



## Fusion Connect, Inc. Basic Terms and Conditions

These Basic Terms and Conditions (“Basic Terms and Conditions”) form a part of a binding contract between Fusion Connect, Inc. a Delaware corporation (“**Parent**”), solely on behalf of its subsidiaries (with such subsidiaries of Parent being hereinafter collectively referred to as “**Fusion**”) identified from time-to-time in Service Orders (as defined below), and the individual or legal entity accepting these Basic Terms and Conditions (“**Customer**”) in conjunction with a Fusion Service Order (as defined below), and apply to Customer’s use of Fusion’s products and services (each a “**Service**”). Fusion and Customer may sometimes be referred to herein as a “**Party**” and collectively as the “**Parties**”.

### Article 1 – Agreement Structure

1.1 **Agreement Structure.** Additional terms and conditions that apply to unregulated Services are set forth in service addendums (the “**Service Addendums**”) for that Service, which Service Addendum will include the service level commitment, if any, associated with that Service. A copy of Fusion’s Service Addendums which are incorporated herein by reference are available on its web site at [www.fusionconnect.com/legal](http://www.fusionconnect.com/legal). Additional terms and conditions that apply to regulated Services are set forth in the pertinent tariff(s) now or hereafter filed by Fusion with any applicable federal or state regulatory agency (each a “**Tariff**”). A copy of Fusion’s Tariffs which are incorporated herein by reference are available on its web site at [www.fusionconnect.com/tariffs](http://www.fusionconnect.com/tariffs). These Basic Terms and Conditions, the applicable Service Addendums and/or Tariffs, as the case may be, the Service Orders and the other documents identified and incorporated by reference herein are collectively referred to as the “**Agreement**”.

1.2 **Service Orders; Credit Information.** Customer may request Fusion to provide a Service by submitting a service order form in a form provided by Fusion from time to time (each a “**Service Order**”). Customer acknowledges that it is solely responsible for the accuracy of all Service Orders and other information that it provides Fusion from time-to-time. Customer understands and acknowledges that certain Taxes, Fees, and Regulatory Surcharges (as defined below) associated with a Service may not be quoted in the Service Order. By signing a Service Order, Customer agrees to the terms and conditions in the Agreement and authorizes Fusion to obtain any credit information necessary to establish Customer’s account. Customer authorizes release of such information by any and all third parties to Fusion and its affiliates. Fusion reserves the right, in its sole discretion, to decline new Service Orders and to require that Customer post appropriate advance payments, in an amount not to exceed three (3) months of monthly recurring charges, for new and existing Services. Any required pre-payments must be paid to Fusion within seven (7) days. *Service Orders need only be executed by Customer.* The provisioning of a Service by Fusion shall indicate its acceptance of the applicable Service Order.

1.3 **Order of Precedence.** In the event of a conflict between the terms of a Service Order, these Basic Terms and Conditions, a Service Addendum, the pertinent Tariff and Fusion’s AUP (as defined below), the following order of precedence shall apply (i) the Service Order, (ii) the Service Addendums, (iii) the Basic Terms and Conditions, (iv) the pertinent Tariff, and (v) the AUP.

### Article 2 – Service Order Term and Pricing

The initial term for each Service shall be set forth in the applicable Service Order (the “**Initial Service Term**”). The Initial Service Term for a Service shall begin on the date that Fusion notifies Customer that the Service has been installed or activated (“**Service Activation Date**”). Except as otherwise noted in the applicable Service Addendum, the term of each Service Order shall automatically continue in full force for successive one (1) year renewal terms (each a “**Renewal Service Term**”) unless a Party provides the other Party written notice of termination at least forty five (45) days prior to the expiration of the Initial or Renewal Service Term (collectively the “**Term**”). In the event that Customer provides notice of non-renewal or requests that the Services continue on a month-to-month basis, at the end of the then current Term, Fusion reserves the right to increase Customer’s pricing automatically without notice by up to twenty percent (20%). Fusion may modify the monthly recurring charges for Services at any time upon no less than thirty (30) days’ notice to Customer.

### Article 3 – Payment; Disputes; Fraud; Taxes and Surcharges

3.1     **Billing Commencement; Withholding; Tax Exemption Certificate.** Customer's obligation to begin paying for the Services (the "Billing Start Date") starts on the Service Activation Date; *provided however*, that Fusion may begin billing Customer immediately for a Service if installation is delayed by Customer and/or Customer's landlord; and *provided further* that billing for a multi-location Service Order, and the Initial Service Term for the Services at each Customer site, shall commence when each location is installed and not when all locations covered by that Service Order have been delivered by Fusion. Fusion shall bill Customer monthly in advance for all monthly recurring charges, non-recurring upfront charges (if any) and all applicable Taxes, Fees, and Regulatory Surcharges (as each term is defined below). Usage-based charges and other non-recurring charges will be invoiced by Fusion monthly in arrears. All payments made by Customer must be made without deduction or withholding for or on account of any Tax. If Customer is required by law to make any deduction or withholding from any payment due to Fusion under the Agreement, then, notwithstanding any such deduction or withholding for Taxes, the net amount to be paid to Fusion shall not be less than the amount that Fusion would have received had no such deduction or withholding been required. In the event and to the extent Customer believes that it is exempt under applicable law from any Tax, Customer shall provide Fusion an appropriate tax exemption certificate, in a form reasonably acceptable to Fusion and to the relevant jurisdiction, demonstrating that it maintains tax-exempt status from collection of all or part of the Taxes. In the event that Customer provides a tax exemption certificate in accordance with the preceding sentence, it shall be effective as of the date Fusion receives it. If Customer has not provided such certificate(s), Fusion shall be entitled to include on any invoice, and Customer shall be obligated to pay, any lawfully imposed Tax.

3.2     **Invoicing; Payment Terms; Late Payment Fees.** All invoices are due upon receipt, payable in US dollars by company check or wire transfer. Unless different payment terms are set forth on the applicable Service Addendum, if Customer fails to pay any amount due within thirty (30) days of the applicable invoice date, then, in addition to any other remedies available to Fusion under the Agreement, Fusion may charge Customer interest on the overdue amounts at a rate of one and one half percent (1.5%) per month until such sum is paid in full. Payments will be applied to Customer's account according to Customer's written remittance instructions. If no remittance instructions are provided, payments will be applied to the oldest outstanding balance on Customer's account. Customer will be responsible to Fusion for any expenses (including collection costs, reasonable attorneys' fees and court costs) incurred by Fusion to collect overdue charges. Customer shall pay a fee of twenty five dollars (\$25) for each returned check or other rejected payment. If Fusion elects to reinstate any Service that has been suspended, Fusion may charge Customer a reinstatement fee.

3.3     **Back-billing.** Fusion will endeavor to bill Customer for Services on a timely basis. However, unless proscribed by law, Customer shall nevertheless be liable for all charges irrespective of any delay in billing. No such delay shall constitute a basis for a claim of waiver, estoppel or other excuse of Customer's obligation to pay for the Services provided irrespective of the length of the delay. Nothing in the Agreement shall toll the running of any statute of limitations applicable to such obligations.

3.4     **Invoice Disputes.** Customer may dispute, in good faith, an invoice or a portion of an invoice by providing written notice to Fusion within sixty (60) days from the date of the applicable invoice. To be valid, any notice of dispute must be accompanied by documentation supporting the dispute. In the event of a billing dispute, Customer shall pay all undisputed amounts by the applicable due date. If Customer fails to pay the undisputed charges by the applicable due date, Fusion may, without further notice, exercise its rights set forth elsewhere in the Agreement. If Fusion does not receive written notification of a Customer dispute within such sixty (60) day-period, Customer shall be deemed to have waived its right to dispute such charges for any reason. Fusion will attempt to respond to any dispute within fifteen (15) business days of receipt of a written dispute (together with supporting documentation) with its determination of the validity of the dispute and, if an adjustment to the disputed invoice is required, Fusion shall use its commercially reasonable efforts to make any applicable adjustments within two (2) billing periods following its determination. Acceptance of late or partial payments (even if marked "Paid in Full" or with other such verbiage) shall not waive any of Fusion's rights to collect the full amount of Customer's charges for the Service. In the event a dispute is resolved against Customer, Customer shall pay Fusion the total amount withheld, plus interest as set forth herein from the date the payment was originally due, within five (5) business days of Fusion's determination.

3.5     **Obligation to Pay; Fraudulent Use of a Service.** Customer expressly acknowledges and agrees that it shall make payment in full to Fusion for all Services provided by Fusion pursuant to the Agreement and properly billed to Customer, whether authorized or not, it being the express intention of the Parties that Customer, and not Fusion, shall bear the risk of loss arising from any unauthorized or fraudulent usage of the Services. Fusion reserves the right, but is not required, to take any and all action it deems appropriate (including blocking access to particular calling numbers or geographic areas) to prevent or terminate any fraud or abuse in connection with the Services, or any use thereof, provided, however, that any such action shall be consistent with applicable federal and state laws, rules, and regulations.

**3.6 Taxes; Fees; and Regulatory Surcharges.** The Services may be subject to a combination of fees, and federal, state and local taxes or surcharges. Fusion may add line items to Customer's monthly invoice for applicable local, state and federal taxes ("Taxes") that it is required to collect and remit to governmental entities in connection with Customer's Services and for certain other variable fees and expenses ("Fees") Fusion incurs as a result of local, state and federal regulation, including its payments to governmental entities and agents, and to underlying network service providers, and its internal costs of compliance associated with taxes and regulatory fees and programs. These Fees *may include, but are not limited to*, state disability access and universal service programs; franchise fees; Federal Communications Commission ("FCC") and state regulatory fees; charges from the FCC's numbering plan and local number portability administrator; and utility, gross receipts, telecommunications, excise or other taxes not recovered by Fusion through a separate line item. Because these expenses fluctuate, Fusion may charge a separate monthly regulatory surcharge (the "Regulatory Surcharge") to recover these costs rather than include them in its monthly recurring charges. Customer agrees to pay all invoiced Taxes, Fees and Regulatory Surcharges. For a list of the Taxes, Fees, and Regulatory Surcharges imposed by Fusion please see the Fusion Fees and Surcharges Guide located at [www.fusionconnect.com/regulatory](http://www.fusionconnect.com/regulatory) which is hereby incorporated by reference.

#### **Article 4 – Termination; Suspension of Service**

**4.1 Termination; Suspension of Service.** Fusion may terminate any or all Service Orders, in whole or in part, or suspend Services without any liability to Customer at any time if: (a) Customer fails to timely pay any amounts when due, (b) Customer fails to perform or comply with any other obligation under the Agreement; (c) Customer or anyone using the Services fails to comply with or violates the AUP (as defined below); (d) Customer, or anyone using any of the Services, uses or operates any Service in a manner that, in Fusion's determination, results in harm to Fusion, its network, or other customers of Fusion; (e) Customer files for bankruptcy or insolvency or a trustee or receiver is appointed over all or some of its assets, or any other similar event occurs with respect to Customer; or (f) Fusion determines that Customer has resold or otherwise transferred the Services and/or any associated Software in violation of this Agreement (each such event a "Termination For Breach").

**4.2 Early Termination.** In the event that Fusion Terminates for Breach, or Customer elects to terminate any Service prior to the expiration of the Term without cause, except as otherwise detailed in the applicable Tariff or Services Addendum for a Service, Customer shall pay, in addition to any amounts owed Fusion through the effective date of the termination, an early termination fee equal to (i) the then current monthly recurring charge for the Service, *multiplied by* (ii) the number of months remaining in the Term *plus* (iii) any previously waived non-recurring charges and/or any promotional credits provided to Customer in connection with its purchase of the terminated Services (the "Early Termination Fee").

**4.3 Genuine Pre-estimate of Loss.** Customer acknowledges that the Early Termination Fee is a genuine pre-estimation of the loss and damage likely to be suffered by Fusion and are not a penalty. Any applicable Early Termination Fee must be paid by Customer within thirty (30) days of the date of the applicable invoice including those charges.

#### **Article 5 - Service Credits; Disclaimer of Warranties; Limitation of Liabilities**

**5.1 Service Credits.** Customer agrees that its sole remedy for a failure of Fusion to comply with the service level commitment, if any, associated with a Service, will be to obtain the credit(s) set forth in the applicable Service Addendum. Notwithstanding anything to the contrary contained in the Agreement, except as otherwise specified in the applicable service level commitment, such credit shall be Customer's sole and exclusive remedy with respect to the failure or non-performance of the Service.

**5.2 Disclaimer of Warranties.** EXCEPT AS EXPRESSLY STATED ELSEWHERE HEREIN OR IN ANY APPLICABLE SERVICE LEVEL AGREEMENT OR SERVICE ADDENDUM, EACH SERVICE AND ANY PRODUCTS OR SOFTWARE PROVIDED IN CONNECTION THEREWITH IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND CUSTOMER'S USE OF THE SERVICE, PRODUCT AND SOFTWARE IS AT ITS OWN RISK. FUSION DOES NOT MAKE, AND EXPLICITLY DISCLAIMS, ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AS WELL AS ANY WARRANTIES THAT MAY ARISE FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. FUSION DOES NOT GUARANTEE THAT A SERVICE WILL BE INSTALLED BY A PARTICULAR DATE. FUSION DOES NOT WARRANT THAT A SERVICE, PRODUCT OR ASSOCIATED SOFTWARE WILL BE ERROR FREE, UNINTERRUPTED OR SECURE FROM THIRD-PARTY ATTACKS. THE PRECEDING DISCLAIMERS INCLUDE AN EXPRESS ACKNOWLEDGMENT BY CUSTOMER THAT, AMONG OTHER

THINGS, FUSION DOES NOT MAKE ANY PROMISE TO CUSTOMER THAT: (1) A SERVICE OR PRODUCT IS FREE FROM DEFECTS; (2) A SERVICE OR PRODUCT WILL PERFORM IN ANY SPECIFIC MANNER, AT A PARTICULAR SPEED, OR TO ANY PARTICULAR STANDARD; (3) A MANAGED OR OTHER SECURITY SERVICE WILL PROVIDE ANY PARTICULAR LEVEL OF PROTECTION FOR CUSTOMER'S COMPUTERS, NETWORKS OR SYSTEMS; OR (4) THAT A HOSTED SERVICE WILL MEET ANY PARTICULAR LEVEL OF SECURITY, RELIABILITY OR COMPLIANCE.

5.3 **Limitation of Liabilities.**

(a) **Disclaimer.** NOTWITHSTANDING ANYTHING ELSE SET FORTH IN THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE UNDER ANY CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OF ANY NATURE, OR FOR ANY LOST REVENUES, LOST PROFITS OR LOSS OF BUSINESS OR POTENTIAL BUSINESS OR DATA OR SERVICES, LOSS OF GOODWILL, WORK STOPPAGE, IN EACH CASE WHETHER OR NOT SUCH LOSSES WERE FORESEEABLE BY SUCH PARTY.

(b) **Cap on Liability.** FUSION'S CUMULATIVE LIABILITY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR ANY ACTION ARISING OUT OF THIS AGREEMENT SHALL NOT EXCEED THREE (3) MONTHS OF MONTHLY RECURRING CHARGES. CUSTOMER ACKNOWLEDGES THAT FUSION HAS ENTERED INTO THIS AGREEMENT AND HAS SET ITS PRICES IN PART IN RELIANCE ON THESE LIABILITY AND REMEDY LIMITS, AND THAT THEY FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

5.4 **Release of Building Owners.** In the event that Fusion has a building access agreement with the owner of the building to which all or some of the Services are being provided, Customer agrees to waive and release the owner of the building in which its premises are located and the building's mortgagees and property and telecommunications managers, and each of their respective owners, partners, directors, officers, managers, employees, agents and contractors (collectively, the "**Owner Released Parties**") from any liability in connection with any damages whatsoever incurred by Customer, including lost revenues, which arise, or are alleged to arise, out of any interruption of or defect in the Services to be provided by Fusion under the Agreement, regardless of whether such interruption or defect is caused by the ordinary negligence (but not the gross negligence or willful misconduct) of an Owner Released Party.

### **Article 6 – Indemnification**

Customer shall defend, indemnify and hold Fusion, its affiliates, directors, officers, employees, members, managers and contractors harmless from any and all third party claims, liabilities, losses, damages, expenses, or causes of action, including, without limitation, reasonable legal fees and expenses (collectively, "**Losses**") arising from or in connection with: (i) Customer's resale or redistribution of any Service or Software to any end-user via any method whether permitted or prohibited by the terms of the Agreement; (ii) Customer's illegal use of, or any misuse of any Service or Software in violation of the Agreement, laws, rules or regulations (including any and all such illegal use or misuse by Customer's end users, employees, agents, and contractors); (iii) bodily injuries (including death) to any person, damage to any property, real or personal (public or private) occurring on Customer's premises unless directly caused by Fusion or its employees, agents or contractors; and (iv) any gross negligence or willful misconduct of Customer, its end users, employees, agents and contractors.

### **Article 7 – Confidentiality; Publicity**

7.1 **Confidentiality.** Each Party acknowledges that it will have access to certain confidential information of the other Party concerning the other Party's business, plans, customers, technology, and products, including the terms of the Agreement ("**Confidential Information**"). Confidential Information will include, but not be limited to, each Party's proprietary software and customer information. Each Party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by the Agreement, nor disclose to any third party (except as required by law or to that Party's attorneys, accountants and other advisors as reasonably necessary), any of the other Party's Confidential Information and will take reasonable precautions to protect the confidentiality of such Confidential Information. Information will not be deemed Confidential Information hereunder if such information: (i) is known to the receiving Party prior to receipt from the disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (ii) becomes known (independently of disclosure by the disclosing Party) to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of the Agreement by the receiving Party; (iv) is independently developed by the receiving Party; or (v) is required to be

released by law or regulation, provided that, to the extent legally permitted, the receiving Party provides prompt written notice to the disclosing Party of such impending release, and the receiving Party cooperates fully with the disclosing Party (at the expense of the disclosing Party) to minimize such release. Fusion acknowledges that, during the course of the Agreement, it may receive on Customer's behalf or be entrusted with data concerning website traffic, visitors, and usage (including, but not limited to, personally identifying information). Fusion agrees that such data is Confidential Information which is owned exclusively by Customer and Fusion agrees that it will not use such Confidential Information for any purpose except the performance of the Agreement and the amendments hereto.

**7.2 Publicity.** Neither Party shall furnish or use any advertising, sales, promotional or other publicity materials that use the other Party's name, logo, trademarks or service marks without the prior written approval of the other Party. Neither Party may use the other Party's trademarks, service marks or trade names ("**Marks**") or otherwise refer to the other Party in any marketing, promotional or advertising materials or activities, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Each Party's Marks are proprietary to such Party and nothing in these Basic Terms and Conditions constitutes the grant of a general license for their use. Upon termination of the Agreement or delivery of written notice by a Party, all rights of the other Party to use the Marks of the other Party shall expire.

## **Article 8 – Customer's Obligations**

**8.1 Use of Services and Software.** Customer shall use the Services and Software (as defined below) in accordance with all applicable laws, rules and regulations and in accordance with applicable Fusion policies. ***Unless agreed to in writing by Fusion, Customer shall not resell any Services.*** In addition, Customer shall not copy, modify, resell or redistribute the Software or the Services, create or recreate the source code for the Services or any Software, or re-engineer, reverse engineer, decompile, disassemble or attempt in any way to disable, deactivate or render ineffective the password protection in the Services or any Software. Some Software necessary to fully utilize the functionality of the Services may require Customer to accept additional terms and conditions required by the third-Party providers of such Software (including "Click-Thru" or "Shrink-Wrap" terms). Customer agrees to comply with any such additional terms and conditions required for the Service. Fusion is not responsible for the configuration of Customer owned equipment which may be necessary for Customer's systems to correctly function with the Services Software. If Customer has opted to provide its own equipment, Customer will be solely responsible for procuring any firmware licenses and/or updates, and Fusion shall have no obligation to provide such firmware licenses or upgrades. If, at any time after execution of a Service Order, Customer causes a delay in Service installation or port dates, Customer shall be responsible for any additional cost and fees incurred by Fusion or Customer as a result of any such delay.

**8.2 AUP.** Customer shall comply with (and will ensure that all users of the Service comply with) Fusion's Acceptable Use Policy located on Fusion's website at [www.fusionconnect.com/legal](http://www.fusionconnect.com/legal) ("AUP"). Fusion may suspend or cancel the Services if Customer (or anyone that uses the Services provided to Customer) violates Fusion's AUP. In most cases, Fusion will endeavor to notify Customer of such violations before taking any action, but Fusion may act without such notice and without liability to prevent harm or damage to Fusion's, Customer's or a third party's property, networks or systems. Customer further acknowledges that Fusion may amend the AUP from time to time without notice, and Customer is responsible for compliance with the then current version of the AUP.

## **Article 9 – General Provisions**

**9.1 Software.** If Fusion provides Customer with software ("**Software**") or other intellectual property (collectively, the "**IP**") for use in connection with any Service or equipment then Customer shall have a non-exclusive, non-transferable, revocable (for breach only) license to use such IP solely for its own internal use to the extent necessary to use the Service. Such license shall not entitle Customer to claim title to, or any ownership interest in, the IP (or any derivations or improvements thereto) and Customer will execute any documentation reasonably required by Fusion to document Fusions' existing and continued ownership of, or right to, the IP. Customer agrees that it will not and will not permit its agents or representatives or others to: (a) copy the IP except as permitted by Fusion or except as reasonably required for backup purposes; (b) reverse engineer, decompile or disassemble the IP except to the extent that it cannot be prohibited from so doing under applicable law; (c) sell, lease, license or sub-license the IP; (d) create, write or develop any derivative IP or any other software program based on the licensed IP or any Confidential Information of Fusion; or (e) take any action prohibited by the owner of the IP. The grant of a license in the IP is intended by the Parties to constitute a license of intellectual property in accordance with the provisions of 11 U.S.C. Section 365(n) and similar provisions of law in other countries where such rights exist and the IP is being used. Other than the limited IP license granted in this Section, nothing in the Agreement shall be construed as granting any right or license under any copyrights, trademarks, service marks, trade names, inventions or patents, whether now or hereafter owned or controlled by either Party.

**9.2     Delivery of the Service; Customer Premise Equipment.**     Fusion reserves the right to deliver a Service using such delivery technology and/or facilities as it chooses from time to time, and Customer acknowledges that the delivery of a Service over certain technologies may require the installation of customer premise equipment (“CPE”). At Fusion’s option, CPE may be purchased by Customer, or Fusion may rent the CPE to Customer. If Customer purchases the CPE, title shall remain with Fusion until Customer has paid the full purchase price associated with the CPE. Any and all warranties for purchased CPE are set forth in the applicable Service Addendum. If Customer is renting the CPE, as indicated on the applicable Service Order, the CPE will, at all times, remain the property of Fusion. During the Term, Fusion will replace rented CPE at no additional cost if such CPE is damaged due to no fault of Customer. In the event that Customer fails to return any CPE to Fusion (or, at Fusion’s option, to permit recovery of CPE by Fusion) in good working order, reasonable wear and tear excepted, within thirty (30) days after termination of the Service(s), Customer shall be responsible for the full replacement cost of the CPE and shall pay Fusion all charges associated with the recovery of that equipment.

**9.3     Cooperation with Law Enforcement.**     Fusion may cooperate with law enforcement organizations that have lawfully requested pursuant to a valid subpoena or court order (i) trap and traces, pen registers, wire taps and similar call intercept methods, and (ii) information regarding Customer or any end user of Customer and provide such organizations with any information requested, including, but not limited to, names, email addresses, mailing or contact addresses, IP addresses, telephone numbers, call detail records or call content and email records.

**9.4     Network Maintenance.**     Customer understands that Fusion may, from time to time, need to interrupt its provision of Services for maintenance and other operational reasons, and that Customer shall not receive any compensation for such interruptions. Fusion will use reasonable efforts to provide notice to Customer of such interruptions.

**9.5     Emergency 911 Services.**     The FCC requires that Fusion, like all VoIP service providers, inform its customers of differences between the 911 and E911 access capabilities available with Fusion Services as compared to the 911 and E911 access capability available with traditional wireline non-VoIP telephone service. The “Important 911 and E911 Disclosure and Notice” found at [www.fusionconnect.com/regulatory](http://www.fusionconnect.com/regulatory) is a material part of these Basic Terms and Conditions and is hereby incorporated by reference. By using a Service, Customer acknowledges that it has read and understands the foregoing disclosure.

## **Article 10 – Miscellaneous Provisions**

**10.1     Notices.** All notices and other communications under the Agreement shall be in writing and shall be deemed to have been delivered in the absence of evidence of earlier delivery: (a) on the delivery date, if delivered by hand; (b) the next business day after being deposited for delivery with a recognized overnight courier; or (c) three (3) business days after deposit in the mail. Notices sent to Customer must be sent to Customer at the address set forth on the applicable Service Order and any notice to Fusion must be in writing and must be sent to: Fusion Connect, Inc., c/o Customer Billing 210 Interstate North Parkway, Suite 200, Atlanta, GA 30339. Either Party may, by similar notice given, change the notice address to which future notices or other communications shall be sent.

**10.2     Force Majeure.** Each Party’s delay in, or failure of, performance under the Agreement shall be excused to the extent that such failure or delay is caused by acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other environmental disturbances, unusual severe weather, inability to secure products or services of other persons or transportation facilities, or other causes beyond the reasonable control of the Party. If any force majeure event occurs, the affected party shall give reasonable notice to the other Party and take reasonable steps to correct the excuse of performance condition. Notwithstanding the foregoing, Customer’s payment obligations shall not be suspended during any force majeure event.

**10.3     Independent Contractor.** The Parties agree that they are independent contractors and that this Agreement and relations between the Parties hereby established do not constitute a joint venture, agency or contract of employment between them, or any other similar relationship. Neither Party has the right or authority to create an obligation or responsibility on behalf of the other.

**10.4     No Third Party Beneficiaries.** No provision of the Agreement shall be enforceable by any third party.

**10.5     Assignment.** Customer may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of Fusion. Fusion may assign or otherwise transfer any of its rights under this Agreement to any subsidiary, parent or affiliated company or to a successor company pursuant to a reorganization or merger of its

business or to any successor pursuant to any sale or transfer of all or substantially all of its assets, without the prior consent of Customer.

**10.6 Customer Affiliates.** Customer Affiliates may order Services under this Agreement by executing and returning to Fusion a joinder agreement in form and substance acceptable to Fusion. For the purposes of this Section, a Customer Affiliate shall mean an entity that directly or indirectly, through one or more intermediaries, owns more than 50% of the outstanding voting securities of Customer, and (ii) an entity that directly or indirectly through one or more intermediaries, is controlled by Customer.

**10.7 Governing Law, Jurisdiction; Venue; Waiver of Jury Trial; No Class Action Law Suits.** The Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without regard to choice of law principles, except to the extent that the Communications Act of 1934, as amended and interpreted applies to a Service ordered under the Agreement. The Parties agree that the exclusive venue for any and all controversies or claims arising out of or in connection with the Agreement shall be New York, New York. **EACH PARTY HEREBY VOLUNTARILY AND IRREVOCABLY WAIVES ALL DEFENSES OF LACK OF PERSONAL JURISDICTION AND FORUM NON-COVENIENS. IN ADDITION EACH PARTY VOLUNTARILY AND IRREVOCABLY WAIVES TRIAL BY JURY IN ANY ACTION OR OTHER PROCEEDING BROUGHT IN CONNECTION WITH THIS AGREEMENT. ANY ACTIONS OR LAWSUITS SHALL BE CONDUCTED SOLELY ON AN INDIVIDUAL BASIS AND THE PARTIES EXPRESSLY WAIVE ANY RIGHT TO BRING ANY ACTION, LAWSUIT OR PROCEEDING AS A CLASS OR COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION OR IN ANY OTHER PROCEEDING IN WHICH ANY PARTY ACTS OR PROPOSES TO ACT IN A REPRESENTATIVE CAPACITY.**

**10.8 Escheats and Unclaimed Property.** Any amounts owing to Customer at the end of the applicable Service Term (i.e., credit balances for amounts paid monthly in advance, security deposits and/or other similar items) shall be returned by Fusion to Customer, via check to the notice address listed herein, or as otherwise directed by Customer in writing, within two (2) billing cycles. In the event any such check is returned to Fusion as undeliverable and no forwarding address is available, Fusion shall have the right to cancel the check and retain the funds as Fusion assets and such amounts shall not be considered unclaimed property under any applicable state laws.

**10.9 Entire Agreement; Amendments.** The Agreement constitutes the entire and exclusive agreement between Fusion and Customer with respect to the Services ordered and Software provided, and the Agreement supersedes any prior agreements, promises, offers, communications, representations, statements, negotiations, understandings, or proposals, oral or written, between Customer and Fusion, or any of their respective employees, contractors or agents with respect to the Services. Customer acknowledges and agrees that Customer has not relied upon any statement, promise or representation by Fusion, any related entity or any of their respective employees, contractors or agents, including those relating to the performance, pricing, specifications or other aspects of any Service offered by Fusion and not expressly set forth in the Agreement. Except as set forth in the Agreement, the Agreement can only be modified, amended or waived through a writing signed by an authorized representative of each Party. Notwithstanding any other provision of this Agreement, Fusion reserves the right to alter, change or eliminate Services, or to change or eliminate areas where Fusion provides Services upon thirty (30) days' notice to Customer.

**10.10 Rules of Construction.** The captions or headings in the Agreement are strictly for convenience and shall not be considered in interpreting the Agreement or as amplifying or limiting any of its content. Words in the Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular. Unless expressly defined herein, words having well known technical or trade meaning shall be so construed. All listing of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires. Except as set forth in the Agreement, a Party's right or remedy shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not. Any reference to a statutory or regulatory provision includes reference to such statute or regulation as amended, modified or re-enacted from time to time. The Agreement has been fully negotiated between, and jointly drafted by, the Parties.

**10.11 Severability.** If any term, clause, provision, covenant or condition contained in the Agreement is adjudicated to be illegal or unenforceable, all other terms, clauses, provisions, covenants or conditions of the Agreement shall remain in force and effect, and the term, clause, provision, covenant or condition held illegal or unenforceable shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law.

**10.12 Survival.** The terms and conditions of the Agreement regarding confidentiality, indemnification, warranties, payment and all others that by their context are intended to survive the expiration or termination of the Agreement will survive and continue in force and effect.

10.13 **Waiver.** Failure by either Party to insist upon strict and complete performance of any or all terms or conditions contained in the Agreement shall not constitute nor be construed as a waiver of that Party's right to enforce such provision or any other provision.

10.14 **Counterparts and Electronic Signatures.** Service Orders or other documents requiring signature that are made a part of the Agreement may be executed in one or more counterparts, each of which taken together shall constitute one and the same instrument. Electronic signatures shall have the same force and effect as originals.

10.15 **CPNI Authorization.** Under federal law, Customer has the right, and Fusion has a duty, to protect certain information about Customer such as the quantity, technical configuration, type, destination, amount of usage, and bill details that Fusion maintains about Customer derived solely through its customer-carrier relationship. This type of information is known as Customer Proprietary Network Information ("**CPNI**"). By executing a Service Order Customer consents to the sharing of its CPNI or other personal information with Fusion and its successors-in-interest, agents and contractors solely for the purpose of developing or bringing to Customer's attention any products and services. This consent is valid until revoked by Customer. To revoke this consent at any time, Customer must 1) notify Fusion, in writing, at 210 Interstate North Parkway SE, Suite 200, Atlanta, GA 30339, Attention: Contract Administration, and provide the following information: (i) Customer name, (ii) Service billing address, (iii) telephone number(s), including area code(s), and (iv) Service account number; *or* 2) complete the online CPNI opt-out form available at <https://www.fusionconnect.com/CPNIdoptout/>.