



# KrickTalk

## Terms of Service

KrickTalk LLC, ("KrickTalk") shall provide, and the named customer shall purchase from KrickTalk, the services described ("Services" or "Service" as the context may dictate) in this Phone Services Agreement ("Agreement").

1. DEFINITIONS. For the purposes of this Agreement, the following definitions apply:

Customer: The person, firm, corporation or other entity that orders or uses Services and is responsible for compliance with all Customer obligations set forth in the Agreement, including the duty to pay for Services.

End User: Any person that receives or uses KrickTalk Services, irrespective of whether such person or entity is authorized by the Customer to receive or use Services. "End User" shall also mean any person or entity Customer or its carrier Customer provides telecommunications and/or related services using, in part, Services provide by KrickTalk.

Hosted Voice Service: Digital Phone Services and features offered by KrickTalk.

Service Order: A document which identifies the type of Service to a Customer, including but not limited to the following: quantity and type of service; location served, Point of Termination, protocols, service term, service date, pricing and equipment.

2. SCOPE. This Agreement provides rate stability for the Services described herein. The Agreement will be governed by the laws of the State of Utah, and the applicable rates in this Agreement. Additional terms and conditions may be associated with specific Services. KrickTalk reserves the right to unilaterally amend all terms and conditions in response to regulatory changes beyond the control of KrickTalk that materially alter the feasibility or economics of the Services provided. Enhanced or information Services purchased under this Agreement may be provided by KrickTalk or a corporate affiliate at KrickTalk's sole discretion. Any costs associated with modifying or reprogramming Customer's equipment to make it compatible with KrickTalk provided Service will be the responsibility of Customer.

3. TERM. Unless otherwise specified, the term of this Agreement shall commence the date of execution of the Agreement, or if earlier, on the Service activation date (the "Effective Date"). Upon commencement of the specified term and without written notification regarding changes to the Agreement, KrickTalk Hosted Voice Service will be converted automatically to a month-to-month agreement at the end of the current term. Month-to-month customers may not be entitled to prior term- plan pricing or discounts.

4. CHARGES AND EXPENSES OF COLLECTION. KrickTalk records shall document Customer's Service location(s), quantities, and monthly recurring local rates stabilized under this Agreement, as well as the applicable one-time charges for initial installation, discounts or credits, which are incorporated into this Agreement by reference. In addition to the monthly charge(s), the Customer will pay federal and state end user common charges that would be applicable to comparable services obtained from the incumbent local exchange carrier; federal, state and local use, excise, sales and privilege taxes; applicable surcharges related to universal service programs, emergency telephone service (911/E911) and telecommunications relay service for the hearing impaired; pay phone surcharges; and other similar surcharges for required programs. KrickTalk shall not be responsible for wrong numbers made to Customer's toll-free number. All costs and expenses, including but not limited to costs, reasonable attorney fees, and service charges, incurred by KrickTalk in collecting payment will be an expense of and charge to Customer. Customer agrees to pay each bill in full by the payment due date. Late payment charges will be billed at 1.5% per month, five dollars (\$5) whichever is higher, or, if lower, the maximum lawful rate allowable under applicable state law.

5. DIRECTORY LISTING. For Hosted Voice Service, Customer's name, address, telephone number and any other information listed on the Agreement and/or quote/service order are certified as correct by the Customer, and it is understood and agreed that Customer's white page directory listing will appear using that information. It is Customer's sole responsibility to inform KrickTalk in writing of any change in the information, including telephone number or address, at least 90 days prior to the local telephone directory issue date, which will be provided to Customer upon request. KrickTalk assumes no liability whatsoever for (a) any telephone numbers published or distributed by Customer prior to confirmation that the number is installed and terminating properly or that the Service is connected to the proper facilities, or (b) errors in the listing due to directory publishing errors or omissions. Customer releases KrickTalk from any damages for any error, including listing omissions, related to a directory listing.

6. 911. Customer will provide accurate End User name and address information for the purpose of updating the E-911 Database. If the End User address provided on a Service Order does not convert to a valid Master Street Address Guide (also known to as the "MSAG") address for the End User locality, KrickTalk will notify Customer and stop all processing of the order until Customer provides an MSAG-compatible address. Customer assumes all responsibility for the accuracy of the End User data that Customer provides to KrickTalk for entry into the E-911 Database. Customer shall indemnify and hold KrickTalk harmless from any claims, damages, or suits related to the accuracy of data provided by Customer for inclusion in the E-911 Database. Customer will provide (and update as necessary) KrickTalk with accurate information related to E-911 Service, including, but not limited to: location of individual telephone stations and a description of Customer's facilities, equipment and software for the Services. Based upon the information supplied by Customer, KrickTalk will provide the Services and advise the appropriate agencies as required. Customer acknowledges and understands that access to emergency services through 911 and E911 calls is limited and not guaranteed. Customer acknowledges and understands that the Hosted Voice Services supports E911 (where available) and that access to emergency service is available only if the service is operated from the service location of record and then only if subscriber has an active connection to the service. Subscriber acknowledges and understands that if there is a service outage (even related to extended power outages) for any reason, such outage may prevent all Hosted Voice Services, including 911 dialing. Customer also acknowledges that it will take KrickTalk to 30 days to get the correct address information to E-911 Database and that during that time the E-911 Database may have the wrong address information. Customer will indemnify and hold KrickTalk, its affiliates, directors, officers, employees and agents harmless from and against all claims, demands, actions, causes of action, damages, liabilities, losses and expenses



(including reasonable attorney fees) incurred as a result of any act or omission, representation or statement by Customer, its affiliates, directors, officers, employees or agents related to E-911 services. Customer is responsible for notifying KrickTalk of any change to the location or address related to any KrickTalk Hosted Voice Service as outlined in this section. It is also Customer's responsibility to regulate the E-911 number for each service, phone system, feature or extension.

7. **CALLER ID.** Customer warrants that they will only use Outbound Caller ID (the number that will be displayed to the receiving party when you make an outgoing call) for numbers that they own or have expressed written consent to represent. Customer will indemnify and hold KrickTalk its affiliates, directors, officers, employees and agents harmless from and against all claims, demands, actions, causes of action, damages, liabilities, losses and expenses (including reasonable attorney fees) incurred as a result of any act or omission, representation or statement by Customer, its affiliates, directors, officers, employees or agents related to Caller ID Services. Customer is responsible for notifying KrickTalk of any change with caller ID. It is also Customer's responsibility to regulate the Caller ID number for each service, phone system, feature or extension. KrickTalk may, in its sole and absolute discretion, deny use of Caller ID information provided by Customer for any reason.

8. **RECORDING.** Client agrees not to use recordings for illegal or fraudulent purposes. Customer understand and agrees that it is familiar with all local, state, and federal laws and regulations regarding calling, recording, and receiving of calls, and agrees to comply with those laws and regulations. KrickTalk waives all liabilities from customer, and its agents and or representatives for failure to comply with these laws and regulations. Visit <http://www.rcfp.org> for information about recording in your state. Customer has sole and exclusive responsibility regarding confidential, private, or privileged calls, recordings, or other data or information created or accessible on or through the Services. KrickTalk shall have no responsibility, legally or otherwise, for any information, recordings, calls, material, or data created or accessible on or through the Services. Customer shall indemnify and hold KrickTalk its affiliates, directors, officers, employees and agents harmless from and against all claims, demands, actions, causes of action, damages, liabilities, losses and expenses (including reasonable attorney fees) incurred as a result of any act or omission, representation or statement by Customer, its affiliates, directors, officers, employees or agents related to this paragraph 8.

9. **DEFAULT & TERMINATION.** Either Customer or KrickTalk may terminate this Agreement during a term only for Cause. "Cause" means any uncured material breach of the terms of this Agreement after giving 30 days prior written notice by the nonbreaching party to the breaching party; provided, that Customer is only entitled to terminate this Agreement for Cause in the event KrickTalk fails to rectify an issue after three completed service orders regarding such issue. If KrickTalk terminates this Agreement WITH CAUSE or Customer terminates this Agreement WITHOUT cause prior to the expiration of the applicable term, Customer shall pay applicable early termination charges. For termination prior to installation of Service and after execution of this Agreement, early termination charges shall be those reasonable expenses incurred by KrickTalk through the date of termination. If there is termination after activation of Service, Customer shall be obligated as follows: to pay an early termination charge of 50% of the last three months' average billing multiplied by the number of months remaining in the term of the Agreement; to pay KrickTalk for Services actually received; to repay KrickTalk for any credits, discounts, or waived installation costs received in anticipation of a long-term Agreement; and to reimburse KrickTalk for the reasonable costs it incurred in setting up Customer's Service (including the costs of any equipment installed and not returned in "as new" condition). Customer agrees that KrickTalk damages for early termination would be difficult to determine, and the termination charge(s) constitutes a reasonable estimate of appropriate liquidated damages and that such is not intended as a penalty. Month-to-month agreements may be terminated on 30 days' written notice to KrickTalk using KrickTalk Cancellation Form. In the event Customer cancels services in writing charges for services will stop billing at the end of the billing period in the month services were canceled. If Customer terminates this Agreement WITH CAUSE or KrickTalk terminates this Agreement WITHOUT cause prior to the expiration of the applicable term, Customer shall be obligated to pay KrickTalk for Services actually received; to repay KrickTalk for any credits, discounts, or waived installation costs received in anticipation of a long-term Agreement; and to reimburse KrickTalk for the reasonable costs it incurred in setting up Customer's Service (including the costs of any equipment installed and not returned in "as new" condition). In all cases where this Agreement is terminated and Customer is using telephone numbers originally assigned by KrickTalk Customer understands and agrees that those telephone numbers will not be released to another service provider until all undisputed charges owing to KrickTalk are paid.

10. **EQUIPMENT.** Upon default, termination, or cancellation of this Agreement, for any reason, within 6 months of the start date of services listed on KrickTalks quote/service order and if customer received free phones from KrickTalk, Customer agrees to return all free equipment to KrickTalk in a prompt and timely manner, all equipment not returned and in good and clean cosmetic and working order will be charged full original retail value for such equipment. Unless otherwise provided for herein, all equipment provided by KrickTalk for free through promotions or other discounts shall remain the sole and exclusive property of KrickTalk for the initial 6 month from the start date of services.

11. **DOWNTURN IN BUSINESS CLAUSE.** If Customer requires fewer lines during the term of this Agreement and does not move services to another provider, or moves outside the providing area of KrickTalk Customer will be obligated to pay through the end of the current billing cycle for any canceled numbers, plus a \$30 per-line cancellation fee. Cancellation requests must be in writing via email to [support@KrickTalk.com](mailto:support@KrickTalk.com), specifying numbers to be canceled and the date on which the lines are to be canceled and accepted and confirmed by KrickTalk. No billing will cease nor will charges be terminated until such time as the cancellation form has been accepted and acknowledged by KrickTalk. The billing cycle is from the 1st to the last calendar day of each month.

12. **SERVICE SUSPENSION/MAINTENANCE.** KrickTalk may from time to time suspend Service for routine maintenance or rearrangement for a short period of time. Whenever possible, KrickTalk will give Customer advance notification. In no event shall KrickTalk be liable for special or consequential damages or for lost profits of any kind.

13. **LIMITATION OF LIABILITY.** KRICKTALK ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY AGAINST KRICKTALK FOR THE FAILURE OF ANY SERVICES PROVIDED UNDER THIS AGREEMENT, OR THE PERFORMANCE OR NON-PERFORMANCE OF ANY OBLIGATION UNDER THIS AGREEMENT, SHALL BE LIMITED TO A REFUND OF THE AMOUNTS PAID TO KRICKTALK DURING THE PERIOD OF TIME (IN EXCESS OF FOUR HOURS) THAT THE SERVICES CONTRACTED BY CUSTOMER FROM KRICKTALK WERE INTERRUPTED OR NOT PROVIDED AS REQUIRED. IN NO EVENT SHALL KRICKTALK BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR LOST PROFITS OF ANY KIND, WHETHER OR NOT KRICKTALK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. KRICKTALK MAKES NO WARRANTIES REGARDING ANY PRODUCTS OR SERVICES PROVIDED OR INSTALLED ON CUSTOMERS BEHALF, BUT KRICKTALK SHALL, WHEN POSSIBLE, ASSIGN TO CUSTOMER THE BENEFITS OF ANY WARRANTIES OR SIMILAR PROTECTIONS PROVIDED TO KRICKTALK BY ITS VENDORS OR SUPPLIERS. REMEDIES UNDER THIS AGREEMENT ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED HEREIN.



## KRICKTALK ACCEPTABLE USE POLICY

KrickTalk LLC ("KrickTalk") has formulated this Acceptable Use Policy ("AUP") in order to encourage the responsible use of KrickTalk networks, equipment, systems, services, web sites, and products (collectively, the "KrickTalk Services") by its customers, users granted access by customers, and any other users of the KrickTalk Services (collectively, "Users"), and to enable it to provide its Users with secure, reliable and productive services. By using the KrickTalk Services, Users consent to be bound by the terms of this AUP. KrickTalk reserves the right to modify this AUP in its discretion at any time. Any use of the KrickTalk Services after such modification shall constitute acceptance of such modification.

KrickTalk Services are for Users' own personal and/or business use and Users shall not, under any circumstances, resell, retail, repackage for sale, distribute or wholesale or otherwise commercially distribute the services described herein by itself or in conjunction with any other services provided by Users.

The KrickTalk Services must be used in a manner that is consistent with the intended purpose of the KrickTalk Services and may be used only for lawful purposes. Users shall not use the KrickTalk Services in order to transmit, distribute or store material: (a) in violation of any applicable law or regulation, including export or encryption laws or regulations; or (b) that may expose KrickTalk to criminal or civil liability. Users are further prohibited from assisting any other person in violating any part of this AUP.

KrickTalk takes no responsibility for any material created or accessible on or through the KrickTalk Services. KrickTalk is not obligated to monitor or exercise any editorial control over such material, but reserves the right to do so. In the event that KrickTalk becomes aware that any such material may violate this AUP and/or expose KrickTalk to civil or criminal liability, KrickTalk reserves the right to block access to such material and suspend or terminate any Users creating, storing or disseminating such material. KrickTalk further reserves the right to cooperate with legal authorities and third parties in the investigation of alleged wrongdoing, including disclosing the identity of the Users that KrickTalk deems responsible for the wrongdoing.

Users shall not use the KrickTalk Services to transmit, distribute or store material that is illegal or illicit.

Material accessible through the KrickTalk Services may be subject to protection under privacy, publicity, or other personal rights and intellectual property rights, including but not limited to, copyrights and laws protecting patents, trademarks, trade secrets or other proprietary information. Users shall not use the KrickTalk Services in any manner that would infringe, dilute, misappropriate, or otherwise violate any such rights.

Users shall not use the KrickTalk Services to transmit, distribute or store material that contains a virus, worm, Trojan horse, or other component harmful to the KrickTalk Services, any other network or equipment, or other users.

Users shall not use the KrickTalk Services to transmit or distribute material containing fraudulent offers for goods or services, or any advertising or promotional materials that contain false, deceptive, or misleading statements, claims, or representations. In addition, Users are prohibited from submitting any false or inaccurate data on any order form, contract or online application, including the fraudulent use of credit cards.

**Users shall only use authentication credentials to make and receive phone calls and services on approved KrickTalk Devices. Users shall not use any device and/or software that has not been authorized by KrickTalk. User agrees to only use KrickTalk Services for normal and regular business use. Any attempt to use any other device or software not approved by KrickTalk in writing or use KrickTalk for any other purpose than normal business service as approved by KrickTalk will be investigated and prosecuted to the full extent of the Law. Furthermore, Customer authorizes KrickTalk to charge the payment method on file for the cost of services used by the customer. If the payment method on file is insufficient to collect all damages. Customer agrees that KrickTalk will use every legal remedy necessary to re cooperate such cost and relate fees necessary until payment t is made in full.**

Users shall not use the KrickTalk Services to send unsolicited email messages, including, without limitation, bulk commercial advertising or informational announcements ("spam"). Further, Users are prohibited from using the service of another provider to send spam or to promote a site hosted on or connected to the KrickTalk Services. In addition, Users shall not use the KrickTalk Services in order to (a) send e mail messages which are excessive and/or intended to harass or annoy others, (b) continue to send e mail messages to a recipient that has indicated that he/she does not wish to receive them, (c) send e mail with forged TCP/IP packet header information, (d) send malicious e mail, including, without limitation, "mailbombing", (e) send or receive e mail messages in a manner that violates the use policies of any other internet service provider, or (f) use an e mail box exclusively as a storage space for data.

Users may have access through the KrickTalk Services to search engines, subscription Web services, chat areas, bulletin boards, Web pages, USENET, or other services that promulgate rules, guidelines or agreements to govern their use. Users must adhere to any such rules, guidelines, or agreements. Users who post messages to Usenet newsgroups are responsible for becoming familiar with any written charter or FAQ governing use of such newsgroups and complying therewith. Regardless of such policies, Users may not (a) post the same message, or a series of similar messages, to one or more newsgroups (excessive cross posting or multiple posting, also known as "Usenet spam"), (b) cancel or supersede posts not originally posted by such Users, unless such Users does so in the course of his/her duties as an official newsgroup moderator, (c) post any message with forged packet header information, or (d) post messages that are excessive and/or intended to annoy or harass others, including, without limitation, chain letters.

Users are prohibited from violating or attempting to violate the security of the KrickTalk Services, including, without limitation, (a) accessing data not intended for such Users or logging into a server or account which such Users is not authorized to access, (b) impersonating KrickTalk personnel, (c) attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization, (d) attempting to interfere with, disrupt or disable service to any Subscriber, host or network, including, without limitation, via means of overloading, "flooding", "mailbombing", "denial of service" attacks or "crashing", (e) forging any TCP/IP packet header or any part of the header information in any e mail or newsgroup posting, (f) taking any action in order to obtain services to which such Subscriber is not entitled, or (g) attempting to utilize another Subscriber's account name or persona without authorization from that Subscriber. Users are also prohibited from attempting any action designed to circumvent or alter any method of measuring or billing for KrickTalk services. Violations of system or network security may result in civil or criminal liability. KrickTalk will investigate occurrences which may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting Users who are involved in such violations.



14. NO WARRANTIES. THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

15. CALLING CARDS. Customer shall remain responsible for payment of calling card usage, irrespective of any actual or alleged unauthorized or fraudulent use. KrickTalk shall use reasonable efforts to obtain a credit from its carrier for all fraudulent or unauthorized usage. KrickTalk reserves the right to terminate Services for a user who uses the card for unauthorized purposes or otherwise misuses the Service, or where in the carrier's judgment there is sufficient risk of fraudulent use.

16. FORCE MAJEURE. If performance by KrickTalk of any obligation under this Agreement is prevented, restricted or interfered with by causes including without limitation failure or malfunction of Customer-supplied equipment, acts of God, explosions, vandalism, cable cut, storms, fires, floods, or other catastrophes, power failure, national emergencies, insurrections, riots, wars, strike, lockouts, boycotts, terrorism, work stoppages, or other labor difficulties, or any law, order, regulation or other actions of any governmental authority, agency, instrumentality, or of any civil or military authority, then KrickTalk shall be excused from such performance on a day-to-day basis to the extent of such restriction or interference. KrickTalk shall use reasonable efforts under the circumstances to avoid or remove such causes of nonperformance with reasonable dispatch.

17. ADDITIONAL PROVISIONS. This Agreement will not be assignable by Customer without the prior express written consent of KrickTalk. The Agreement, including any addenda, and any product-specific terms and conditions, constitutes the entire understanding between Customer and KrickTalk with respect to Services provided herein and supersedes any prior agreements or understandings. If any part of a provision of this Agreement is invalid or unenforceable said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provisions of this Agreement. In addition to any provisions that by their nature would survive, above sections shall survive termination, cancellation or expiration of this Agreement. A waiver of a breach of any term of this Agreement will not be considered a waiver of a further breach of the same term, or a waiver of a breach of any other term.

18. MISCELLANEOUS. The laws of the State of Utah shall govern this Agreement. The parties expressly submit to the exclusive personal jurisdiction of the state courts located within Washington County, State of Utah. This Agreement shall not be construed for or against either party, and no rule or presumption against the drafter shall be employed. All paragraph headings in this Agreement are for convenience only and shall not be considered as having any legal effect. If a dispute arises out this Agreement, then the prevailing party will be entitled to reasonable attorney fees and costs.

19. KRICKTALKACCEPTABLE USE POLICY. Customer hereby acknowledges that Customer has read, and is familiar with, KrickTalk Acceptable Use Policy ("AUP") attached hereto and incorporated by this reference. Customer hereby acknowledges that any violation of the AUP by Customer shall entitle KrickTalk to terminate or suspend the Services provided hereunder to customer.

### **Privacy Policy**

#### **Messaging Terms & Conditions**

When you opt-in to receive SMS/MMS communications from KrickTalk, you agree to receive customer care, marketing, account notification, and delivery notifications. Message frequency may vary. Message & Data rates may apply. You may opt-out at any time by texting "STOP". For assistance you can text "HELP" or contact us at 435-777-8887.

By checking the "I accept the terms" box in KrickTalks Quote/Service Order you hereby agree to the terms and conditions of this Agreement and acknowledge that the Agreement for services is subject to acceptance by KrickTalk LLC. You hereby authorize KrickTalk to verify all listed information for credit purposes. I appoint KrickTalk to act as agent in order to effect changes and authorize it to handle on my behalf all arrangements including ordering my services, obtained as inventory of all numbers billed to designated BTNs (Base Telephone Number), and obtaining carrier information for all locations. I agree to pay any additional charges due or to become due by to customer Long Distance, local, and/or Internet provider for service provided to the date of transfer of the services to KrickTalk. I agree to pay the bill upon receipt and to reimburse KrickTalk upon termination of the Agreement for and Custom charges incurred for equipment or special installations all accounts are due and payable Vernal Utah offices of KrickTalk.

For questions or concerns please contact us.

KrickTalk

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Find us online at Kricktalk.com