

# Terms of Services Agreement

By Convergent Systems Technologies



**CONVERGENT**  
— SYSTEMS TECHNOLOGIES —

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## VoIP

- VoIP is an acronym that stands for Voice over Internet Protocol. This service is a best effort service that relies both upon the internet and your local intranet, which is out of the control of Convergent Systems Technologies, Inc. (hereafter “CSTECH”). Under normal circumstances the service will provide a reliable and good quality communication path; however, the overall reliability of the circuit to always be available cannot be guaranteed. By establishing an account or using the services of CSTECH, you agree to be bound by this Agreement and to use the Services in compliance with this Agreement, our Acceptable Use Policy, and other policies. The following terms and conditions shall apply to all customers subscribing to CSTECH VoIP Services. This Agreement is part of and shall be incorporated into the Acceptable Use Policy.
- In utilizing the CSTECH VoIP Services, Customer agrees to adhere to the terms and conditions of the Acceptable Use Policy and this Agreement as CSTECH may modify it from time to time.
- In the event of an inconsistency or conflict between the Acceptable Use Policy and this Agreement, the provisions of this Agreement shall govern.

## E911 Disclosure

- CSTECH VoIP Telephone Service (including 911 calling) will not function during a power outage and may not function during network congestion. Use of 911 service is permitted only at a CSTECH registered local phone exchange service address, otherwise 911 calls will not route directly to a 911 operator. Customers should secure an alternative to 911 service.
- VoIP 911 service is different from traditional 911. The Enhanced 911, or E911, service that is available to CSTECH’ customers has the ability to deliver the address, name and phone number of your phone to the Public Service Answering Point (PSAP) in your County.

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- This information is delivered from a database that requires up to 7 days to update once the new information is provided. If you move your VoIP phone to a different address, updating the E911 database requires additional effort on your part. For each phone line you must notify CSTECH and register a physical address with CSTECH.
  - If you move, or move your VoIP service to a new physical address, it is your responsibility to notify CSTECH of the new physical address at least 10 business days prior to moving the phone. Please make sure that the physical address on your CSTECH Service Activation Form is the correct physical address where your phone will be used.
  - If you do not provide CSTECH with the proper address and require the use of emergency services, your E911 calls will appear with your old address information resulting in emergency crews being dispatched to the last registered physical address.
  - Each physical location that you associate with your account will require an associated fee. This fee varies, but is generally around \$3.00 per location.
  - E911 surcharges will be charged on your monthly statement.
  - VoIP equipment, such as telephones, ATA's and associated network hardware do not work without power. In the event of a commercial power outage, your phone service will not work without you providing the electricity locally to power the equipment.
  - CUSTOMER AGREES TO HOLD CSTECH, ITS PRINCIPALS, OFFICERS, DIRECTORS, AND EMPLOYEES HARMLESS FROM ALL CLAIMS REGARDING E911, THE FAILURE OF E911 TO RESPOND, OR THE INABILITY TO ACCESS E911 FOR ANY REASON.

### **Service Distinctions**

- VoIP service is a unique form of telecommunications service that utilizes the public Internet to connect calls to the Public Switched Telephone

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Network. This service may be subject to different regulatory treatment than traditional telecommunications service.

- Events beyond our control may affect your service such as power outages, fluctuations in the Internet, and outages/issues with upstream backbone providers, etc.
- VoIP service does not function without the Internet. A loss of your internet service will cause a disruption in your VoIP phone service.
- This service does not support 0+ or operator assisted calling, including collect calls, third party billing calls, 900 or calling card calls. Our service may not support x11 services in all calling areas (211, 411, etc).
- You acknowledge that our service may not be compatible with all non-voice communications equipment, including, but not limited to home security systems, satellite television systems, fax machines, computer modems, medical equipment, etc.
- By signing up for this service through CSTECH, you waive all claims against interference or disruption of these services and equipment. We do not guarantee the service of modems and faxes over the VoIP system. Some devices work fine communicating with this type of service, while others do not.
- CSTECH is required by law to cooperate with law enforcement and investigative government agencies. When a lawful request is made by a law enforcement or relevant government agency we may be required to disclose your name, phone number, location and other personal information about your account, use of service, length of service, IP address etc. to the requesting agency.
- International Calling: Current service plans include calling to the United States and Canada. International calling requires use of a pin to make international calls. International calls are disabled on all accounts by default. To enable International calling, you must request the service to be enabled in writing. Fraudulent calls placed on your account are the responsibility of the account holder. International rates vary by country.

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- **Overage of minutes:** Our standard unlimited plan includes up to 1000 minutes of calling, combined inbound and outbound, to the US and Canada per month, per call path. Charges of up to \$0.10 per minute may be applied to any account exceeding the 1000 minute per month cap. Partial minutes are rounded up to the next full minute.
  - **Devices:** CSTECH retains ownership of all VoIP telephones not purchase by you “The Client”. In event of service or contract termination, you will be required to return equipment in good working order to our corporate office within 3 business days of service termination. Equipment that is not returned will be billed to your payment method on file.
  - **Credit.** CSTECH reserves the right to conduct a review of Customer’s credit rating, credit history, and payment history at any time prior to the Effective Date or at any time during the term of service. After either a) an initial credit review or b)if Customer has been late in paying any invoice two or more times in any twelve month period, CSTECH may, as a condition of providing new services or continuing to provide services, require Customer to tender a deposit equal to the total of all estimated usage-based charges, Monthly Recurring Charges, and Non-Recurring Charges for the applicable Service’s) for up to two months or such lesser amount that CSTECH requires. CSTECH shall not be liable to Customer for the payment or accrual of any interest thereon. CSTECH shall be entitled to apply the deposit against any and all unpaid amounts that are past due, and shall refund to Customer any remaining amount still held as a deposit upon expiration or termination of service. Any request for a deposit shall be honored by Customer within ten business days of request by CSTECH, and failure to remit such deposit within the foregoing period shall constitute cause for CSTECH to suspend all services upon five days written electronic notice, in addition to any other rights and remedies it may have herein or at law or equity with respect to breach.

## **Billing**

- Electronic billing is done once per month; full payment is due on receipt. Payments can be mailed to our office or automatically billed to a credit card or by debit of a checking account (ACH). Complete payment and

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account history can be accessed through CSTECH online portal, found at <https://pbx.convergentsystemstech.com>

- We will only give account information to the registered account holder. Please make sure to add additional account contact names to the application, or request in writing, if you want others to have access to changing the account in any way. Please only include trusted personnel to those granted access to your CSTECH account.
- Payment Policies and Terms: Payment by Subscriber shall be due to CSTECH when the invoice is received. A late payment fee shall be assessed on any account not paid within 30 days.
- Accounts remaining unpaid for sixty (60) or more days shall be deemed delinquent. Delinquent accounts shall be placed on “accounting hold” and services to the Subscriber shall be suspended until the account is paid in full. For any subscribers’ account that has been placed on suspended service, there shall be due a Fifty Dollar (\$50.00) reconnection charge to reactivate Subscribers Services after the arrearage has been paid.
- In the event any balance is not paid as agreed, account holder agrees to pay any applicable collections fees. In the event of a lawsuit to collect the unpaid balance, the account holder further agrees to pay court costs and reasonable attorney’s fees.
- A Thirty Five Dollar (\$35.00) fee will be added to the subscriber account in the event of any bank returned check. In the event that more than one check is returned, we will only accept cash, credit card or certified funds for payment on the account.

### **Cancellation of Service**

**Subscribers that are no longer under their contractual term are considered to be month-to-month and may cancel CSTECH service under the following conditions:**

- 15 days written notice of intent to cancel is provided
- Account may not be past due
- All telephone numbers must be ported to your new provider

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**Once ALL of the above conditions are met, your account will be closed. If ANY services remain with CSTECH into a new billing cycle, the account will be responsible for the entire monthly service fee.**

## **Termination**

- Subscribers that are no longer under their initial term may terminate this Agreement by submitting a written request for termination to the CSTECH corporate office. Requests received prior to close of business shall have a termination date of the next business day.
- If a Customer cancels or terminates a service prior to the end of the service term for any reason; or CSTECH terminates the service for any reason provided in this Terms of Service Agreement, then in addition to any other rights or remedies available to CSTECH hereunder, at law, or in equity, Customer shall pay CSTECH early termination charges as liquidated damages and not as a penalty equal to:
  - All previously waived non-recurring charges specified on the Sales Order;
  - The replacement cost of any and all unreturned CSTECH provided equipment;
  - The aggregate fees, charges, expenses, and taxes payable by CSTECH (including, but not limited to, liquidated damages and disconnection, early cancellation or termination charges payable to third parties) in connection with the cancellation or termination of the service(s);
  - All monthly recurring charges and usage charges for the remaining balance of the Service Term.
- Subscribers that terminate accounts prior to contract maturity without paying an Early Termination Fee or without returning VoIP telephones will forfeit all telephone numbers in the CSTECH portal and the telephone numbers will become the property of CSTECH.
- Without prior notice, CSTECH may terminate this Agreement, your password, your account, or your use of the Services, without liability, for any reason, including, without limitation, if CSTECH, in its sole discretion, believes you have violated this Agreement, our Acceptable Use Policy, or any of the applicable user policies, or if you fail to pay any charges when



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due, become insolvent, file bankruptcy, assignment for the benefit of creditors, appointment of a receiver or custodian. In the event Customer has multiple accounts with CSTECH, a default under one account will be deemed a default under all accounts, and in the event of a default, all services under all accounts may be subject to suspension and/or termination.

- CSTECH may provide termination notice to you by US Mail to the address you provided for the Services. Termination by CSTECH for violation of CSTECH Acceptable Use Policy shall be subject to the termination fee as described above.
- Additional Fees: In the event that special construction or networking is needed or requested by the customer to support CSTECH VoIP service, additional technical labor is billed at \$95.00 per man-hour.
- Disputes: If Customer reasonably and in good faith disputes any portion of CSTECH's invoice, Customer shall, within sixty days of the payment date, submit written notice to CSTECH by certified mail, return receipt requested, of such dispute, identifying in specific detail the reason for the dispute and the amount being disputed. If Customer does not deliver such written notice within sixty days of the payment date, the invoice will be deemed correct and customer shall have waived its rights to dispute the invoice. Customer's dispute as to any portion of the invoice shall not excuse Customer's obligation to pay the undisputed portion of the invoice on time. The Parties shall negotiate in good faith to resolve any disputes within thirty days following CSTECH's receipt of Customer's timely written notice. Any amounts that CSTECH determines to be in error shall be adjusted on the next month's invoice, or if the disputed amount has already been paid, a credit shall be posted to Customer's account. Any disputed amounts that CSTECH determines to be correct as billed shall be due and payable by Customer, along with any interest charges or late fees that CSTECH may impose pursuant to the Terms of Service.
- Force Majeure: Neither party will be in default or otherwise liable for any service outage, other interruption or unavailability of service, delay, or failure of its performance under the service agreement, these additional terms or the Incorporated Agreements, except with respect to payment



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obligations hereunder for services, to the extent such service outage, other interruption or unavailability of service, delay, or failure arises by reason of an act of God or of the public enemy, the elements, adverse weather conditions, fire, flood, riots, strikes, catastrophic accident, war, governmental requirement or any action of government in its sovereign capacity, act of civil or military authority, action or inaction of a supplier or other third party, inability to secure materials, labor or transportation, Denial of Service attacks, DNS spoofing and/or any other malicious attempts orchestrated by third parties, or any other cause or circumstance of a similar nature to the foregoing, beyond the reasonable control and without the fault or negligence of the affected Party (each constituting a "Force Majeure Event"). Any such Force Majeure Event shall suspend all services until the Force Majeure Event ceases.

### **Equipment and Scope of Work**

- Unless purchased, all equipment, telephones, analog terminals adapters (ATA), modems, subscriber modules, antennas and standard mounting equipment will at all times remain the property of CSTECH. Subscriber may not sell, transfer, lease, encumber or assign all or part of the equipment to any third party. Subscriber will not allow or cause any CSTECH provided equipment to be rearranged, moved, modified, repaired, or relocated without CSTECH's written consent, nor will Subscriber create or allow any liens or other encumbrances to be placed on any such CSTECH provided equipment. All CSTECH provided equipment will be provided for the sole purpose of use in connection with the service(s), shall remain the exclusive property of CSTECH or its supplier, respectively, and shall be immediately returned to CSTECH upon termination of the Service(s) to which the equipment relates. Subscriber shall be responsible for ensuring that any CSTECH provided equipment is maintained in a secure location, and Subscriber shall be fully liable for any and all costs and charges associated with damage to or loss of CSTECH provided equipment including, but not limited to, all costs associated with replacement equipment, facilities, and systems together with any costs incurred by CSTECH in obtaining or attempting to obtain possession of any such equipment.

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- If Subscriber moves from the location that their service was originally installed in, the Subscriber shall pay CSTECH's then current non-recurring charges for Professional Services to facilitate the move of CSTECH services for Subscriber.
  - On expiration or termination of this Agreement, Subscriber will return equipment that is owned by CSTECH. Customer will be billed retail prices for any/all equipment not returned when service is cancelled by either party.

### **Leases and Replacement of Non-Working Equipment**

- Your service agreement may include rented telephones and other equipment. All rented equipment is the property of CSTECH through the duration of the contract period and/or renewal of contract .
- During the contract period, rented equipment will be replaced if it fails while being used under normal office conditions. Failure of equipment due to misuse, abuse, lightning and/or electrical surges is not covered and the client will be required to pay for the damaged equipment at manufacturer's published MSRP pricing.

**LIMITATION OF LIABILITY: NOTWITHSTANDING ANY OTHER PROVISION OF THIS TERMS OF SERVICE AGREEMENT TO THE CONTRARY, THE PARTIES AGREE THAT THE TOTAL LIABILITY OF CSTECH UNDER THE TERMS OF SERVICE AGREEMENT ARE AS FOLLOWS: 1) TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL CSTECH BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT OR PUNITIVE DAMAGES WITH RESPECT TO ANY CLAIM ARISING UNDER OR RELATING TO THESE TERMS OF SERVICE OR THE ACCEPTABLE USE POLICY OR PRIVACY POLICY INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR PROFIT OR ANY OTHER BUSINESS LOSS INCLUDING GOODWILL, LOSS OF USE OF ANY PROPERTY, COST OF SUBSTITUTE PERFORMANCE, EQUIPMENT, OR SERVICES, DOWNTIME COSTS AND CLAIMS FOR SUCH DAMAGES, REGARDLESS OF WHETHER DAMAGES ARE CAUSED BY WILLFUL MISCONDUCT, NEGLIGENT ACT OR OMISSION, OR OTHER WRONGFUL ACT ARISING FROM OR RELATED TO THESE TERMS OF SERVICE OR THE ACCEPTABLE USE POLICY OR PRIVACY POLICY AND REGARDLESS OF WHETHER THE PARTY WAS ADVISED OF OR COULD HAVE FORESEEN THE POSSIBILITY OF SUCH DAMAGE; 2) CSTECH'S ENTIRE LIABILITY FOR ANY CLAIM, LOSS, EXPENSE OR DAMAGE**

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ARISING UNDER OR RELATED TO THESE TERMS OF SERVICE, THE ACCEPTABLE USE POLICY OR PRIVACY POLICY SHALL IN NO EVENT EXCEED THE SUM ACTUALLY PAID OR PAYABLE BY CUSTOMER TO CSTECH FOR THE AFFECTED SERVICE TO WHICH THE CLAIM, LOSS, EXPENSE OR DAMAGE RELATES DURING THE THREE MONTH PERIOD PRECEDING THE DATE SUCH CLAIM, LOSS, EXPENSE OR DAMAGE FIRST AROSE; 3)THE FOREGOING LIMITATIONS ARE IN ADDITION TO (AND NOT IN LIEU OF) ANY LIMITATIONS SET FORTH ELSEWHERE IN THESE TERMS OF SERVICE, ACCEPTABLE USE POLICY OR PRIVACY POLICY AND THEY APPLY TO ALL CAUSES OF ACTION AND CLAIMS OF ANY KIND BY ANY PERSON OR ENTITY ARISING OUT OF OR RELATED TO THESE ADDITIONAL TERMS OR THE INCORPORATED AGREEMENTS INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, NEGLIGENCE, MISREPRESENTATION, OR ANY OTHER TORT. THE PARTIES ACKNOWLEDGE AND ACCEPT THE REASONABLENESS OF THE FOREGOING LIMITATIONS OF LIABILITY. FOR PURPOSES OF THIS SECTION, ALL REFERENCES TO CSTECH OR A PARTY SHALL INCLUDE ITS AFFILIATES, AGENTS, SUPPLIERS, OTHER CONTRACTORS, OFFICERS, DIRECTORS, SHAREHOLDERS AND EMPLOYEES.

**Agreement Updates:** This Terms of Service Agreement may be updated from time to time. It is the Subscribers responsibility to check this webpage at least once every 30 days for changes and updates. This Terms of Service shall be interpreted and governed by Florida law, without regard to choice of law provisions. The Parties further agree that the exclusive venue for the resolution of all disputes shall be in the State and Federal courts located in Hillsborough County, Florida. The Parties further agree that the non-prevailing party in any dispute shall be responsible for the prevailing party's attorney's fees. The headings used in this Terms of Service Agreement are for convenience only and do not in any way limit or otherwise affect the meaning of any terms of the Terms of Service Agreement.

**Entire Agreement:** This Agreement constitutes the entire Agreement between the parties and no other representations or statement will be binding upon the parties. If any part of the Agreement is held to be invalid or unenforceable for any reason, the remaining terms and conditions of this Agreement shall remain in full force and effect.

**Client Name:** \_\_\_\_\_

**Client Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_