



KWIC Internet  
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[www.kwic.com](http://www.kwic.com)

## KWIC Internet Business Services Terms and Conditions of Service

### 1. Definitions

The following words have the meanings as described below:

“KWIC, Our, Ours, Us, We” means KWIC Internet or any of its subsidiaries or affiliates.

“You, Your, Yours” means the customer entering into this Agreement

“Agreement” refers to this Agreement, including Cover Pages, all Schedules, order forms, quotations, purchase orders, all documents that supplement, amend or confirm the Agreement entered into now or at any point hereafter, and KWIC’s Acceptable Use and Privacy Policy which can be viewed at <https://www.kwic.com/corporate/legal.php>. This Agreement may be changed and updated from time to time by KWIC, and an updated copy will be posted on KWIC’s website. Your continued use of the Services thereafter will be deemed acceptance by You of any changes. Please refer to our website for the latest version of these Terms and Conditions.

“Laws” means any legislation, regulation, rule, governmental order and decision, including those of the Canadian Radio-Television and Telecommunications Commission.

“Parties” means You and KWIC, and “Party” may refer to either one of us, including Your and KWIC’s officers, directors, employees, and agents.

“Services” means the Services purchased by You as set out in this Agreement and as may be set out in various schedules, quotations, and purchase orders that may be attached to this Agreement.

“Schedules” means all Schedules attached to this Agreement and any additional Schedule(s) as may be executed from time to time by the Parties.

“Term” means the initial period of the Agreement as set out in this Agreement and any attached Schedules, quotations, and purchase orders.

### 2. Services

#### 2.1

By this Agreement, you agree to subscribe to the Services and KWIC agrees to provide the Services to you subject to the terms and conditions in this Agreement. You may subscribe to

additional services at any time in accordance with the terms of this Agreement. For added clarity, email acceptance shall be considered binding acceptance of contracting additional Services involving monthly service charges of up to one hundred Canadian dollars before taxes.

## 2.2

You may use the Services for your lawful business purposes only. You will at all times use the Services in compliance with this Agreement and all applicable laws and KWIC's Acceptable Use Policy.

## 3. Term, Activation of Service and Terminations/Suspension

### 3.1

This Agreement becomes binding upon you once signed, and the term for Services will commence on the date that the Service is activated as determined by KWIC's records (the "Activation Date").

### 3.2

At the completion of the initial term, this Agreement will automatically renew for successive one (1) year Term(s) unless and until you inform us of your intention to terminate the Services as per section 3.3.

### 3.3

This agreement may be terminated under the following circumstances:

- By either Party without incurring liability, where the other Party commits a material breach of any provision of this Agreement and fails to cure it within thirty (30) days after receipt of written notice of the breach. In the case of a material breach by KWIC, your termination right encompasses only those Services directly and materially affected by such a breach.
- By either Party effective at the end of the then-current term (should a service term apply), with at least sixty (60) days written notice prior to the end of that term.
- Upon your filing of a bankruptcy petition or similar proceeding under the law of any competent jurisdiction or upon your becoming insolvent or making any assignment for the benefit of creditors, or upon the dissolution, liquidation, or appointment of a receiver of your property or where any law prohibits KWIC from providing Services.
- Upon thirty (30) days written notice from us if you behave in a way that is threatening, harassing, abusive, or unreasonable to KWIC, its employees, or our agents.
- Upon us providing you with forty-eight (48) hours notice, where possible, that you have used or can be reasonably suspected by KWIC to have used the Services in a fraudulent or illegal manner.

- Upon us providing you with 30 days written notice in cases where you fail to make payment in full within 90 days of a billing date for Services.

Notwithstanding any clause to the contrary in this Agreement, eligible services may be terminated immediately by you upon notice if you are an eligible small business customer in accordance with CRTC Regulatory Policy 2014-576, which may be viewed at <https://crtc.gc.ca/eng/archive/2014/2014-576.htm>.

You are required to compensate us for any costs we incur should you wish to terminate Services prior to the end of a term.

### 3.4

You acknowledge and agree that termination or suspension of the Services provided under this Agreement, for any reason whatsoever, does not eliminate your responsibility to pay all fees and other amounts owed to KWIC up to the date of termination or suspension with any deduction. You also acknowledge and agree that KWIC reserves the right to charge Service, Administration, or Install fees upon reactivation of Services following suspension or termination.

### 3.5

If you terminate this Agreement other than in accordance with the terms of this Agreement, you will be required to pay to KWIC as liquidated damages, and not as a penalty, an amount which is equal to the sum of:

A) Seventy-five per cent (75%) of the average monthly usage of each of the Services (where applicable);

B) Seventy-five per cent (75%) of the monthly recurring charge for each of the Services, multiplied by the number of months remaining in the then-current term;

C) A charge equivalent to any Equipment discount you received as set out in your Agreement, and;

D) Any other applicable charges as set out in your Agreement. In addition, you will be responsible to pay any other charges that KWIC, if acting reasonably, is liable to incur for the remainder of the then-current Term, including without limitation: installation charges, removal costs, and rental costs, and you will forfeit a refund of any prepayment made for Services.

## 4. Fees and Monthly Charges

### 4.1

You are responsible for all charges for all Services and you agree to pay the rates and charges for all Services as set out in the Agreement, including system access fees, monthly service charges, any restoral fees, airtime, data transfer fees, long distance fees, fees incurred in the course of provisioning Services, and any other charges incurred in using your Services, regardless of who used the Services at the time in question.

### 4.2

You are solely responsible in the event of any charges arising from fraudulent or unauthorized use of your Services, without regard to how the fraudulent or unauthorized use happened.

#### 4.3

KWIC reserves the right to alter rates for all Services not governed by a service term upon thirty days written notice to you.

### 5. Billing

#### 5.1

Fixed or pre-determined charges are billed monthly, in advance. All other charges are billed in the month following the period in which they occurred (such as long-distance billing or data usage).

#### 5.2

In addition to all applicable rates and charges for the Services, you are responsible to pay all applicable taxes, both federal and provincial, as well as any interest on prior overdue accounts and any bank fees, administrative surcharges, or other fees that are incurred as a result of a payment problem on your account.

#### 5.3

Invoices are to be paid within thirty (30) days after the date of invoice, with interest accruing on all unpaid invoices more than ninety (90) days old at a rate of 1.5% per month, or at the rate as KWIC may set from time to time. You will be responsible to pay all costs we incur in order to collect any unpaid invoices, including legal fees.

#### 5.4

KWIC may request immediate payment in extraordinary circumstances, provided KWIC notifies you in writing and the risk of a loss increases substantially since such notice was given and KWIC, at its sole discretion, has reasonable grounds to believe that you intend to defraud KWIC.

#### 5.5

All billing disputes, invoice inquiries, and other complaints relating to the billing and payment of Services must be received by KWIC in writing within sixty (60) days of the invoice date. Your failure to communicate a billing dispute, inquiry, or other complaint to us in writing within this time is taken as acceptance of the contents of the invoice, and you will have no further right to challenge any portion of the invoice.

#### 5.6

KWIC's standard method of delivery for invoices is by electronic mail (E-mail). If you require a copy of your invoice sent to you via standard mail (paper billing), you may request this from a KWIC customer service agent. Fees for delivery may apply.

KWIC's required method of payment is by pre-authorized payment, either by direct withdrawal from a bank account or by payment using a credit card (Visa, Mastercard, or American Express). KWIC, at its sole discretion, may waive this requirement and permit monthly payment by cash, cheque, money transfer, or some other method that KWIC, at its sole discretion, deems appropriate.

## 6. Equipment

### 6.1

Where required, KWIC will provide and install equipment and products to provide you with the Services. You agree that the equipment and any IP addresses assigned to you will at all times remain KWIC's property, and that you have no right, title, or interest in or to the equipment and IP addresses provided to you except for your use as specified by this Agreement.

You are solely responsible for the physical safety and protection of all equipment that KWIC provides you for use with your Services. You are also solely responsible for the data, electronic, and network security of the equipment provided to you for use with your Services when connected to equipment and networks that are not provided or managed by KWIC. In addition, you are responsible for protecting passwords and credentials for equipment provided for use with your Services, where applicable.

All equipment will be considered in good working condition unless you provide us notice to the contrary within 10 days of receiving the equipment.

You agree not to re-arrange, disconnect, remove, reconfigure, or repair any equipment, and you agree not to change any passwords, except as instructed by KWIC, its employees, or its agents.

You agree to return promptly upon termination of Services all equipment provided by KWIC, and that said equipment will be returned in good working condition, excepting normal wear and tear. All applicable equipment charges will continue and shall be payable until the equipment is returned. Failure to return the equipment within such reasonable time limits as specified by KWIC will result in KWIC, at its option, repossessing the equipment at your expense, or billing you for the replacement cost of the equipment.

If the equipment is damaged, lost or stolen while in your care, or is returned to KWIC in an unusable condition, you agree to pay the replacement value of the equipment as determined by KWIC.

### 6.2

You are solely responsible for the maintenance, performance, and condition of all equipment, software, and systems not provided to you by KWIC but that are used to access your Services. You accept that KWIC will not provide any manner of support or guarantee of performance for any such equipment, systems, software, or networks.

You are solely responsible for the security and protection, both physical and network, of all non-KWIC equipment that is used in relation to your Services. In addition, you are solely responsible

for protecting passwords and credentials for all non-KWIC equipment connected to your Services or used to access or manage your Services.

## 7. Passwords

In addition to 6.1 and 6.2, incorporated herein by reference, you bear sole responsibility for the provision, creation, security, and protection of all codes, passwords, keys, and credentials as applicable, including without limitation access codes and credentials used to access your Services, or are used to access and use equipment that is not provided to you by KWIC but is used to access your Services.

You are solely responsible for creating strong passwords and maintaining safe practices, including but not limited to: frequently changing passwords, meeting minimum security standards, and any other measure as may be applicable.

## 8. Access to Facilities

You agree to provide KWIC and its employees and agents access to your premises, including power and support, at KWIC's reasonable request, in order to perform the installations, service, inspections, tests, or other work required for the proper function of the Services. In the event of termination of services, you agree to provide access to your premises for KWIC to remove or repossess all equipment provided to you.

## 9. Confidentiality

### 9.1

In accordance with this section and any Non-Disclosure Agreement between the Parties, each Party will hold confidential all information of the other Party, including the terms of this Agreement, and will not disclose such information to any third party without the Party's prior written consent, unless required by law to do so. In addition to any other remedies a Party may have access to, if a Party breaches this confidentiality clause, the Parties thereby agree that any further or continued disclosure will cause irreparable harm to the non-disclosing Party, and the non-disclosing Party will be entitled to an injunction barring any further disclosure of such confidential information, in addition to monetary damages for such a disclosure. In such an event, the disclosing Party agrees not to defend against or otherwise contest such an injunction.

### 9.2

Notwithstanding section 9.1, you authorize KWIC to disclose information such as your name, address, and telephone number to such parties as are required to provide the Services, in accordance with KWIC's Privacy Policy, which may be viewed at <https://www.kwic.com/corporate/privacy-policy.php>.

## 10. INDEMNIFICATION

YOU AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS KWIC, ITS AFFILIATES, AGENTS, UNDERLYING CARRIERS, DIRECTORS, OFFICERS, EMPLOYEES, LICENSORS, AND SUPPLIERS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, EXPENSES, DAMAGES, AND COSTS, INCLUDING LEGAL FEES, RESULTING FROM THE USE OF THE SERVICES OR FROM ANY BREACH OF THIS AGREEMENT AND ANY SCHEDULES BY YOU EXCEPT AND TO THE EXTENT OF ANY NEGLIGENCE OR MISCONDUCT ON THE PART OF KWIC. THE PROVISIONS OF THIS SECTION WILL SURVIVE TERMINATION OF THIS AGREEMENT.

## 11. Disclaimer and Limitation of Liability

### 11.1

KWIC provides the Services to you on an "as is, where is" basis and disclaims all warranties, whether express, implied, or statutory, including but not limited to: warranties or merchantability, fitness for particular purpose, title, quiet enjoyment, accuracy, or system integration. No warranty is made that the Services will operate in an error-free or uninterrupted manner.

### 11.2

KWIC will not be held responsible for any damages whatsoever, including lost profits of any kind, even if the damages were foreseeable, arising out of the provision and operation of the Services or arising in any way out of this Agreement. Your exclusive remedy, and KWIC's sole liability, if any, for damages in any case whatsoever, will be no more than the recurring charges you pay for the affected Services for the one (1) month preceding the event alleged to have caused damages. Any legal action in connection with this Agreement must be brought within one (1) year after the cause of action arises. For the purposes of this section, "KWIC" includes its officers, directors, employees, agents, and affiliates.

### 11.3

NOTWITHSTANDING THE GENERALITY OF THE FOREGOING, IN THE EVENT YOU SUBSCRIBE TO KWIC SERVICES THAT INCLUDE YOU OR YOUR EMPLOYEES OR AGENTS RECORDING INDIVIDUAL TELEPHONE CONVERSATIONS AND/OR COMPUTER OR DEVICE SCREEN ACTIVITY, LAWS REGARDING NOTICE AND JUSTIFICATION WITH RESPECT TO SUCH RECORDING MAY VARY ACROSS JURISDICTIONS. YOU AGREE THAT YOU ARE SOLELY RESPONSIBLE FOR COMPLYING WITH ALL APPLICABLE LAWS, AND KWIC EXPRESSLY DISCLAIMS ANY LIABILITY WITH RESPECT TO YOUR USE OF THE SERVICES FOR THE PURPOSE OF RECORDING CONVERSATIONS OR INTERACTIONS OF ANY KIND AND YOU FULLY RELEASE AND INDEMNIFY KWIC TO THE EXTENT PERMITTED BY LAW FROM ALL CLAIMS AND LIABILITY IN RELATION THERETO.

## 12. Disputes

The Parties will first attempt to resolve any dispute arising out of this Agreement between two designated representatives appointed by the Parties. The Parties agree that any dispute deemed legitimate by KWIC which cannot be resolved within thirty (30) days shall be determined by arbitration to be held in Simcoe, Ontario, or at the closest location to Simcoe, Ontario where arbitration is readily available, pursuant to the provisions of the Ontario

Arbitration Act, 1991. The Parties agree that there shall be three arbitrators, one appointed by each Party and a third, appointed by the first two arbitrators, who shall function as the chair of the arbitration. The Parties agree that the arbitrators' fees and other related expenses shall be borne equally by the Parties, and the Parties further agree that they may mutually agree to opt out of arbitration and instead choose to have any dispute determined by the Courts of the Province of Ontario.

### 13. Miscellaneous

#### 13.1

This Agreement constitutes the entire agreement between the Parties for the provision of Services. It replaces and supercedes all prior agreements and any representations, whether written or oral, regarding provision of Services. In the event of a conflict between the terms of a quotation and these terms and conditions, the terms of the quotation shall prevail.

#### 13.2

Amendments require notice in writing, and must be signed by an authorized representative of KWIC. This Agreement can only be amended by a signatory authorized by KWIC.

#### 13.3

This Agreement is governed by the laws of Ontario and the applicable laws of Canada, and the Parties agree to be subject to the jurisdiction of the Courts of Ontario.

#### 13.4

This Agreement will not be construed as constituting a creation of a joint venture, or as an agreement by either Party to become an agent, partner, or contractor of the other Party.

#### 13.5

Any notice or other communication required or permitted by this Agreement must be in writing and must be provided by personal delivery, standard mail, courier, email, or facsimile to you or to KWIC at the last given location or facsimile number provided in writing by each Party. Notices delivered in person will be considered effective on the date of delivery. Notices delivered electronically will be considered effective on the date of transmission, provided the transmitting party can provide printed proof of transmission. Notices delivered by mail or courier will be considered effective on the date of receipt by the recipient Party.

#### 13.6

KWIC will not be liable for any failure to perform, or delay in performance arising from factors beyond its reasonable control, including without limitation labour disputes, fires or other disasters, weather events, damage to facilities, acts of God, or the conduct of third parties.

#### 13.7



You cannot assign this Agreement, in whole or in part, without KWIC's prior written consent. KWIC reserves the right to assign this Agreement to any affiliate or subsidiary at any time. This Agreement is binding upon the Parties and their respective successors and assigns.

13.8

If any provision of this Agreement is determined by a court of law to be unenforceable, that provision will be severed from the remaining provisions of this Agreement, which shall remain in force. The terms and provisions of this Agreement may only be waived in writing once signed by authorized signatories of both Parties. No failure by either Party to insist on the other Party's performance of any obligations hereunder will constitute waiver unless in writing.

13.9

This Agreement is drafted and agreed to in the language of English.

**END OF DOCUMENT**