

# Terms of Service

## READ THE TERMS OF SERVICE CAREFULLY BEFORE USING OUR SERVICES

### 1. GENERAL

1.1 THE TERMS OF SERVICE. PHONICVIEW, INC. ("PHONICVIEW") hosts the PHONE Service which enables PHONICVIEW Members to make calls on the internet through their PHONICVIEW phone ("PHONE"). The PHONE Service is provided by PHONICVIEW to the owners/lessees of the PHONE for their personal use on a subscription basis and is subject to certain terms and conditions established by PHONICVIEW as described herein, which collectively are called the "Terms of Service". You acknowledge that this document is a binding and enforceable contract for use of the PHONE Service, effective as PHONICVIEW begins providing such Service to you under the terms hereof.

1.2 ACCEPTANCE OF TERMS. By registering for the PHONE Service, you acknowledge that you have read and agree to comply with all the terms and conditions on your use of the PHONE Service as outlined within the Terms of Service.

1.3 CHANGES TO THE SERVICE. Because PHONICVIEW strives to provide its Members with the best and most up-to-date Internet Phone Service, the PHONE Service may be updated from time to time. Most updates to the PHONE Service will be provided at no additional cost to your regular subscription fees. You acknowledge that PHONICVIEW shall have the right to and may change the PHONE Service at any time. If any of the changes to the PHONE Service is unacceptable to you, your only remedy shall be to terminate your PHONICVIEW Account.

1.4 CHANGES TO TERMS. PHONICVIEW may revise, amend, or modify the Terms of Service at any time. If PHONICVIEW makes material changes or revisions to the Terms of Service, PHONICVIEW will provide notice to you thirty (30) days in advance. Notice of any revision, amendment, or modification will be posted on PHONICVIEW's website (<http://www.phonicview.com>), on Members' start pages, by email, and/or in our various publications and mailings to Members. You are responsible for reviewing the Terms of Service and any changes made thereto. If any of the changes to the Terms of Service are unacceptable to you, your only remedy shall be to terminate your PHONICVIEW Account.

### 2. USE OF THE PHONE SERVICE

#### 2.1 SUBSCRIPTION ACCOUNT.

2.1.1 PHONICVIEW MEMBER. You must be an adult to register for the PHONE Service and become an PHONICVIEW Member. By registering to become a Member, you represent that, (i) you are 18 years old or older, (ii) you have read and agree to the Terms of Service, (iii) you will be responsible for payment of the monthly subscription fees and toll charges, and (iv) you will be responsible for all usage of your PHONE Service through your PHONICVIEW Account, including that of any other person that you authorize to use your PHONICVIEW Account. You agree to provide accurate and complete information for yourself. Should any information that you provide be found to be incorrect or incomplete, PHONICVIEW has the right to terminate your PHONICVIEW Account immediately and take any such other action as may be appropriate under the circumstances.

2.2 LIMITATIONS ON USAGE OF PHONE SERVICE. Usage of the PHONE Service is subject to the conditions imposed by the Terms of Service, the nature of the Internet, as well as the capabilities of various contracted service providers. Therefore, while PHONICVIEW strives to provide continuous and uninterrupted service to our Members, PHONICVIEW does not warrant that the PHONE Service will be accessible at all times, free from design bugs, or that any session will be uninterrupted. PHONICVIEW may, in its sole discretion and without prior notice, (i) restrict or limit access to the PHONE Service; (ii) terminate your PHONICVIEW Account or user sessions at any time; or (iii) discontinue or modify any or all aspects of the PHONE Service.

2.3 PROVISION AND USAGE OF SOFTWARE AND EQUIPMENT. The PHONE Service may only be used in connection with PHONICVIEW's PHONE. You agree that in the event of any malfunction by the PHONE, you will send or deliver it to one of the authorized PHONE Service facilities for servicing. You may contact PHONICVIEW Customer Service at (925)463-4849 for the location of the nearest authorized PHONE Service facility. You further agree that neither you nor any authorized user of your PHONICVIEW Account shall tamper with or permit any tampering or adjustment of the PHONE. You further agree and acknowledge that PHONICVIEW, its partners, and its suppliers retain title to and ownership of all content as well as the embedded software and hardware intellectual property that comprise the PHONE Service system. Any attempt to disassemble, decompile, create derivative works of, reverse engineer, modify, further sublicense, distribute, or use for other purposes either the hardware or software of the PHONE Service system is strictly prohibited and may result in a termination of your PHONICVIEW Account and the pursuit of other legal remedies by PHONICVIEW, its providers, or partners.

2.4 USAGE OF SUBSCRIBER INFORMATION. The PHONE Service maintains records of certain user information pertaining to subscriptions and billing, user-selected options and preferences, and service usage. PHONICVIEW reserves the right to and may forward information or offers to you relating to its own or third parties' products or services as it deems appropriate and may, from time to time, share certain information with third parties at PHONICVIEW's sole discretion. In addition, PHONICVIEW may elect to or be obligated to provide certain information to authorities, based upon existing law or regulation, court action, law enforcement request, or evidence of wrongdoing, imminent harm or injury, or other reasons warranting action by PHONICVIEW. A complete statement of PHONICVIEW's policies relating to its use and protection of user-related information can be found in a document called "The PHONE Service Privacy Policy" located on the PHONICVIEW corporate Web site at <http://www.phonicview.com>. You acknowledge that you have read and accept the PHONE Service Privacy Policy and agree to hold PHONICVIEW harmless from the results of any use of information by PHONICVIEW, its agents, or partners.

### 3. STANDARDS OF BEHAVIOR

3.1 GENERAL. Conduct on the PHONE Service and throughout the Internet should conform to public standards of decency and decorum, right of quiet enjoyment, and current "netiquette" standards. You agree to conform to such standards and to ensure that all authorized users on your PHONICVIEW Account similarly refrain from engaging in any disallowed behavior, inappropriate or unauthorized uses, or from using the PHONE Service in any manner that does or would have the tendency to disrupt the normal use of the PHONE Service or the Internet by other users. In the event PHONICVIEW determines that you have engaged in any disallowed behavior or inappropriate or unauthorized usage, you may receive an email warning or have your account temporarily suspended or, at PHONICVIEW's sole discretion, terminated. In addition to the foregoing, certain unauthorized usage or transmissions of email or chat which contain commercial solicitations (spam), admissions of illegal behavior, pornography, or other illicit information may subject you to the assessment of additional fees, fines, or charges, and/or civil or criminal liability.

3.2 DISALLOWED BEHAVIOR. No user of the PHONE Service may disrupt, harass, abuse, stalk, defame, embarrass, threaten, impersonate, cause discomfort to, become offensive to, or otherwise violate the legal rights (including rights of privacy and publicity) of any person using the PHONE Service or the Internet.

3.3 INAPPROPRIATE OR UNAUTHORIZED USAGE. No user of the PHONE Service may use the PHONE Service (i) for any commercial or business purpose unless you subscribe to an PHONICVIEW Business Account; (ii) to make unauthorized attempts to access, use, change, disrupt, shut off, or clog the systems, networks or accounts of others; (iii) to send unsolicited messages, surveys, advertising, promotional materials or commercial solicitations to third parties (spamming); (iv) to provide a minor access to inappropriate materials without the consent of the minor's parent or guardian or to attempt to engage any minor in any context not specifically approved by the minor's parent or guardian; (v) to collect together a listing or directory of PHONICVIEW Members or, if any directory of PHONICVIEW Members is made available, to use, copy or provide to any person or entity (whether or not for a fee) such listing or directory or any portion thereof other than for personal, non-commercial purposes; (vi) to falsely purport to be an PHONICVIEW employee or agent or to falsely assume the identity of any other individual or entity; or (vii) to act, in your use of the PHONE Service, in a manner that is contrary to applicable law or regulation.

3.4 COMPLAINTS ABOUT PHONE SERVICE USERS. All complaints regarding any PHONE Service users should be directed to PHONICVIEW by email at [info@phonicview.com](mailto:info@phonicview.com) along with a copy of any email, posting or other proof of the matter being complained about. If, after a review of such complaint, a violation of the Terms of Service is found by PHONICVIEW, a warning email will be sent to the offending party to alert him or her that a possible Terms of Service violation occurred. If the problem continues after the date that the first warning was sent generating more complaints, a second warning message will be sent out indicating that any further violation of the Terms of Service will result in that PHONICVIEW Account being suspended. Additional violations conducted after the date of the second warning notice and forwarded to PHONICVIEW, will result in the suspension or termination of that Member's Account. Nothing in this paragraph limits PHONICVIEW's right to terminate or take any other action against any PHONICVIEW Account (including taking no action) without notice at anytime.

### 4. FEES AND PAYMENTS

4.1 SUBSCRIPTION FEES. The current subscription and toll fees for using the PHONE Service may be obtained by calling (925)463-4849. PHONICVIEW reserves the right to change fees (including monthly subscription fees) and surcharges, or to institute new fees at any time upon thirty (30) days prior notice

4.2 PAYMENT OF SUBSCRIPTION FEES. You agree to provide prompt payment in full of the PHONE Service subscription fees. You agree not to register for PHONE Service using inaccurate billing information, including, but not limited to your legal name, home and billing address, telephone numbers, and credit card/billing information. PHONICVIEW is not responsible for any charges or expenses (e.g., for overdrawn accounts, exceeding credit card limits, etc.) resulting from charges billed by PHONICVIEW. PHONICVIEW will assess an additional late charge of 1.5% (or the highest amount permitted by law) per month if your payment is more than 30 days past due. Furthermore, in the event that you fail to pay for the PHONE Service on a timely basis, you agree and acknowledge that PHONICVIEW shall have the right to immediately terminate, suspend, or restrict access to the PHONE Service at its sole

discretion. You agree that you will pay any outstanding balances if your PHONICVIEW Account is suspended or terminated. In the event that you wish to reactivate the PHONE Service after a suspension of service or termination, you must pay any outstanding balances on your PHONICVIEW Account and pay a reactivation fee for the reactivation of your Account or set up of a new account.

**4.2.1 AUTOMATIC CREDIT OR DEBIT CARD PAYMENT.** The PHONE Service provides for the automatic and secure payment of the monthly basic subscription fee by credit card or debit card. PHONICVIEW initiates processing of the subscription fees on the 20th day of each month at the then current monthly subscription fee for the PHONE Service. Members are responsible for the security of their own credit cards and should notify PHONICVIEW within thirty (30) days if there is a change in the card's expiration date, in billing information, or validity.

**4.2.2 PAYMENT BY CHECK.** If paying by check, PHONICVIEW will activate your PHONE Service upon collection of the funds from your bank or financial institution. Subsequent monthly subscription payments are due by the 20th day of each month. Checks should be made payable to "PHONICVIEW" and should be mailed to PHONICVIEW, INC., 4900 Hopyard Road, Suite 100, Pleasanton, California 94588. Additional check processing fees of \$20.00 may be charged for returned checks or insufficient funds.

**4.3 SPECIAL PROMOTIONAL OFFERS.** In exchange for receiving the benefit of any promotions or discounts, you may be required to maintain your PHONICVIEW Account in good standing for an extended term. Close attention should be paid to the terms of any special offers you accept. If you terminate your PHONICVIEW Account before the expiration of any such extended term, PHONICVIEW may charge an early termination fee as specified by such special promotional offer.

**4.4 PAYMENT FOR INTERNET SERVICE PROVIDER.** The use of the PHONE requires a broadband connection. You are responsible for all of your actual Internet service and connection costs as billed by your ISP and phone company. PHONICVIEW shall not be responsible for any Internet connection problems you encounter using your own ISP.

**4.5 OTHER PHONE CHARGES.** You can typically connect to the Internet via a local call. However, local access may not be available in some areas, in which case you may need to access the Internet via a long-distance call. Your telephone company will bill you directly for any long-distance toll charges you incur. It is your responsibility to determine whether or not use of a particular dial-up number will cause you to incur long distance, toll, or other related charges. You acknowledge that PHONICVIEW shall have no responsibility or liability for any telephone charges, including but not limited to local and/or long distance charges, per minute surcharges, or equipment or line costs incurred by any users.

**4.6 REFUNDS.** PHONE Service fees are not refundable for any reason, including any month in which an PHONICVIEW Account is canceled or terminated.

**4.7 BILLING DISPUTES.** Members with questions regarding charges billed to your credit card or debit card in connection with the PHONE Service should contact PHONICVIEW Customer Service at (925)463-4849. All charges shall be deemed valid unless disputed in writing within sixty (60) days of the billing date. No adjustments will be made for charges beyond sixty (60) days.

**4.8 INFORMATION FOR CALIFORNIA RESIDENTS.** The following information is provided pursuant to California Civil Code Section 1789.3: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted at 400 R Street, Sacramento, California 95814, or by telephone at (800) 952-5210 or (916) 445-1254

## 5. TERMINATION OF SERVICE

**5.1 TERMINATION BY MEMBER.** You may terminate your PHONICVIEW Account after 1 year for any reason by providing written notice of intent to terminate to PHONICVIEW by US Mail to PHONICVIEW, INC., 4900 Hopyard Road, Suite 100, Pleasanton, California 94588, or by telephone at (925)463-4849. Email cancellation requests will not be accepted. Your termination will only be complete upon your receipt of a cancellation confirmation letter from PHONICVIEW. Charges to your PHONICVIEW Account will stop accruing the day PHONICVIEW provides you with a cancellation confirmation letter. Based on your billing cycle, charges accrued prior to your termination may apply after you receive a cancellation confirmation.

**5.2 TERMINATION BY PHONICVIEW.** Without prior notice, PHONICVIEW may terminate your PHONICVIEW Account, or your use of the PHONE Service for any reason, including, without limitation, the misuse of any part of the PHONE or the PHONE Service, delinquency in the payment of the Account, misconduct on the PHONE Service, or for disruption or termination of Internet service in your area, violation of the Terms of Service or any of the applicable user policies. PHONICVIEW may provide termination notice to you by email addressed to your email account or by US Mail or courier service to the address you provided to PHONICVIEW at registration. All notices to you shall be deemed effective on the first (1st) calendar day following the date of electronic mailing or on the fourth (4th) calendar day following the date of first-class mailing or deposit with a commercial courier service.

**5.3 USER INFORMATION NOT RETAINED.** Upon any final termination of an PHONICVIEW Account, all user information is eliminated. If you wish to retain such information, you must make your own copy of such information prior to the termination of the account. In the event any user

establishes a later account with PHONICVIEW after the termination of an earlier account, the earlier account information will not be transferable.

## 6. DISCLAIMER, WARRANTY, AND INDEMNITY

**6.1 DISCLAIMER.** YOU AGREE THAT USE OF THE PHONE Service, ITS CONTENT, AND ANY MATERIALS OBTAINED THROUGH USE OF THE PHONE Service IS AT YOUR SOLE RISK. NEITHER PHONICVIEW NOR ITS INFORMATION PROVIDERS, LICENSORS, EMPLOYEES, PARTNERS, OR AGENTS WARRANT THAT THE PHONE Service WILL BE UNINTERRUPTED OR ERROR FREE NOR DO THEY MAKE ANY WARRANTIES AS TO THE QUALITY, ACCURACY, OR COMPLETENESS OF ANY MATERIALS AVAILABLE THROUGH USE OF THE PHONE Service OR ITS SERVICES. YOU ASSUME FULL RESPONSIBILITY AND RISK FOR USE OF THE PHONE Service. YOU ARE SOLELY RESPONSIBLE FOR EVALUATING THE ACCURACY, COMPLETENESS, AND USEFULNESS OF ALL SERVICES, PRODUCTS, AND OTHER INFORMATION, AND THE QUALITY AND MERCHANTABILITY OF ALL MERCHANDISE PROVIDED THROUGH THE PHONE Service.

**6.2 NO WARRANTIES.** THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. PHONICVIEW DOES NOT WARRANT THAT THE PHONE Service WILL BE UNINTERRUPTED, ERROR-FREE, OR DEVOID OF OTHER HARMFUL COMPONENTS. PHONICVIEW, ITS OFFICERS, DIRECTORS, PARENT CORPORATION, EMPLOYEES, PARTNERS, OR ANYONE ELSE INVOLVED IN CREATING, PRODUCING, PROMOTING, OR DELIVERING THE PHONE Service SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF, OR INABILITY TO USE, THE PHONE Service, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EVEN IF PHONICVIEW AND/OR ANY OF ITS SUPPLIERS HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

**6.3 ACKNOWLEDGMENT OF LACK OF SECURITY ON INTERNET.** Information sent or received through the Internet may be accessed or intercepted by unauthorized parties. You acknowledge and agree that PHONICVIEW is not responsible for the security of information that you send or receive through the Internet, and you agree to hold PHONICVIEW harmless from any results of any such information being accessed, intercepted, or used by unauthorized parties.

**6.4 INDEMNITY.** You agree to indemnify and hold PHONICVIEW harmless from and against any and all costs incurred by PHONICVIEW, including but not limited to collection of attorney's fees, as a result of any claims arising from your breach of the Terms of Service or otherwise as a result of your usage of the PHONE Service.

**6.5 LIMITATION OF LIABILITY.** PHONICVIEW's liability to you for breach of the Terms of Service is limited to the amount actually paid by you for access to and use of the PHONE Service. You hereby release PHONICVIEW from any and all obligations, liability, and claims in excess of this limitation.

## 7. OTHER PROVISIONS

**7.1 INTERPRETATION OF TERMS.** In the event that any term herein is found invalid, the remainder of the terms shall remain in full force and effect. This Terms of Service agreement shall be interpreted in all respects in accordance with the laws of the State of California, without reference to conflict of laws principles. You hereby consent to exclusive jurisdiction and venue of courts in Los Angeles County, California in all disputes arising out of or relating to the use of the PHONE Service.

**7.2 ENFORCEMENT.** Any failure by PHONICVIEW to enforce strict performance of the Terms of Service or to exercise its rights under the Terms of Service, shall not be construed as a waiver or relinquishment of PHONICVIEW's right to assert conformance with these same provisions in other instances nor as a basis for liability to any subscriber or non-subscriber.

**7.3 ENTIRE AGREEMENT.** These Terms of Service, together with any other documents directly or indirectly made a part of these Terms of Service, constitute the entire agreement between you and PHONICVIEW with respect to the PHONE Service. Any more recent version of the Terms of Service, once posted on the service, supersedes all prior versions and summaries, whether electronic, oral, or written; and you agree and acknowledge that it is your responsibility to periodically review the Terms of Service, so as to become familiar with terms and conditions that may have been changed from prior versions that had been posted. Any conflict between the Terms of Service and any translations thereof provided by PHONICVIEW or its partners or providers in other languages, either orally or in printed form, shall be resolved in favor of this English language version. A printed copy of the Terms of Service and any notice given by PHONICVIEW in electronic form shall be admissible in judicial or administration proceedings to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

END OF TERMS