

Terms of Service

The terms of service set forth below (the "Terms of Service" or "Agreement") apply to your use of the Service and Equipment (as defined below) provided by Fusion Telecommunications International, Inc. ("Fusion"), as well as your access to the Fusion website (the "Website").

PLEASE READ SECTION 2(e) CAREFULLY BEFORE USING THE SERVICE. THIS SECTION EXPLAINS THE OPERATION AND LIMITATIONS OF VOIP E911 EMERGENCY CALLS.

1. Terms and Abbreviations.

The following terms and abbreviations apply to this Agreement:

"Account" means the account established by Customer for the use of the Service and Equipment.

"Affiliate" means a person or entity, other than Fusion, who is engaged by Fusion to assist in the sales, marketing, delivery, installation, or operation of Fusion's Service and Equipment.

"Customer" or **"you"** means the person, firm, corporation or other entity which orders, uses or cancels Fusion's Service and Equipment, and who is responsible for the payment of charges and for compliance with this Agreement.

"Customer Equipment" refers to Equipment or wiring that you acquire from a source other than Fusion and use in conjunction with the Service.

"Direct Inward Dialing" or **"DID"** refers to a Service feature that allows callers from the PSTN to directly reach a specific network telephone number or User of the Service.

"E911 Notice" means the notice posted on the Website stating Fusion's policy regarding the availability and limitations of E911 Service, as amended from time to time.

"Equipment" means equipment or wiring at your location(s) that is provided by Fusion and used in conjunction with the Service.

"Federal Communications Commission" or **"FCC"** refers to the U.S. Government agency that has the authority to regulate all interstate telecommunications, as well as all international telecommunications that originate or terminate in the United States.

"Fusion" means Fusion Telecommunications International, Inc.

"Internet Protocol" or **"IP"** refers to a standard protocol designed for use in interconnected systems of packet-switched computer communication networks.

"Privacy Policy" means the Privacy Policy posted on the Website, as amended from time to time.

"Public Switched Telephone Network" or **"PSTN"** refers to the traditional circuit switched local telephone network, which connects telephone users with each other for the purpose of communications. In common usage, the term PSTN may also include local wireless networks.

"Service" refers to the services provided by Fusion, including voice, data, and all other types of communications services. The individual services are described in detail on the Website.

"Software" means the computer programs developed, licensed or acquired by Fusion in object or executable-code versions only, licensed by you under this Agreement. The Software is for use solely in conjunction with the Service, Equipment, and Customer Equipment on the terms and conditions stated herein. The term "Software" includes updates and patches made available to you.

"User" means any person or entity that obtains or uses Fusion's Service and/or Equipment under this Agreement, regardless of whether such person or entity is authorized by you.

"Voice over Internet Protocol" or **"VoIP"** refers to a technology that enables people to use the Internet as the transmission medium for telephone calls by sending voice data in packets using IP rather than by traditional circuit switched technology.

"Website" means the Fusion website identified by the domain name www.fusiontel.com, along with any content set forth therein, as updated from time to time.

2. Terms and Conditions

(a). **Acceptance.** By ordering, activating, using, or paying for the Service or Equipment, you agree to be bound by this Agreement. Fusion reserves the right, with or without notice, to amend or modify these Terms of Service, and you agree to be bound by any amendment or modification. The Privacy Policy and E911 Notice shall be incorporated into this Agreement by reference. Copies of the Privacy Policy and E911 Notice are posted on the Website. Modifications or amendments to the Terms of Service, Privacy Policy and E911 Notice shall be effective at the time they are posted on the Website.

(b). **Term.** Unless otherwise terminated pursuant to this Agreement, the Service is offered for an initial term of service (the "Initial Term") specified in the Master Service Order ("MSO"), which term shall be a minimum of one (1) year. The Initial Term shall begin on the date Fusion activates the Service (the "Service Activation Date"). And continue until the expiration of the Initial Term. Following the Initial Term, this Agreement shall renew on a month-to-month basis, unless and until you cancel on thirty (30) days prior written notice. If you cancel the Service prior to the end of the Initial Term, you agree to pay to Fusion, as liquidated damages and not as a penalty, all non-recurring and monthly-recurring charges which would otherwise be due through the end of the Initial Term, including all applicable taxes and fees.

(c). **Use.** Customer is responsible for all use of the Service and Equipment associated with the Account. Customer accepts full responsibility and liability for such use, even if such use is without Customer's permission. The Service and Equipment provided under this Agreement may be used for any lawful purpose for which they are technically suited. Customer agrees not to utilize the Service or Equipment for any unlawful purpose. Fusion, in its sole discretion, may terminate Customer's Service without advance notice if it believes that Customer has violated these terms.

(d). **Fraud.** Customer agrees to notify Fusion promptly if it becomes aware of any fraudulent or unauthorized use of its Account, Service, or Equipment. Fusion shall not be liable for any damages whatsoever resulting from fraudulent or unauthorized use of Customer's Account, and the payment of all charges to Customer's account shall be the responsibility of Customer.

(e). **Limitations of E911 Service.** By use of the Service and Equipment, you acknowledge the limitations set forth in the E911 Notice, as well as those set forth below. While some individual services offer access to E911 Service, others may not. Fusion advises you to thoroughly understand the Service and the options available. By accepting these Terms of Service, you acknowledge that you have received the information, understand it, and assume the risks associated with the E911 limitations. Fusion may disclose to the FCC that you have in fact acknowledged the E911 Notice by virtue of your having accepted this Agreement.

(f). **Availability.** The Service and Equipment are offered subject to the availability of the necessary facilities and equipment, and subject to the provisions of this Agreement.

(g). **Compatibility.** The Service and Equipment may not be compatible with Customer Equipment, and Fusion is not required to maintain or repair Customer Equipment, or modify the Service to make it compatible with Customer Equipment.

(h). **Right to Suspend.** Fusion reserves the right to suspend, limit or discontinue offering or providing Service, when necessitated by conditions beyond its control, when you are using the Service in violation of the provisions of this Agreement, or when you are using the Service in violation of the law.

(i). **Limitations of Service and Equipment.** You may not be able to utilize the Service or Equipment, if the Equipment or Customer Equipment fails; if the power required to operate your computer, router, or modem, if applicable, fails; if your computer experiences hardware or software problems and/or viruses; if your Internet service provider fails to provide adequate services for any reason; if your hardware or software is improperly installed; or if you are blocked or otherwise unable to access our network. By using the Service and Equipment, you acknowledge that they may be limited in certain circumstances and may not work 100% of the time. Fusion will not be liable for errors in transmission or for failure to establish connections. In addition, the Service and Equipment may not be compatible with certain fax machines, firewalls or home alarm systems.

(j). **Rules and Regulations.** By using the Service and Equipment, you acknowledge that there are certain rules and regulations that may apply to the location from which you are utilizing the Service, and that they may be materially different from jurisdiction to jurisdiction. You agree to abide by all rules and regulations, including the exportation of data from the U.S. or other applicable jurisdictions.

(k). Required Maintenance. Fusion reserves the right to perform maintenance on or upgrade its network, its infrastructure, the Website, the Service and Equipment, or your Account, without prior notice or liability, even if such actions cause a partial or full disruption of the Service. Fusion may, in its sole discretion, add, change or delete features of the Website, features or functionality of the Service and Equipment, or features of your Account.

(l). Limitation of Fusion's Liabilities

(i) Fusion's liability for damages arising out of mistakes, interruptions, omissions, delays, errors, or defects which occur in the course of furnishing Service and Equipment or for any other reason, shall in no event exceed an amount equivalent to the proportionate charge to you for the period during which the faults occurred. In the event that you experience a loss of service due to Fusion's fault, Fusion will provide you with a credit on a pro-rata basis for the period of time that the Service was unavailable. In order to receive a credit, you will need to provide Fusion written notice within ten (10) days of the service interruption. The credit will be applied to your next service invoice.

(ii) Fusion shall not be liable for claim or loss, expense or damage (including indirect, special or consequential damage), for any interruption, delay, error, omission, or defect in the Service or Equipment provided under this Agreement, if caused by any person or entity other than Fusion; by any malfunction of any service, equipment, or facility provided by any other service provider; by any act of God, fire, war, threat of terrorism, civil disturbance, or act of government; or by any other cause beyond Fusion's direct control.

(iii) Fusion shall not be liable for, and it, and its directors, officers and employees shall be fully indemnified and held harmless by Customer against any claim or loss, expense, or damage (including indirect, special or consequential damage) for defamation, libel, slander, invasion of privacy, infringement of copy-right or patent, unauthorized use of any trademark, trade name or service mark, unfair competition, interference with or misappropriation or violation of any contract, proprietary or creative right, or any other injury to any person, property or entity arising out of the material, data, information, or other content revealed to, transmitted, or used by Fusion under this Agreement; or for any act or omission by you; or for any personal injury, property damage or death of any person caused directly or indirectly by the installation, maintenance, location, condition, operation, failure, presence, use or removal of Equipment or Customer Equipment; or failure or inability to access emergency services.

(iv) IN NO EVENT WILL FUSION BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR LOSS, EXPENSE, OR DAMAGE DUE TO LOSS OF REVENUES, PROFITS, SAVINGS, BUSINESS, OR GOODWILL, NOR WILL FUSION BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR EXEMPLARY, PROXIMATE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES.

(m). Warranty. OTHER THAN THE THIRD PARTY MANUFACTURERS' WARRANTIES THAT MAY BE APPLICABLE TO THE EQUIPMENT, FUSION MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY NATURE, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE OR EQUIPMENT THAT ARE THE SUBJECT OF THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, FUSION MAKES NO REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FUNCTION, WHETHER EXPRESS OR IMPLIED. FUSION MAKES NO WARRANTY THAT THE SERVICE OR EQUIPMENT WILL OPERATE UNINTERRUPTED OR ERROR FREE.

(n). Equipment. You are responsible for all costs at your premises, including but not limited to personnel, wiring, computer equipment, Internet access, electrical power, and the like, incurred in the use of the Service. Feel free to contact Fusion if you need assistance with the installation or use of the Equipment. In the event you have Customer Equipment, please contact the supplier or manufacturer of the Customer Equipment for any service related questions.

(o). Software

(i) License. Fusion hereby grants you a nonexclusive license (or sub-license) to install and use the Software in machine-readable form solely on your business or personal computer(s) and in conjunction with your use of the Service or Equipment. The term "Software" shall mean the computer programs developed, licensed or acquired by Fusion in object or executable-code versions only, licensed by you under this Agreement. The term "Software" includes updates and patches made available to you.

(ii) Restrictions. Fusion retains all right, title, and interest in and to the Software and accompanying documentation, and any rights not expressly granted to you, are herein reserved by Fusion. You may not copy, reverse engineer, disassemble, decompile, or translate the Software, or otherwise attempt to derive the source code of the Software, except to the extent (if at all) expressly

permitted under any applicable law. If applicable law expressly permits such activities, any information so discovered or derived shall be deemed to be the confidential proprietary information of Fusion and must be promptly disclosed by you to Fusion. Any attempt to transfer any of the rights, duties or obligations hereunder is void. You may not rent, lease or loan the Software. You may not reproduce, distribute, publicly perform, publicly display or create derivative works of or based on the Software or any part thereof.

(iii) No Warranty. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE USE OF THE SOFTWARE IS AT YOUR SOLE RISK. THE SOFTWARE (AND TECHNICAL SUPPORT, IF ANY) IS PROVIDED "AS IS" AND WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAWS, FUSION AND ANY APPLICABLE LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. FUSION DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET YOUR REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. FURTHERMORE, FUSION DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE IN TERMS OF ITS CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE.

(iv) Termination. Upon termination of this Agreement, you must delete or destroy all copies of the Software in your possession and, if requested, provide Fusion evidence in writing that you have done so.

(v) Third Party Software. The Software incorporates certain components licensed by Fusion from third parties. You agree that you will not use the third party components except in conjunction with use of the Software.

(p). Privacy

(i) Privacy Policy. Fusion's Privacy Policy governs the manner in which Fusion agrees to use and, if applicable, disclose Customer's Personal Information (as defined in the Privacy Policy). Fusion recommends that you read and understand the Privacy Policy. The Privacy Policy, which is incorporated by reference herein, is available on the Website.

(ii) Third-Party Networks. Fusion utilizes the public Internet and third-party networks in conjunction with its provision of the Service and the Website. Fusion makes no representation that the Internet or any third-party network will adequately protect the privacy of your Personal Information, and Fusion expressly denies any liability associated therewith.

(iii) Monitoring. Consistent with the Privacy Policy and applicable laws, Fusion may monitor your Account and your use of the Service.

(iv) Emergency. You allow Fusion to disclose Personal Information in the event its business is at risk or in an emergency.

3. Financial Terms

(a). Prices and Charges. Provided Customer is not in default, the monthly recurring prices and charges for Service in effect at the beginning of the Initial Term shall remain in effect during the Initial Term. Usage sensitive charges for local and/or long distance calls during the Initial Term shall be those charges posted on the Website. After the completion of the Initial Term, all prices and charges shall be those posted on the Website. Fusion may change its prices and charges for Service from time to time, without advance notice, including, but not limited to, the addition or subtraction of countries or territories and types of calls (such as mobile/cell and special networks). Decreases shall be effective at 24:00 GMT on the date they are posted on the Website. Increases shall be effective at 24:00 GMT one (1) day after their posting on the Website. Any increase to prices or charges that is imposed by any government or regulatory agency, or that are intended to recover costs associated with government or regulatory programs may, at Fusion's sole discretion, be effective immediately upon posting to the Website.

(b). Taxes and Fees

(i) Taxes. Federal, state, local and other governments or regulatory agencies may assess taxes, surcharges or fees ("Taxes") on Customer's purchase or use of the Service or Equipment. These Taxes may change from time to time, with or without notice to Customer. Customer is responsible for the payment of all applicable Taxes now in force or enacted in the future. Such amounts are in addition

to the charges paid for the Service and Equipment. If Customer is exempt from any or all Taxes, it must provide Fusion with an original certificate that satisfies applicable legal requirements attesting to its tax-exempt status. Tax exemption shall only apply from and after the date that Fusion receives such certificate.

(ii) Fees. In addition to any Taxes imposed by governments or regulatory agencies, Fusion reserves the right to charge various fees ("Fees"), including but not limited to activation fees, late payment fees, early termination fees, cancellation fees, E911 Service fees, and regulatory recovery fees. Fusion reserves the right to change Fees from time to time without advance notice. Decreases in Fees shall be effective at 24:00 GMT on the date they are posted on the Website. Increases to Fees shall be effective at 24:00 GMT one (1) day after their posting on the Website. Any increases to Fees that are imposed by a government or regulatory agency or that are intended to recover costs associated with government or regulatory programs may, in Fusion's sole discretion, be effective immediately upon posting to the Website.

(c). Billing and Payment

(i) Payment. Customer agrees to pay for all Service and equipment when payment is due. Payment shall be due on or before the due date specified on the invoice. Customer is solely responsible for any and all charges incurred as the result of the use of the Service associated with its Account, whether or not such charges were authorized or intended. Fusion may suspend, restrict, or cancel use of the Service and Equipment, if Customer does not make full payment of all billed charges by the due date.

(ii) Late Payments. Past due amounts shall accrue interest at the lower of 1.5% per month or the maximum rate allowed by law. Customer agrees to reimburse Fusion for reasonable attorneys' fees and other costs associated with collecting delinquent payments or with the breach of this Agreement.

(iii) Invoice and Statement Periods, Format and Delivery. Billing periods and invoice formats may vary. Fusion reserves the right to change the billing period, invoice format, or method of delivery from time to time, with or without notice to you. Unless otherwise agreed, all invoices shall be delivered electronically via the email address on file for your Account. It is your obligation to keep your Account information accurate and current. An incorrect or obsolete email addresses in no way releases you from any or all of your payment obligations.

(iv) Methods of Payment. Fusion accepts payment by check, credit card, debit card, and wire transfer, as well as through third-party payment agencies. All payments must be made in U.S. currency. In the event that your chosen method of payment is a credit card or debit card, you authorize Fusion to charge all invoice amounts due to your credit card or debit card. This authorization shall remain valid until you notify Fusion in writing that you wish to terminate your authorization.

(v) Prepayment. Unless otherwise specified, all monthly-recurring charges for Service and Equipment will be billed and paid one calendar month in advance.

(vi) Billing Disputes and Refunds. If you believe you have been charged in error, or if you believe you are due a refund, you must notify Fusion in writing within thirty (30) days after delivery of your invoice or within seven (7) days after receipt of your credit card or bank statement. All such disputes should be sent via governmental mail service or other standard delivery service, to the attention of the Billing Department of Fusion Telecommunications International, Inc., 1475 West Cypress Creek Rd., Suite 204, Ft. Lauderdale, FL 33309. Absent any notice from you as per the above, all charges and invoices will be considered correct and binding.

(d). Service Suspension, Termination and Restoration. Fusion may suspend or terminate your Account, and may terminate this Agreement, if you fail to meet any or all of your payment obligations. If your Account has been suspended or terminated, Fusion may, at its sole option, choose to restore or re-establish your access to the Website and the Service prior to the payment of all charges due. Such restoration or re-establishment shall not be construed as a waiver of Fusion's right to receive full payment for all charges due or as a waiver of any rights to suspend or disconnect Service for nonpayment of any such charges due and unpaid or for the violation of the provisions of these Terms and Conditions; nor shall the failure to suspend or disconnect Service for nonpayment of any past due Account or Accounts operate as a waiver or estoppel to suspend or disconnect service for nonpayment of such Account or of any other past due Account. Should Service be suspended for nonpayment of charges, it will be restored when appropriate payments are made and at Fusion's discretion.

(e). Termination Notice, Disconnection/Cancellation Fees. All Services that are billed on a monthly -recurring basis require that you provide Fusion with thirty (30) days' written notice of your desire to cancel. You are responsible for all charges for thirty (30) days from the date of receipt of your termination notice, and you may be charged a cancellation or early termination fee. If your service is disconnected due to your breach of any provision of this Agreement, you will be responsible for the full month's charges to the end of the current term, and you may be charged a disconnection fee. Fusion shall pursue collection for unpaid balances on disconnected Accounts, and may report to credit bureaus. We will charge your method of payment on file for the disconnection fee, if applicable, and any other outstanding charges.

(f). Authorization to Verify Credit Rating. You agree to supply Fusion with the information necessary to verify your credit rating prior to providing you access to the Website or any Service or Equipment. Fusion may also, during the term of this Agreement, update its information regarding your credit rating without notice to you. Fusion will keep any information received from credit bureaus confidential.

(g). Deposit. If Fusion determines, prior to providing you access to the Website or any Service or Equipment, or during the term of this Agreement, that it requires a deposit to insure your payment, you may be required to provide a deposit. In the event Fusion requires a deposit, the deposit will be held and applied as required by law. Fusion may apply your deposit to past due obligations, and any fees or other assessments to your Account without notice to you.

4. Trademarks. You agree not to use any of Fusion's trade names, trademarks, service marks or logos without its express written consent.

5. Service Disconnection. Fusion reserves the right to terminate the Service or your use of the Equipment in the event you are in violation of this Agreement. Fusion may be required by law to interrupt your service in the event it causes interference to other parties or equipment.

6. Indemnification. You agree to indemnify and hold Fusion, along with its stockholders, officers, directors, employees and agents, harmless from any and all loss, cost, damage, expense or liability, including without limitation, court costs and reasonable attorneys' fees, arising out of, in whole or in part, directly or indirectly, (i) the installation, operation, or maintenance of the Service or Equipment; (ii) your use of the Service, Equipment, or Customer Equipment; (iii) your violation of any applicable laws; and (iv) your breach of this Agreement.

7. Dispute Resolution

(a). Arbitration. In the event of any controversy or claim arising from or related to this Agreement, its performance or interpretation, the parties, in good faith, will initially attempt to resolve the dispute between them. Failing such resolution, the dispute will be settled by binding arbitration conducted in accordance with the Arbitration Rules of the American Arbitration Association ("AAA Rules"), and judgment upon the award rendered by the arbitrator(s) may be entered by any court with jurisdiction. The location of the arbitration shall be New York, New York. The cost of the arbitration, including the fees and expenses of the arbitrator(s), shall be shared equally by the parties, unless the arbitration award provides otherwise. Each party shall bear the cost of preparing and presenting its case. The arbitrator(s) are not empowered to award damages in excess of compensatory damages, and each party irrevocably waives any damages in excess of compensatory damages.

(b). Action to Collect Charges. Notwithstanding the above, Fusion shall be entitled to receive attorneys' fees and costs in the event it is required to institute an action to collect any amounts owed for Service or Equipment under this Agreement. In the event Fusion is required to initiate such an action, it shall not be limited to arbitration but may bring the action in civil court.

8. Governing Law. This Agreement shall be governed by, construed under and interpreted in accordance with the laws of the State of New York without regard to the conflicts of law principles thereof.

9. Severability. This Agreement is made subject to all present and future valid orders and regulations of any regulatory body having jurisdiction over the subject matter hereof and to the laws of the United States of America, any of its states, or any foreign governmental agency having jurisdiction. In the event this Agreement, or any of its provisions, shall be found contrary to or in conflict with any such order, rule, regulation, or law, this Agreement shall be deemed modified to the extent necessary to comply with any such order, rule, regulation or law, provided that such modification is consistent with the

form, intent and purpose of this Agreement. If any provision of this Agreement or part thereof is stricken in accordance with this section, then the stricken provision shall be replaced, to the extent possible, with the a legal, enforceable, and valid provision that is as similar to the stricken provision as is legally possible.

10. Notice

(a). To you: In the event Fusion is required to provide you with notice under this Agreement, it will provide electronic notice to the e-mail address on file. In the event that you change your e-mail address, please advise Fusion immediately. By your acceptance of these Terms of Service, you agree to electronic delivery of all required notifications, unless otherwise provided for herein.

(b). To us: Unless expressly stated otherwise in this Agreement, in the event you are required or desire to provide Fusion with notice, please send all correspondence as follows:

Fusion Telecommunications International, Inc.
420 Lexington Avenue, Suite 1718
New York, New York 10170

11. Waiver. The failure of either party to enforce or insist upon compliance with any of the provisions of this Agreement or the waiver thereof, in any instance, shall not be construed as a general waiver or relinquishment of any other provision of this Agreement.

12. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns and any User who uses the Services under your Account.

13. Assignment. You shall not assign any or all of your rights or obligations under this Agreement, or transfer ownership of the Account or any Service or Equipment, without Fusion's express written consent.

14. Amendment. This Agreement may not be amended except by a written document executed by the parties.

15. Merger. This Agreement (including its exhibits) supersedes and merges all prior agreements, promises, understandings, statements, representations, warranties, indemnities, covenants, and all inducements to the making of this Agreement relied upon by either party, whether written or oral, and embodies the parties' complete and entire agreement with respect to the subject matter hereof. No statement or agreement, oral or written, made before the execution of this Agreement shall vary or modify the written terms hereof in any way whatsoever.