



eSIP Evolution and Titan Series eMobile Plus and eMobile Pro Terms and Conditions

Definitions

- 1. **“Customer’s Account”** means the numbered account established with Estech Systems Inc. and associated with Customer and the Services provided to Customer under this Agreement. For billing and convenience purposes, multiple services, Digital Lines, or End Users may be included in a single billing account, and/or a single Customer may have multiple billing accounts encompassing different geographic locations, business units, or other designations as requested by Customer and accepted by Estech Systems Inc..
- 2. **“Account Data”** means: any business contact information provided with the Account; Estech Systems Inc.-generated logs of calling or other metadata developed or collected in the provision of the Services; configuration data; and records of Digital Lines and any Services purchased under this Agreement.
- 3. **“Customer Content”** means the content of calls, facsimiles, SMS messages, voicemails, voice recordings, shared files, conferences or other communications transmitted or stored through the Services.
- 4. **“End Point”** means an application or device through which any End-User might access and/or use any of the Services, including without limitation IP Desk Phones, Desktop Clients, Web Clients, Mobile Applications, and Software Integrations.
- 5. **“End User”** means an individual user to whom Customer makes the Services available, and may be a natural person, and may include but is not limited to Customer’s employees, consultants, clients, external users, invitees, contractors and agents.
- 6. **“Law”** means any law, statute, regulation, rule, ordinance, administrative guidance, treaty or convention, or court or administrative order or ruling of any governing Federal, State, local or non-U.S. governmental body with jurisdiction over the Services.
- 7. **“Estech Systems Inc. Network”** means the network and supporting facilities between and among the Estech Systems Inc. points of presence (“PoP(s)”), up to and including the interconnection point between the Estech Systems Inc.’s network and facilities, and the public Internet, private IP networks, and the Public Switched Telephone Network (PSTN). The Estech Systems Inc. Network does not include the public Internet, a Customer’s own private network, or the PSTN.
- 8. **“Service(s)”** means all services provided under this Agreement and set forth in one or more Order(s).
- 9. **“Service Attachment”** means documents appended to the Agreement containing additional terms for equipment and Services.
- 10. **“Start Date”** means the date so identified in the relevant Order or the date on which Customer orders Services via the website or the Administrative Portal.
- 11. **“Taxes”** means any and all federal, state, local, municipal, foreign and other taxes and fees charged or collected from Customers, including but not limited to any Universal Service Fund, TRS and 911 taxes and fees.
- 12. **“Term”** means the Initial Term plus any Renewal Terms.
- 13. **“eMobile”** In this document refers to eMobile Plus (also spelled eMobile+) and eMobile Pro.



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1. ACCEPTANCE OF TERMS

1.1 The Terms of Service (the “Agreement”) govern the Customer’s use of ESI eMobile+ Service (the “Service”), including the use of ESI eMobile+ Unified Communications App (the “Application”), ESI eMobile+ Cloud Service, and any features, scripts, instruction sets, or related documentation that Estech Systems Inc. delivers via the Service or includes as part of the Service. By using the Service in any way, including, but is not limited to, (a) enabling ESI eMobile+ Cloud Service and (b) downloading or uploading any Materials (as defined herein) and Contents (as defined herein) via the Service, The Customer (as defined herein), agree to terms and conditions of this Agreement. If Customer does not agree to the terms of this agreement, neither Customer nor its End Users may download, install, or use the services or equipment.

1.2 Estech Systems Inc. reserves the right to modify the Terms of Service from time to time, in Our sole discretion, by posting the revised Terms of Service to www.Estech Systems Inc..com/Legal. The Customer’s use of the Service is subject to the most current version of the Terms of the Service at the time of such use.

2. SERVICE DESCRIPTION

2.1 ESI eMobile+ Service includes ESI eMobile+ Unified Communication App (the “Application”), ESI eMobile+ Cloud Service, and any features, scripts, instruction sets, or related documentation that Estech Systems Inc. delivers via the Service or includes as part of the Service.

2.2 ESI eMobile+ Unified Communications App is an application designed to coordinate with Estech Systems Inc. Cloud PBX and on-premises PBX. Available using Microsoft Windows, macOS, iOS and Android, it includes voice, messaging, presence and a list of powerful unified communications features.

2.3 ESI eMobile+ Cloud Service is a value-added service designed to minimize server and network configurations for Estech Systems Inc. on-premises PBX users. It avoids the necessity of port forwarding when using the Application outside of the company and makes collaboration features like instant messaging and file sharing possible on the Application.

2.4 Estech Systems Inc. reserves the right, in its sole discretion, to modify the Service when necessary. Such modifications to the Service may include, without limitation, adding, modifying or removing features and/or functionality, and suspending or discontinuing the entire Service.

3. PROVISION OF THE SERVICE

3.1 **The Application.** Estech Systems Inc. may provide the Application through third-party marketplaces or stores. The Customer is responsible for obtaining and maintaining any equipment or ancillary services needed to access the Application and the Customer is responsible for all applicable taxes and fees incurred while accessing such Application (such as fees from the Customer’s mobile carrier, overage charges, etc.).

3.2 **ESI eMobile+ Cloud Service.** ESI eMobile+ Cloud Service is a subscription-based for-charge service. It is provisioned and available only when the Customer enables the service and during (a) the applicable Subscription Term (as defined herein) or (b) the applicable free trial period defined by Estech Systems Inc..

3.3 **Geographical Scope.** The Service may not be offered, available or fully supported in all regions, countries or jurisdictions of the world. Estech Systems Inc. may restrict or limit the Service’s availability, in whole or in part, in or to any geographical location(s) or jurisdiction(s), in Estech Systems Inc.’s sole discretion.



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3.4 Physical Location of Content. By using the Service, the customer acknowledges and agrees that Estech Systems Inc. may use third-party service providers in connection with the Service or part of the Service, who may maintain and host, Customer Content, or the data, in locations anywhere around the world. Customer Content, or the data, may be subject to legal or contractual restrictions limiting or prohibiting its storage or transmission to particular physical locations. The customer acknowledges and agrees that the Customer is solely responsible for complying with any such restrictions. Estech Systems Inc. is not responsible for the Customer's failure to comply with any such restrictions, and will not be liable to the Customer or any third party for any loss or damages resulting from any such failure.

4. USE OF THE SERVICE

4.1 Service Requirements. The Service is dependent upon the Customer's maintenance of sufficient Internet access, networks, security and power. Estech Systems Inc. will not be responsible for any deficiencies in the provision of the Services if Customer's network does not meet Estech Systems Inc.'s Technical Sufficiency Criteria. By using the Service, the Customer confirms and understands that the Service may sometimes be unavailable as a result of things over which Estech Systems Inc. has no control, for example, weather, power disruptions, availability of bandwidth over the entirety of the Internet, and failures of the Customer's internet service provider (ISP) or broadband / ADSL connection. Estech Systems Inc. does not guarantee that the Customer's access to and use of the Service will be uninterrupted and does not guarantee any minimum availability to the Service.

4.2 Acceptable Use. The Customer may use the Services only in compliance with this Agreement, applicable Law, and the Restrictions referenced below.

4.2.1 General Restrictions. The Customer and Customer's Users must not: use the Service (i) in a way prohibited by law, regulation, or governmental order or decree, (ii) to violate any rights of Estech Systems Inc. or others, (iii) to try to gain unauthorized access to, test the vulnerability of, or disrupt the Service or any other service, device, data, account, or network, (iv) to distribute spam or malware, (v) in a way that could harm the Service or impair anyone else's use of it, (vi) in a way intended to work around the Service's technical limitations, or usage limits, or (vii) for any High Risk Activities.

4.2.2 Content Restrictions. The Customer must not use the Service to transmit, store, host, or process any data that would cause the Customer or Estech, Systems Inc. to be out of compliance with applicable laws or regulations. If the Customer's uses the Service for data regulated by law or regulation, then the Customer is solely responsible for the consequences of that use.

4.2.3 Violations of Acceptable Use. A breach of any restrictions stated this Section will be grounds for Estech Systems Inc. to terminate the Service or part of the Service for the Customer without notice and with immediate effect, at Estech Systems Inc.'s discretion. The Customer shall fully and effectually indemnify Estech Systems Inc. from and against all loss, liability, damages, costs and expenses which Estech Systems Inc. may incur in relation to any breach by the Customer of their obligations under this section.

5. PRIVACY, CONTENT AND CONTENT SECURITY

5.1 Privacy Policy. By using the service, the Customer acknowledges and agrees that Estech Systems Inc. collect and use personal information the Customer submitted to the Service as set forth in the Estech Systems Inc. Privacy Policy, found at www.Estech Systems Inc..com/privacy.

5.2 Content and Content Security. By using the service, The Customer acknowledges and agree that while Estech Systems Inc. and Estech Systems Inc. authorized third-party service



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providers will take reasonable precautions to protect the Customer's content from unauthorized access or other security breaches, Estech Systems Inc. and Estech Systems Inc. authorized third-party service providers do not guarantee that such unauthorized access or other security breaches will not occur. The Customer is responsible for ensuring that the security of the Service is appropriate for its intended use of the Service and the storage, hosting, or processing of any Content. The Customer are responsible for taking and maintaining appropriate steps to protect the confidentiality, integrity, and security of all Content from unauthorized access, use, loss, or destruction. Those steps include: (a) controlling access that the Customer provides to its Users; (b) configuring the Service appropriately; (c) ensuring the security of Content while it is in transit to and from the Service; (d) using encryption technology to protect Content; and (e) backing up Content. The Customer are responsible for providing any necessary notices to Users, and obtaining any legally required authorizations or consents from Users regarding their use of the Service.

5.3 Data Security Estech Systems Inc. will take commercially reasonable precautions, including, without limitation, technical (e.g., firewalls and data encryption), administrative and physical measures, to help safeguard Customer's Account, Account Data, and Customer Content against unauthorized use, disclosure, or modification. Customer must protect all End Points using industry-standard security measures. Customer is solely responsible to keep all user identifications and passwords secure. Customer must monitor use of the Services for possible unlawful or fraudulent use. Customer must notify Estech Systems Inc. immediately if Customer becomes aware or has reason to believe that the Services are being used fraudulently or without authorization by any End User or third party. Failure to notify Estech Systems Inc. may result in the suspension or termination of the Services and additional charges to Customer resulting from such use. Estech Systems Inc. will not be liable for any charges resulting from unauthorized use of Customer's Account.

6. INTELLECTUAL PROPERTY

The Service and Materials, and their selection and arrangement, are protected by Intellectual Property Rights. Except as expressly provided in the Agreement, Estech Systems Inc. does not grant any express or implied rights to use the Service and Materials. All rights, title, and interest in the Service and Materials, in all languages, formats, and media throughout the world, are and will continue to be the exclusive property of Estech Systems Inc. and nothing in the Agreement shall be construed to confer any license or right, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to the Customer or any third party.

7. PAYMENT TERMS

7.1 Subscription Fees. Parts of the Service may require the Customer to purchase a subscription or membership in order to access all or part of such Service. Subscription Fees are non-refundable, except as otherwise stated in specific subscription terms applicable to a Service. Subscription Fees may change at the end of the subscription period.

7.2 Taxes and Third-party Fees. The Customer is responsible for paying all taxes levied in connection with the use of the Service. The Customer's credit card company or bank may impose other fees, such as foreign exchange fees, in connection with a payment of the Subscription Fees. The Customer's ability to access the Service or Part of the Service may require payment of third-party fees (such as telephone toll charges, mobile carrier fees, ISP, data plan, etc.). Estech Systems Inc. has no connection to or responsibility for such fees.



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8. SERVICES AUTOMATIC RENEWAL

The Services' term will begin on the Start Date of the initial Order and continue for the initial term set forth in the initial Order ("Initial Term"). Upon expiration of the Initial Term, recurring Services will automatically renew for successive periods of the same length as the Initial Term (each a "Renewal Term") unless either Party gives notice of non-renewal at least thirty (30) days before the expiration of the Initial Term or the then-current Renewal Term. The term of any recurring Services added to the Account after the initial Order is submitted will start on the Start Date of the subsequent Order, will run coterminously with the then-current term of any pre-existing Services, and will be billed on the same billing cycles as the pre-existing Services

9. SUSPENSION

Estech Systems Inc. may suspend the Customer's use of the Service if: (a) the Customer is in breach of the Agreement; (b) the Customer's use of the Service poses a security risk to the Service or to other users of the Service; or (c) suspension is required pursuant to a subpoena, court order, or other legal requirement. We will give the Customer notice before suspending use of the Service if permitted by law or unless Estech Systems Inc. reasonably determines that providing notice presents a risk of harm to the Service, to other users of the Service, or to any person or property, in which case we will notify the Customer as soon as feasible or permitted. We will suspend the Customer's access only to the Service that is the subject of the issue giving rise to the suspension. We will promptly reinstate the Customer's access to the Service once Estech Systems Inc. has determined that the issue causing the suspension has been resolved.

10. TERMINATION

10.1 Termination by The Customer. As either an individual user or a group administrator for a Service, the Customer may stop using the Service at any time, but the Customer will remain liable for all fees and charges otherwise due during the applicable Subscription Term of the Service or part of the Service.

10.2 Termination for Cause. Subject to this Agreement and any associated subscription terms and conditions, Estech Systems Inc. may at any time terminate our agreement with the Customer (or any subscription agreement) if: (a) The Customer has breached this Agreement; (b) Estech Systems Inc. is required to do so by Law (for example, where the provision of the Services or Materials to the Customer is, or becomes, unlawful). The Customer agrees that Estech Systems Inc. will not be held liable for any costs, expenses, losses, damages or other liabilities (howsoever arising) which The Customer may incur as a result of a suspension or termination of the Service.

11. LIABILITY

11.1 Excluded Damages TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR (1) INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, REPUTATIONAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND; (2) COSTS OF PROCUREMENT, COVER, OR SUBSTITUTE GOODS OR SERVICES; (3) LOSS OF USE, LOSS OR CORRUPTION OF DATA; OR (4) LOSS OF BUSINESS OPPORTUNITIES, PROFITS, GOODWILL, OR SAVINGS, WHETHER IN ANY OF THE FOREGOING, ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR ANY OTHER THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN INFORMED IN ADVANCE OF SUCH DAMAGES OR SUCH



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DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. NEITHER PARTY WILL BE LIABLE FOR ACTIONS REASONABLY TAKEN TO COMPLY WITH LAW.

11.2 Direct Damages EXCEPT AS SET FORTH HEREIN, THE TOTAL CUMULATIVE LIABILITY OF THE PARTIES UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNTS PAID OR PAYABLE UNDER THIS AGREEMENT DURING THE PREVIOUS SIX (6) MONTHS. LIMITATIONS UNDER THIS SECTION 10(B) (DIRECT DAMAGES) WILL NOT APPLY TO: I) CUSTOMER PAYMENT OBLIGATIONS; II) EITHER PARTY'S LIABILITY FOR INFRINGEMENT OF THE OTHER PARTY'S IP RIGHTS; III) EITHER PARTY'S LIABILITY RESULTING FROM GROSS NEGLIGENCE, FRAUD, OR WILLFUL OR CRIMINAL MISCONDUCT; OR IV) CUSTOMER'S LIABILITY RESULTING FROM USE OF THE SERVICES IN BREACH OF THE ACCEPTABLE USE POLICY OR EMERGENCY SERVICES POLICY.

NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE ANY LIABILITY WHICH MAY NOT BE RESTRICTED, LIMITED OR EXCLUDED PURSUANT TO APPLICABLE LAW.

11.3 Survival The limitations of liability contained in this Section 10 (Limitation of Liability) will survive termination or expiration of this Agreement and apply in any and all circumstances (except as expressly set forth above), including without limitation in the event of any failure of the essential purpose of any limited warranty or available remedy provided herein