cap before agreeing it.
- Confirm whether "gross negligence" should be defined. It is not a term of art in English law and a buyer's US-derived draft will assume it is.

13. Insurance

SUGGESTED WORDING

"TeamTalk will maintain, with a reputable insurer, professional indemnity insurance of not less than £ [5,000,000] in the aggregate, public liability insurance of not less than £ [5,000,000] per occurrence, employers' liability insurance of not less than £5,000,000 where it employs staff, and cyber liability insurance of not less than £ [amount] , and will provide certificates of currency on request. TeamTalk will maintain professional indemnity cover for [6] years after the end of this agreement."

FOR THE SOLICITOR

- Do not commit to limits that are not in place. Buy the limits that clear the target buyers' thresholds before signing anything: raising a limit mid-procurement costs about three weeks.
- Benchmark: Crown Commercial Service framework RM6263 Joint Schedule 3 requires professional indemnity, public and products liability, and employers' liability each at £5m, maintained for six years after the end date, with indemnity to principals. Most private construction and FM buyers sit at or below that level. **CHECK THE CURRENT VERSION OF THE CCS SCHEDULE AND EACH TARGET'S OWN THRESHOLD**
- The six-year run-off obligation is a real cost. Budget for continuing professional indemnity cover after a contract ends.

14. Publicity and reference rights

A named, quotable reference is worth more than a discount, and discounting for a reference rather than for a signature is the pricing rule that holds the list price. Make the right explicit and make it revocable, which is what gets it agreed.

> **SUGGESTED WORDING**
>
> "Neither party may use the other's name, logo or trade marks in publicity without prior written consent, except that TeamTalk may identify the Customer by name and logo in a list of customers on its website and in sales materials, which consent the Customer may withdraw on 30 days' written notice."
>
> "Where the Order Form records a reference discount, the Customer agrees to: provide a named, attributable quotation approved by the Customer in writing; participate in up to [two] reference calls with prospective customers in each 12-month period; and permit publication of an agreed case study. TeamTalk will provide the exact wording for approval before publication. If the Customer withdraws its consent, the discount ends at the next renewal and does not become repayable."

FOR THE SOLICITOR

- Keep the logo right and the reference obligation separate. Many buyers will agree to the first and refuse the second, and the deal should not turn on it.
- Commercial rule to preserve: up to 20% in year one for a named, quotable reference, in writing, expiring at renewal. Never discount for a signature alone.

15. General provisions

> **SUGGESTED WORDING, IN OUTLINE**
>
> **Confidentiality** (mutual, three years, standard carve-outs, no time limit on personal data). **Notices** (writing, named addresses on the Order Form, email effective next working day). **Entire agreement** with a non-reliance clause and an express carve-out for fraudulent misrepresentation. **Variation** in writing and signed. **Assignment** with consent not unreasonably withheld, free assignment on a group reorganisation, sub-processors excepted. **Third parties** excluded under the Contracts (Rights of Third Parties) Act 1999. **Force majeure** with a 30-day termination right. **Anti-bribery** (Bribery Act 2010) and **modern slavery** (Modern Slavery Act 2015) compliance. **Severance**. **No partnership or agency**. **Counterparts and electronic signature**. **Governing law: England and Wales, exclusive jurisdiction of the English courts.**

FOR THE SOLICITOR

- Add a dispute escalation clause: named executives meet within 15 business days before proceedings, excluding applications for injunctive relief. Buyers like it and it costs nothing.
- Confirm whether an express change-control clause is needed for enterprise customers who want notice of material changes to the Service.

What to settle before instructing counsel

DECISION	RECOMMENDED POSITION	STATUS
Committed availability	99.5% monthly, 99.9% priced as Enterprise	CONFIRM MONITORING CAN EVIDENCE IT
Support hours and on-call	08:00 to 18:00 UK, Monday to Friday	CONFIRM STAFFING
Liability cap	100% of fees in the preceding 12 months	Settled
Super-cap for data breach	200% of fees on a subscription; **the cyber policy limit** on the pilot, where 200% of £2,500 is not a serious number	BUY THE CYBER COVER FIRST, THEN CHECK IT EXCEEDS THE CAP
Insurance limits actually held	Target £5m PI, £5m PL, cyber	CURRENT LIMITS
Renewal notice period	60 days, with a 90-day reminder from TeamTalk	Settled

DECISION	RECOMMENDED POSITION	STATUS
Renewal uplift cap	5% to 8%, with a walk-away right above the cap	Settled
Payment terms	Net 30, Bacs	Settled; expect pressure to 45 or 60
Default data retention	24 months, configurable per tenant	**CONFIRM THE PRODUCT ENFORCES IT**
DPA incorporation method	By URL, versioned, 30 days' notice of change	For counsel to confirm enforceable

Not legal advice. This is a brief for counsel, not a contract, and must not be issued to a customer. TeamTalk's terms of service must be drafted or reviewed by a solicitor qualified in England and Wales before first use. **Sources:** Unfair Contract Terms Act 1977, ss.2 and 3 legislation.gov.uk/ukpga/1977/50; Late Payment of Commercial Debts (Interest) Act 1998 legislation.gov.uk/ukpga/1998/20; Contracts (Rights of Third Parties) Act 1999 legislation.gov.uk/ukpga/1999/31; Health and Safety at Work etc. Act 1974 legislation.gov.uk/ukpga/1974/37; Bribery Act 2010 legislation.gov.uk/ukpga/2010/23; Modern Slavery Act 2015 legislation.gov.uk/ukpga/2015/30; UK GDPR Article 28 legislation.gov.uk/eur/2016/679/article/28; Bonterms bonterms.com and Common Paper commonpaper.com published standard forms; UK payment performance data check-payment-practices.service.gov.uk. Commercial positions from the TeamTalk commercial research, sections 4.7 and 2.9, 28 August 2026.