



FracTEL Service Terms and Conditions

Date of Last Revision: April 27, 2015

The use of services provided by FracTEL LLC (hereafter referred to as "FracTEL") constitutes agreement to these terms. In the absence of any other prevailing document, the provisions of this document shall serve as a binding contract between FracTEL and you.

BY ENROLLING IN, ACTIVATING, USING, OR PAYING FOR FRACTEL SERVICES, YOU REPRESENT THAT YOU ARE OF LEGAL AGE TO ENTER INTO THIS AGREEMENT AND THAT YOU HAVE READ AND UNDERSTAND FULLY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

E911 Service

FracTEL provides you with phone services over your broadband connection. There is an important difference between the FracTEL service and the phone service provided over a traditional phone line — this difference is that the E911 dialing feature with FracTEL has important limitations that you should be aware of and that you advise others that may use the FracTEL service in your residence or business.

YOU ARE RESPONSIBLE FOR REGISTERING THE E911 DIALING FEATURE BY TAKING AFFIRMATIVE STEPS TO LOG INTO YOUR ACCOUNT PORTAL TO PROVIDE AND/OR VERIFY A VALID PHYSICAL ADDRESS. IF YOU MOVE THE LOCATION OF WHERE YOU USE THE FRACTEL SERVICE, YOU MUST AFFIRMATIVELY REGISTER THE E911 DIALING FEATURE AT THAT LOCATION BY CHANGING THE ADDRESS. IF YOU FAIL TO CONFIGURE YOUR LOCATION OR CHANGE THE ADDRESS TO A NEW LOCATION, THE E911 DIALING FEATURE WILL NOT FUNCTION PROPERLY AND POTENTIALLY NO EMERGENCY SERVICE WILL BE SENT TO YOUR LOCATION.

Additional limitations are as follows:

If you lose power or there is a disruption to power at the location where FracTEL is used, neither FracTEL nor the E911 dial feature will function until power is restored. You should also be aware that after a power failure or disruption, you may need to reset or reconfigure the FracTEL devices prior to utilizing the service, including the E911 dialing feature.

If your Internet connection or Broadband Service is lost, suspended, terminated or disrupted, neither FracTEL nor the E911 dial feature will function until the Internet connection or Broadband Service is restored.

If your FracTEL account is suspended or terminated, the FracTEL service outage will prevent the E911 dialing feature from functioning. There may be a greater possibility of network congestion and/or reduced speed in the routing of E911 dialed calls utilizing FracTEL as compared to traditional 911 dialing over traditional public telephone networks.

You are responsible for the accuracy and the completeness of the address that you submit to FracTEL for the location at which FracTEL will be used and to which emergency service will be sent in the event that you use the FracTEL E911 dialing service. You are responsible for updating and of the advising us of any and all changes to the address or location at which FracTEL will be used. FracTEL uses a third party to route the E911 dialed calls to the applicable local emergency response center or to the national emergency calling centers. We make no warranties or guarantees as to whether, or the manner in which, E911 dialed calls that you make are answered or responded to by the local emergency response center or by the national emergency calling centers. We disclaim any and all liability or responsibility in the event that the third party data used to route E911 dialed calls is incorrect or yields an erroneous result. Neither FracTEL, its officers, directors, stockholders, parent corporation, its affiliated or subsidiary corporations, employees, representatives or agents may be held liable for any claim, damage or loss, and you hereby waive any and all such claims or causes of action, arising from or relating to FracTEL E911 dialing service unless such claims or causes of action arise from FracTEL's gross negligence, recklessness or willful misconduct. You agree to release, indemnify, defend and hold harmless FracTEL, its officers, directors, stockholders, parent corporation, its affiliated or subsidiary corporations, employees, representatives or agents and any other service provider who furnishes services to you from any and all claims, damages, losses, suits or actions, fines, penalties, cost and expenses (including, but not limited to, attorney fees) or any liability whatsoever, whether suffered, made, instituted or asserted by you or by any other party or person, for any personal injury to or death of any person or persons, or for any loss, damage or destruction of any property, whether owned by you or others, or for any infringement or invasion or the right of privacy of any person or persons, caused or claimed to have been caused, directly or indirectly, by the operation, failure or outage of services, incorrect routing, or use of, or inability of a person to use, FracTEL 911 dialing feature or service or access emergency service personnel.

Equipment

You are not authorized, nor may you allow any other person, to update the firmware, load third-party firmware, or otherwise tamper with FracTEL supplied devices, nor are you authorized to connect any devices not supplied by FracTEL without prior written authorization from FracTEL. Service credits will NOT be issued for the time the service is down due to tampering or unauthorized configuration of devices. If you or your agents attempt to circumvent this restriction, FracTEL may immediately terminate your service. FracTEL reserves the right to remotely access and manage any devices connected to our network.

Support

FracTEL provides support for using our service and provided hardware only. FracTEL is not responsible for troubleshooting or support for routers, computers or internet connections.

Service Limitations

Due to the nature of VoIP services, FracTEL service is not designed to be used for data connections with modems, home security systems, credit card processors, postal meters and related devices. It is optimized for voice only and you may experience issues and inconsistencies when using FracTEL service in non-voice scenarios.

Services Average Use Only

FracTEL unmetered residential and small business VoIP plans are intended for general business use only. Any other use is strictly prohibited. FracTEL uses automated systems to monitor usage to detect patterns which are typical of extraordinary use such as telemarketing, call center, autodialing, continuous call forwarding, frequent, excessively long calls to single numbers, etc. Cloud PBX plans are designed for users with average usage of 2,500 minutes per month. Accounts exceeding 2,500 minutes per month per user on a regular basis are subject to review. If an account exceeds 2,500 minutes per user in a calendar month, FracTEL may require that additional users be added to the account. FracTEL shall have sole discretion to determine whether usage is consistent with average usage or not.

Invoicing

FracTEL services are billed monthly on the first day of each month. The monthly Invoice includes the following items:

- Monthly Recurring Charges (e.g. CloudPBX licenses, DID charges, SIPTrunks) for the upcoming month
- Pro-rated Monthly Recurring Charges for any new Services added during the prior month
- Non-recurring Charges (e.g. setup fees, number porting fees, etc.) incurred during the prior month
- Usage Charges (e.g. international calls, toll free charges, etc.) incurred during the prior month
- Applicable Federal, State and Local Taxes for all Services

Payments and Late Fees

If you provide credit card information to FracTEL, You authorize FracTEL to charge such credit card for all Charges listed on your Invoice. It is your responsibility to provide FracTEL with credit card information that is current and valid. If FracTEL has agreed to accept payment by a method other than a credit card, invoiced Charges are due net 10 days from the invoice date. If any invoiced amount is not received by FracTEL by the due date, then without limiting our rights or remedies, those Charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower. You are responsible for providing complete and accurate billing and contact information to FracTEL and notifying FracTEL of any changes to such information.

Disputes

All amounts must be paid in full by the Invoice Due Date unless Customer elects to withhold a good faith disputed amount. If Customer, in good faith, disputes the amount or appropriateness of any Charge, the Customer must notify FracTEL, in writing, of the disputed Charge upon withholding a disputed amount, but in any event, no later than thirty (30) days of the invoiced date indicated on the disputed invoice. Failure to contest an invoice within thirty (30) days of the invoiced date will create an irrefutable presumption of the correctness of the Charge, absent manifest error, and Customer shall have waived its right to dispute that Invoice. In the event of a billing dispute, the Customer may withhold payment of such disputed amounts pending the resolution of the dispute, provided that the Customer shall not withhold payment of more than 5% of the total invoice amount absent manifest error in said invoice. If more than 5% of the total invoice is withheld in dispute, FracTEL reserves the right to suspend all Services until dispute is resolved. Disputed amounts notwithstanding, all undisputed amounts must be paid in full by the Due Date of the invoice.

Suspension of Service

If any amount owed by you under this or any other agreement for FracTEL services is 30 or more days overdue, FracTEL may, without limiting our other rights and remedies, suspend services until such amounts are paid in full. We will give you at least 5 working days' prior notice that your account is overdue before suspending services to you.

Cancellation

FracTEL requires thirty (30) days written notice in order to cancel an account. The 30 day written notice period will begin at the time of receipt of this notice by FracTEL, unless otherwise specified in this policy. If Customer account is "past due" at time of the cancellation request, Customer will be immediately responsible for the amount due in order to begin the process of account cancellation and start the 30 day notice period. All accounts must complete one billing cycle after the cancellation request is made, before the account can be closed. The Customer will be responsible for and agrees to pay the Service and Usage Charges billed during the final billing cycle. The account will be officially closed when final payment is received.

Right to Refuse or Terminate Service

FracTEL reserves the right to refuse to provide service to anyone at its sole discretion with or without reason. FracTEL also reserves the right to terminate accounts with or without reason at its sole discretion. If FracTEL terminates service for any reason other than a material breach of this agreement or any other agreement between you and FracTEL, you will receive a pro rata refund for any prepaid service. If FracTEL terminates service for material breach of this agreement by you, you are not entitled to any refund. You may terminate service at any time by written notice to FracTEL. If you terminate service for any reason other than a material breach of this agreement by FracTEL, you forfeit any prepaid fees paid by you.

Privacy

FracTEL's privacy policy is incorporated by reference into this agreement. The FracTEL privacy policy can be viewed here:

<http://retail.fractel.net/privacy-policy/>

Indemnification

You agree that you shall defend, indemnify, save and hold FracTEL harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorney's fees asserted against FracTEL, its agents, its customers, officers and employees, that may arise or result from any use of the service provided or performed or agreed to be performed or any product sold by you, your agents, employees or assigns. You agree to defend, indemnify and hold harmless FracTEL against liabilities arising out of: (1) any injury to person or property caused by any products sold or otherwise distributed in connection with FracTEL; (2) any material supplied by you infringing or allegedly infringing on the proprietary rights of a third party.

Binding Arbitration

By using any FracTEL service, you agree to submit to binding arbitration. If any disputes or claims arise against FracTEL or its subsidiaries, its agents, its employees, its officers, or its owners, such disputes will be handled by an arbitrator of FracTEL 's choosing. An arbitrator from the American Arbitration Association or the National Arbitration Forum will be selected in Brevard County, Florida. Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the applicable rules. All decisions rendered by the arbitrator will be binding and final. The arbitrator's award is final and binding on all parties. The Federal Arbitration Act, and not any state arbitration law, governs all arbitration under this Arbitration Clause. This agreement shall be governed and construed in accordance with the laws of the State of Florida without regard to conflict/choice of law principles.

Disclaimer

FracTEL shall not be liable for any claim arising out of the performance, non-performance, delay in delivery of or defect in its services nor for any special, indirect, economic or consequential loss or damage howsoever arising or howsoever caused (including loss of profit or loss of revenue) whether from negligence or otherwise in connection with the supply, functioning or use of its goods and/or services. Any liability of the FracTEL shall in any event be limited to the fees paid by you. FracTEL makes no warranties of any kind, expressed or implied for services FracTEL provides. FracTEL disclaims any warranty or merchantability or fitness for a particular purpose. Since FracTEL service is provided over public internet and can be affected by power outages and other infrastructure, we cannot guarantee uptime for a specific physical location. FracTEL guarantees the overall uptime of our network with a 100% SLA. Details of the FracTEL SLA can be viewed here:

<http://retail.fractel.net/sla/>

General

The prevailing party shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorneys' fees incurred in enforcing this agreement. If any provision of this agreement is held by any competent authority to be invalid or unenforceable in whole or part the validity of the other provisions of these terms and conditions and the remainder of the provision in question shall not be affected. If a conflict occurs between this agreement and any other document which is mutually agreed on by you and FracTEL, the document which is executed on the latter date/time will be the prevailing document. If any conflict between documents should occur, only the specific provisions of the prevailing document which are in conflict with this agreement will supersede the terms and conditions of this agreement. All other terms and conditions of this agreement shall remain unaffected by the prevailing conflict. Nothing in this agreement creates, implies or evidences any partnership or joint venture between you and FracTEL, or the relationship between those of principal and agent. Any notice permitted or required under the agreement will be in writing and will be sent to the contact address, or e-mail address of the other party set out in the proposal or any other address or e-mail address which that party may designate by notice given to the other party in accordance with this condition. Any notice may be delivered personally, or by first class pre-paid letter or by e-mail and will be deemed to have been served: if by hand, when delivered; if by first class post, 72 hours after posting; and if by e-mail, on that e-mail being accessible by the intended recipient. You may not assign your rights or obligations hereunder without FracTEL's prior written consent. Any assignment without consent of FracTEL will be null and void.

Change of Terms

Complete Terms and Conditions can be located at the following URL:

<https://retail.fractel.net/terms-and-conditions/>

We may change the terms and conditions of this Agreement from time to time. Notices will be considered given and effective on the date posted on our website. These changes will become binding and effective the date they are posted to our website. No further notice by us is required upon your continued use of the Service. The Agreement as and when posted supersedes all previously agreed to electronic and written terms of service.