

# Terms of Service – Update September 27, 2011

## 1. ACCEPTANCE OF TERMS

Welcome to the Talkspot.com Website and Email Marketing Creation Services (the "Service"). Your use of the Service is subject to these Terms of Service ("TOS"). Talkspot.com reserves the right to update and change the TOS from time to time without notice and by using the Service; you signify your irrevocable acceptance of this TOS.

Unless explicitly stated otherwise, any new features, including the release of new Talkspot.com tools and resources, shall be covered by this TOS.

Talkspot.com may also offer 3<sup>rd</sup> party services that may be governed by their own terms of service and copyright protections.

Because the Terms of Service contain legal obligations, please read them carefully. Failure to comply may result in account termination and possible further legal liability.

## 2. DESCRIPTION OF SERVICE

Talkspot.com provides web based creation tools and hosting for the online presence of individuals and businesses and also provides ecommerce and email marketing services for commercial customers.

Talkspot web services are provided free to registered individual users not involved in commercial activities and web, ecommerce and email marketing services are provided to commercial customers on a fee basis. In addition, Talkspot.com also provides art production and consulting services to certain customers on a "per hour" and "per project" basis.

Talkspot does not provide access to the world-wide web directly, and all users are required to provide their own connectivity and equipment to access the services.

From time to time, Talkspot will provide registered and prospective users with "webcasts," email newsletters and other communications suggesting methods and strategies for implementation of website creation and promotion. These communications are advisory only and it is up to the individual user or commercial entity to determine the implication, advisability and/or legality of such methods and strategies for their own situation and in accordance with applicable laws.

Other than tools, web addresses, services and artwork directly provided by Talkspot.com, all web content is the property of the individual account holder and Talkspot.com takes no responsibility for the content.

You also understand and agree that the service may include certain communications from Talkspot.com, such as service announcements, administrative messages and the Talkspot.com Newsletter, and that these communications are considered part of Talkspot.com membership and you will not be able to opt out of receiving them.

## 3. REGISTRATION

All users of Talkspot.com are required to register and will be given a valid Talkspot.com account number. To be an Account Holder with your own website, you must provide Talkspot.com with a valid email address and other information ("Registration Data"). In consideration of use of the Service, you agree to: (a) provide true, accurate, current and complete information about yourself as prompted by the Service's registration form, and (b) maintain and promptly update

the Registration Data to keep it true, accurate, current and complete. This information may change from time to time.

Talkspot.com reserves the right to cancel or suspend any account if communications or enquiries to the email address on file are not responded to in a timely manner or if any other information is deemed to be incomplete, incorrect or fraudulent.

Talkspot.com accounts may not be transferred or resold without the express written permission of Talkspot.com.

Account holders are provided with passwords during the registration process as well as the ability to update or change passwords at any time. The account holder is solely responsible for maintaining the confidentiality of this information and account as well as any account activity.

The account holder agrees to (a) immediately notify Talkspot.com in writing of any unauthorized use of your password or account or any other breach of security, and (b) exit from the account at the end of each session.

Users under 13 years of age are prohibited from using the Service.

## 4. CANCELLATION AND TERMINATION

Talkspot provides web services for non-commercial use free under most conditions and commercial users have the option to pay for monthly service or receive a substantial discount for pre-paying for annual service. Account holders wishing to cancel may do so at any time.

After cancellation, Account Holders will no longer have access to your Web site and all information contained therein may be deleted by Talkspot.com. Talkspot.com accepts no liability for such deleted information or content under any circumstances.

Although Account Holders are solely responsible for the legality and suitability of content on their websites and blogs, in their outbound email communications and in ecommerce transactions, Account Holders agree that Talkspot.com may, at its sole discretion but without obligation, terminate your password, and/or account, and remove and discard any Content within the Service that it deems to be illegal, inappropriate, offensive, damaging to either Talkspot.com bandwidth usage, operations or professional reputation.

Termination can also occur due to lack of use or overuse or if talkspot.com believes that you have violated or acted inconsistently with the letter or spirit of the TOS. Talkspot.com may also in its sole discretion and at any time, discontinue providing the Service, or any part thereof, with or without notice for any reason or for no reason at all. In such event, unused moneys paid by Account Holders will be refunded in accordance with U.S. laws.

Termination of your access to the Service under any provision of this TOS may be effected without prior notice, and Account Holder acknowledges and agrees that talkspot.com may immediately deactivate or delete your website, as applicable and all related information and files.

Talkspot.com reserves the right to bar any further access to such files or the Service. Account holder agrees that talkspot.com shall not be liable to you or any third-party for any termination of your access to the Service.

## 5. REFUND POLICY

No refunds will be provided for any reason on free accounts under any circumstances, and for account holders paying "month to month," all payments will be considered in 30 days increments so billing will end at the end of your next full month as determined by when account was opened.

Customers who prepay for annual service may be refunded for unused portions at the sole discretion of Talkspot and any such refunds will be pro-rated to reflect monthly billing policies and applicable service fees from 3<sup>rd</sup> party billing process providers.

For customers who are terminated due to violations of TOS, refunds for paid users will be processed based on this policy minus any processing fees to cover outstanding legal or similar claims and/or processing fees.

UNDER NO CIRCUMSTANCES WILL TALKSPOT.COM BE RESPONSIBLE FOR ANY CHARGES (INCLUDING NSF CHARGES) YOU INCUR AS A RESULT OF ERRONEOUS CHARGES, AGAINST YOUR CREDIT CARD OR PAYPAL ACCOUNT, OR AS A RESULT OF YOUR FAILING TO CANCEL YOUR ACCOUNT AND/OR AUTOMATIC PAYMENTS IN A TIMELY FASHION.

## 6. PRIVACY POLICY

Registration Data and certain other information about you are subject to our Privacy Policy, the terms of which are incorporated into this TOS by reference.

## 7. CONTENT AND CONDUCT RULES AND OBLIGATIONS

Account Holder understands that all content uploaded to the site including, but not limited to, information, intellectual property, data, text, software, music, sound, photographs, graphics, video, messages, goods, products, services or other materials are the sole responsibility of the Account Holder. It is the sole responsibility of the account holder to insure that the content uploaded to the site is correct and free of fraudulent intent, free from defects and viruses, and legal within the jurisdictions where Account Holder will do business or disseminate information. This includes, but is not limited to, any content that may violate local community standards.

Talkspot.com does not control the Content posted via the Service and, as such, does not guarantee the accuracy, integrity legality or quality of such Content. You understand that by using the Service, you may be exposed to Content that is offensive, indecent or objectionable.

Account Holders and any visitor to a site hosted by Talkspot.com agrees that under no circumstances will Talkspot.com be liable in any way for any Content, including, but not limited to, for any errors or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content posted, transmitted or otherwise made available via the Service.

Account Holder and site visitors acknowledge that Talkspot.com does not pre-screen Content nor endorse or warrant the content in any way.

Account Holders agree that they alone must evaluate, and bear all risks associated of, the use of any Content, including any reliance on the legality accuracy, completeness, or usefulness of such Content. Both Account Holder and site visitors acknowledge that they may not rely on any Content created with Talkspot.com or submitted to Talkspot.com.

Both Account Holders and any third party uploading content or performing transactions on the service acknowledge and agree that Talkspot.com may preserve Content and may also disclose to legal authorities or provide content if required to do so by law authorities in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce the TOS; (c) respond to claims that any Content violates the rights of third-parties; or (d) protect the rights, property, or personal safety of Talkspot.com, its users and the public.

Further, Account Holder understand that the technical processing and transmission of the Service, including your Content, may involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

Should Content be found or reported to be in violation with, but not limited to, these terms, it will be in talkspot.com's sole discretion as to what action should be taken and is under no legal obligation to do so unless directed to do so by applicable courts, law enforcement representatives or appropriate city, state, federal or international entities.

Account Holders and visitors agree that they will not:

- upload, post, transmit or otherwise make available any Content that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy (up to, but not excluding any address, email, phone number, or any other contact information without the written consent of the owner of such information), hateful, or racially, ethnically or otherwise objectionable;
- post pornographic, obscene, nude, graphically violent, and other inappropriate content; this is strictly prohibited;
- harm minors in any way;
- associate Talkspot.com and/or the Service with any illegal and or pornographic or fraudulent site, material, content or activities;
- impersonate any person or entity, including, but not limited to, a talkspot.com official, forum leader, guide or host, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Service;
- upload, post or otherwise transmit any Content that you do not have a right to transmit under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
- upload, post or otherwise transmit any Content that infringes any patent, trademark, trade secret, copyright, rights of privacy or publicity, or other proprietary rights of any party;
- upload, post, or transmit unsolicited commercial email or "spam". This includes unethical marketing, advertising, or any other practice that is in any way connected with "spam", such as (a) sending mass email to recipients who haven't requested email from you or with a fake return address, (b) promoting a site with inappropriate links, titles, descriptions, or (c) promoting your site by posting multiple submissions in public forums that are identical;
- upload, post, email, otherwise transmit, or post links to any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation.
- upload, post or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service;
- intentionally or unintentionally violate any applicable local, or international law;
- 'stalk' or otherwise harass another;

- promote or provide instructional information about illegal activities, promote physical harm or injury against any group or individual, or promote any act of cruelty to animals. This may include, without limitation, providing instructions on how to assemble bombs, grenades and other weapons or incendiary devices;
- offer for sale or sell any item, good or service that (a) violates any applicable law or regulation, (b) you do not have full power and authority under all relevant laws and regulations to offer and sell, including all necessary licenses and authorizations, or (c) talkspot.com determines, in its sole discretion, is inappropriate for sale through the Service provided by talkspot.com;
- use the Service as a forwarding service to another website;
- solicit passwords or personal identifying information for commercial or unlawful purposes from other users;
- exceed the scope of the Service that you have signed up for; for example, accessing and using the tools that you do not have a right to use;
- make any unauthorized automated use of the system.

If any user is reported to be in violation with the letter or spirit of these terms, Talkspot.com retains the right to terminate such account at any time without further warning.

## 8. ADDITIONAL SOFTWARE

With respect to any additional software that may be made available by Talkspot.com in connection with the Service, if Account Holders or site visitors elect to download or access such additional software or third party Content made available to through the Service, parties understand that they may have to agree to additional terms and conditions before use of such software or third party Content.

Both Account Holders and Site Visitors also agree that the use of any third party software or Content obtained through the Service does not transfer any rights, title or interest in or to the software or such Content, and that they will not use any Content made available to them through the software or the Service except as expressly authorized under that third party provider's terms of service or license. For greater certainty, by downloading software or Content made available through the Service, all users are deemed to agree to the terms of service or license agreement posted on the Service, the terms of which are incorporated by reference herein for the benefit of such third party providers. If you do not agree to the terms of service or license agreement, do not download the software or Content.

## 9. INTERNATIONAL USE

Recognizing the global nature of the Internet, all users agree to comply with all local rules regarding online conduct and acceptable Content. Specifically, users agree to comply with all applicable laws regarding the transmission of technical data exported from Canada or the country in which you reside.

## 10. CONTENT SUBMITTED

Talkspot.com does not claim ownership of the Content placed on your Talkspot.com website or within Account Holder created email marketing materials. By submitting Content to Talkspot.com for inclusion on your talkspot.com website, Account Holder and/or site visitors grant Talkspot.com a world-wide, royalty-free, and non-exclusive license to reproduce, modify, adapt and publish the Content solely for the purpose of displaying, distributing and promoting the content on talkspot.com's Internet properties.

All users acknowledge that Talkspot.com does not pre-screen Content, but that Talkspot.com and its designees shall have the right (but not the obligation) in their sole discretion to refuse or remove any Content that is available via the Service.

Without limiting the foregoing, Talkspot.com and its designees shall have the right to remove any Content that violates the TOS or is otherwise objectionable. All users agree that they alone must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content.

## 11. ADVERTISERS

Account Holders understand and agree that the Service may include advertisements and that these advertisements are necessary for talkspot.com to provide the Service. Any correspondence or business dealings with, or participation in promotions of, advertisers found on or through the Service, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between the user and such advertiser. All users agree that Talkspot.com shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such advertisers on the Service.

## 13. LINKS

The Service may provide, or third parties may provide, links to other World Wide Web sites or resources. Because Talkspot.com has no control over such sites and resources, All users acknowledge and agree that talkspot.com is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any Content, advertising, products, or other materials on or available from such sites or resources. Users further acknowledge and agree that Talkspot.com shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such Content, goods or services available on or through any such site or resource.

## 14. INDEMNITY

All users agree to indemnify and hold Talkspot.com, and its subsidiaries, affiliates, officers, director's, agents, co-branders or other partners, and employees, harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of uploaded Content, use of the Service, Visitor/Guests activities, connection to the Service, violation of the TOS, or violation of any rights of another, whether actions are of a registered Account holder or not. The user is solely responsible for his or her actions when using the Service, including, but not limited to, costs incurred for Internet access.

## 15. RESALE OF SERVICE

You agree not to reproduce, duplicate, copy, sell, resell or exploit any portion of the Service, use of the Service, or access to the Service without the express written permission by Talkspot.com.

## 16. GENERAL PRACTICES REGARDING USE AND STORAGE

You acknowledge that Talkspot.com may establish general practices and limits concerning use of the Service and may modify such practices and limits from time to time without notice to you.

## 17. MODIFICATIONS TO SERVICE

Talkspot.com reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Service (or any part thereof) with or without notice at any time. All users agree that talkspot.com shall not be liable to Users or to any third party for any modification, suspension or discontinuance of the Service.

## 18. TALKSPOT.COM'S PROPRIETARY RIGHTS

All users acknowledge and agree that the Service and any necessary software used in connection with the Service ("Software") contain proprietary and confidential information that is protected by applicable intellectual property and other laws. Users further acknowledge and agree that Content contained in sponsor advertisements or information presented through the Service or advertisers is protected via copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except as expressly authorized by Talkspot.com or advertisers, users agree not to modify, rent, lease, loan, sell, distribute or create derivative works based on the Service or the Software, in whole or in part.

Talkspot.com does not want to receive confidential or proprietary information from you through the Service or by email. Unless otherwise agreed in writing by an authorized Talkspot.com representative, any material, information or idea you transmit to Talkspot.com by any means may be disseminated or used by Talkspot.com or its affiliates without compensation or liability to you for any purpose whatsoever, including, but not limited to, developing, manufacturing and marketing products. However, this provision does not apply to Content (as defined herein), or to personal information that is subject to our Privacy Policy.

## 19. DISCLAIMER OF WARRANTIES

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

- ALL USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. talkspot.com EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- TALKSPOT.COM WILL MAKE REASONABLE EFFORTS TO MAINTAIN THE SERVICE, BUT WILL NOT BE RESPONSIBLE FOR ANY DAMAGE, LOSS OF DATA, CUSTOMER INFORMATION OR VENDOR DATA, REVENUE, OR OTHER HARM TO BUSINESS ARISING OUT OF DELAYS, MISDELIVERY OR NONDELIVERY OF INFORMATION, RESTRICTION OR LOSS OF ACCESS, BUGS OR OTHER ERRORS, UNAUTHORIZED USE DUE TO SHARING OF ACCESS TO THE SERVICE, OR OTHER INTERACTION WITH THE SERVICE. THE ACCOUNT HOLDERS ALONE ARE RESPONSIBLE FOR MAINTAINING AND BACKING-UP YOUR DATA AND INFORMATION THAT MAY RESIDE ON THE SERVICE.
- TALKSPOT DOES NOT WARRANT THAT (i) THE SERVICE WILL MEET ANY USERS SPECIFIC REQUIREMENTS, (ii) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED THROUGH THE SERVICE WILL MEET EXPECTATIONS, AND (V) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED.
- ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT USERS OWN DISCRETION AND RISK AND USER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO COMPUTER SYSTEMS OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL

- ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED THROUGH OR FROM THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TOS.

## 20. LIMITATION OF LIABILITY

YOU EXPRESSLY UNDERSTAND AND AGREE THAT TALKSPOT.COM SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF TALKSPOT.COM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (i) THE USE OR THE INABILITY TO USE THE SERVICE; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR (v) ANY OTHER MATTER RELATING TO THE SERVICE.

## 21. EXCLUSIONS AND LIMITATIONS

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. IN SUCH EVENT, ALL LIMITATIONS NOT SPECIFICALLY PROHIBITED SHALL BE AGREED TO BE ENFORCED.

## 22. GENERAL

This agreement will be governed by the state of Washington, United States of America. All parties agree to submit any disputes to final and binding arbitration.

Talkspot.com is a trade name for Cielo Azul Ventures II, LLC and all legal enquiries should be forwarded to the legal address of Cielo Azul Ventures II, LLC, Admiralty Way, West Seattle, WA.

## 23. VIOLATIONS

Please email [Admin@talkspot.com](mailto:Admin@talkspot.com) to report any violations of the TOS.

### How To Contact Us

Should you have other questions or concerns about these TOS, please send us an email at [Customersupport@Talkspot.com](mailto:Customersupport@Talkspot.com).