

# FluentCloud

## Terms of Service Agreement

### 1. Definitions

- 1.1. FluentCloud. “FluentCloud” is a registered trade name of FluentStream Technologies, LLC, a Colorado limited liability company.
- 1.2. Customer. “Customer” shall be defined as the individual or legal entity entering into a legally binding contract with FluentCloud.
- 1.3. Services. “Services” means provisioning of voice services, server collocation, hardware sales and leases, data storage and all related support services.
- 1.4. Equipment. “Equipment” shall mean any hardware furnished to Customer in relation to the delivery of Services. This shall include, without limitation, telephone, routers, analog adapters, and other SIP related devices.
- 1.5. Agreement. “Agreement” refers to this Terms of Service between FluentCloud and Customer (collectively referred to as “Parties” or individually referred to as “Party”).
- 1.6. Customer Premises. “Customer Premises” shall refer to the physical office location of the Customer. This shall not be a mailing address or post office box. This does not include the location of any remote workers. Customer agrees to immediately notify FluentCloud of any changes to this address.
- 1.7. Term. The “Term” of this Contract shall begin on the day FluentCloud receives a signed Customer Sales Order by Customer, or the date payment is processed, whichever is later, and shall continue on a month-to-month basis until terminated as provided for herein. Customer may terminate service at any time by providing FluentCloud written notice 30 days prior to the termination date.

### 2. Payment & Services

- 2.1. Fixed Charges. The cost for Services requiring a fixed monthly fee shall be as stated in the Customer Sales Order and shall be payable monthly, in advance, plus all applicable taxes, tariffs, governmental assessments, surcharges and fees (collectively, the “Fixed

Service Fee(s)"). This agreed upon fee for Unlimited and Basic Extensions as stated in the Customer Sales Order will never increase. The Fixed Service Fee for the first month of Service shall be due and payable prior to installation of Service and if commencement of Service occurs on other than the first calendar day of the month then the Fixed Service Fee will be prorated by the number of calendar days remaining in the month. Thereafter, the Fixed Service Fee is due and payable in advance on the first day of each month and shall be considered late if not received by FluentCloud by the seventh (7) calendar day of each month.

2.1.1. Unlimited Voice Services. Unlimited voice services may not be used for monitoring services, data transmissions, transmission of broadcasts, transmission of recorded material, or other connections which do not consist of uninterrupted dialog between parties. If FluentCloud finds that you are using unlimited voice services for other than uninterrupted dialog, FluentCloud may, at its sole and absolute discretion, terminate Customer's service or change Customer plan to one with no unlimited usage components. FluentCloud will provide notice that it intends to take the above action and Customer may terminate the agreement. Upon Customer's decision to terminate the agreement, Customer shall not be entitled to a refund of any kind.

2.1.1.1. Basic Extension. Basic Extensions (also referred to as "Basic Users") are designed primarily for common area phones located in places such as lobbies, break rooms, conference rooms or cafeterias. A Basic Extension will not include a voicemail box and will have a soft cap of 500 minutes per month. A Basic Extension may also be used for Call Forwarding Extensions, or in instances where a User needs multiple deskphones.

2.1.1.2. One User per Extension. An Unlimited Extension may elect to have a deskphone, a PC-based softphone client or WebPhone, and a Smartphone Application. However, in no event, may a user be active on multiple devices simultaneously. If a user is determined to be in breach of this rule, then FluentStream, in its sole and absolute discretion, may elect to charge Customer for one (1) additional user. FluentStream shall notify Customer prior to making any additional charges. Said charge shall be effective immediately and shall not expire until the termination of the Agreement.

2.1.2. Telephone Equipment. All telephone equipment, unless separately purchased by Customer, shall be the property of FluentCloud. Customer acknowledges that FluentCloud sells new and refurbished equipment. All telephone equipment purchased by Customer from FluentCloud shall come with a one (1) year warranty against any defects, however, in FluentCloud's sole and absolute discretion, this warranty shall be waived if FluentCloud determines Customer's negligence was the cause of product

defect. In the event Customer obtains a free phone from FluentCloud, this free phone must be returned to FluentCloud upon the termination of service. Customer shall be responsible for all shipping charges related to the return of leased or free equipment. In the event Customer does not return leased or free equipment, then FluentCloud shall charge Customer \$125.00 per phone. This amount shall be due and payable within three (3) business days of the termination date.

2.1.2.1. Lease with Buyout Option. Customer may choose at any time to purchase the leased equipment outright from FluentCloud. The buyout price would be the purchase price listed on the Customer Sales Order less a credit for the Net Lease Value. The Net Lease Value shall equal the sum of the paid monthly lease payments minus a \$5.00 per month administrative fee. If Customer elects this option, their monthly Fixed Service Fee, per user, shall decrease by the amount paid per month to lease the phone upon FluentCloud receiving full payment for phone equipment. Upon purchase of the phone equipment, FluentCloud shall no longer be held liable or responsible for any damaged or defective phones.

2.1.2.2. Promotional Phones and Discounts. From time to time, FluentCloud may offer customers the right to use a free phone. Please note that the make and model of the free phone shall be as stated in the Customer Sales Order and is subject to change without notice. Unless explicitly stated in the Customer Sales Order, only Unlimited Extensions shall be eligible to receive a free phone. In addition, a minimum monthly commitment of \$50.00 per month is required to be eligible for any free phone offer. Customer shall retain the right to use the free phone for the duration of the Term. Customer agrees to return the free phone to FluentCloud immediately upon cancellation of the Service. In the event the customer fails to return the free phone within seven (7) days of cancelling the Service, the customer shall be subject to a fee of \$125.00 per phone. The customer agrees to return all phones in a timely manner and understands that a fee of \$125.00 per phone will be assessed if the phone is not returned within seven (7) days of cancelling the Service. FluentCloud may also offer initial discounts for phone equipment. The initial discount as stated in the Customer Sales Order will only apply to the initial purchase of equipment. Additional equipment purchased at a later date will be invoiced at the current retail rate for the specific make and model of the equipment unless otherwise stated in the Customer Sales Order.

2.1.2.3. Equipment Upgrade. Customer may elect to lease phone equipment from FluentCloud for the duration of the Term. Upon written request by the Customer, which shall be received by FluentCloud no later than thirty (30) days prior to the completion of the second (2) year of Term, FluentCloud shall provide Customer with new phone equipment at the completion of the second

(2) year of Term. New equipment shall be comparable to existing phone model. To be eligible for this equipment upgrade, Customer's account shall be current with no past-due amounts owed to FluentCloud.

- 2.1.2.4. Defective Equipment. Customer shall immediately notify FluentCloud of any defective Equipment. FluentCloud, in its sole discretion, will determine whether or not the Equipment is defective and if found defective, FluentCloud will ship Customer a replacement piece of hardware along with a prepaid return shipping label to return the defective item. Upon the termination of this Agreement, Customer agrees to promptly return all Equipment to FluentCloud. FluentCloud reserves the right to charge Customer for any damage, outside of normal wear and tear, to the Equipment.
- 2.1.2.5. Existing Hardware. In the event Customer uses existing telephone hardware, FluentCloud shall offer no product warranty or service guarantee. In addition, all existing phones shall incur a one-time setup and provisioning fee as outlined in the Customer Sales Order.

2.2. Variable Charges. There are certain calls which will incur additional usage charges, such as calls under a metered usage plan, calls to Alaska, Hawaii, international calls, inbound toll-free calls, conference calls, high rate rural areas and Directory Assistance. Metered usage is billed in full-minute increments, and actual usage is rounded up to the next full increment at the end of each call for billing purposes. Customer shall contact FluentCloud to setup international calling as this feature is initially disabled. At the time international calling is setup, FluentCloud will provide Customer with a list of usage rates. However, the rates for international calls are subject to change on ten (10) calendar day notice from FluentCloud. New rates are automatically effective on the eleventh (11) calendar day from the date of such notice. The cost for Services computed based on the usage by Customer and other variable factors shall be computed at the going per-minute rate at the time of the call and shall be payable monthly, using a cut-off date selected by FluentCloud, in arrears, plus all applicable taxes, tariffs, governmental assessments, surcharges and fees (collectively, the "Usage Fee(s)"). FluentCloud, upon ten (10) calendar day notice, can adjust the rates for voice services to include the cost, if any, or tariffs or assessments imposed upon FluentCloud by any governmental agency. The Usage Fees are due and payable on the first day of the month billed and shall be considered late if not received by FluentCloud by the twentieth (20) calendar day of such month.

2.2.1. Toll-Free Calls. Domestic inbound toll-free calls shall be billed at \$0.03 per minute or the rate listed in the Customer Sales Order, whichever is lower. Usage is billed in full minute increments, and actual usage is rounded up to the next full increment at the end of each

call for billing purposes. Toll-free numbers are only able to receive calls from US and Canada. Please note that incoming calls to toll-free numbers from Canada are disabled by default and incur a charge of \$0.06 per minute. Please contact a FluentCloud representative to enable inbound toll-free calls from Canada. In addition, toll-free numbers shall only have the ability to receive incoming calls from the US and Canada.

2.2.2. International Calls. International calls and calls to Alaska and Hawaii shall be billed based upon the most current set of international rates. Usage is billed in full-minute increments, and actual usage is rounded up to the next full increment at the end of each call for billing purposes. At any time, you may contact a FluentCloud representative to review an updated international rate sheet.

2.2.3. Conference Bridge. Conference calling is an optional feature that Customer may elect to enable on their account. The conference bridge includes a new local telephone number and usage shall be billed at \$0.06/min, per participant or the rate listed in the Customer Sales Order, whichever is lower. Usage is billed in full-minute increments, and actual usage is rounded up to the next full increment at the end of each call for billing purposes.

2.2.4. Shipping Costs. Customer shall be responsible for all applicable delivery fees related to the purchase of new equipment. FluentCloud shall pay for all shipping charges on returned or defective equipment. Standard shipping shall be via FedEx 2nd Day, FedEx Ground, or USPS Priority Mail and any charges for expedited shipping shall be paid by Customer.

2.3. Changes in Service. At any time Customer shall have the right to change the level of service or features included on the account. FluentCloud shall process all new requests to upgrade service or add additional features within five (5) business days. Customer shall be pro-rated for the first month of new service(s) in the event service is not started on the first of the month. In addition, in the event Customer must downgrade service or disable a feature, FluentCloud shall make the necessary changes to the account in the next billing cycle. FluentCloud may request Customer sign an updated Customer Sales Order in the event changes are made to existing service.

2.4. Payment Processing. Customer shall provide FluentCloud with a valid email address and a valid payment method. Customer shall immediately advise FluentCloud if changes occur to the email address on file and/or payment method changes or expires. Customer agrees to accept invoice via electronic delivery; no paper statements will be mailed to Customer. FluentCloud shall deliver an electronic invoice to Customer on the 2<sup>nd</sup> of every month for an amount including, the Fixed Monthly Fee plus Usage Fees

accrued over the previous month for each month until the Agreement is terminated or cancelled. FluentCloud shall then charge the Customer's credit card for all unpaid fees on the 5<sup>th</sup> of every month.

- 2.5. Fee Payments & Late Charges. Except for Usage Fees, all fees are due in advance on the first day of month. All Usage Fees (including charges for calls to Alaska, Hawaii, inbound toll-free calls and international calls) and any other non-recurring charges are due and payable in arrears on the first day of each month following the month they were incurred. Customer agrees to pay for all equipment and set-up fees at the time of request for such Services. Customer agrees to pay for the first month of service upon Customer's request for such Services. All payments, including payments paid in advance, are completely non-refundable. FluentStream reserves the right to deactivate service in the event payment is not received 10 days following the due date. Failure to pay in full will result in account suspension and FluentCloud shall have no liability for such suspension under any circumstances. Accounts will be reactivated, at FluentCloud's sole discretion, only after the account balance is paid in full. FluentCloud will assess an additional 1.5% (or the highest amount allowed by law, whichever is lower) per month late charge if your payment is more than thirty (30) days past due. In the event that payment is returned due to insufficient funds, Customer shall pay a \$50 processing fee. Customer shall be responsible and liable for any fees, including attorney and collection fees, that FluentCloud may incur in its efforts to collect any outstanding balances from Customer. Customer shall also be responsible for and agrees to pay any outstanding balances in the event Services are terminated or cancelled.
- 2.6. Taxes. Prices for the Services do not include any custom duties, sales, use, value added, excise, federal, state, local, public utility, universal service or other similar taxes. All such taxes shall be paid by Customer and will be added to any amounts otherwise charged to Customer unless Customer provides FluentCloud with an appropriate exemption certificate.
- 2.7. Credit Inquiries. Customer authorizes FluentCloud to make inquiries and to receive information about Customer's credit experience from others, enter this information in Customer's file, and disclose such information concerning Customer to appropriate third parties for reasonable business purposes. FluentCloud reserves the right, in its sole discretion, to refuse to provide Service based upon lack of creditworthiness, or in the alternative to require a security deposit that will be returned to Customer, without interest thereon, upon the expiration or termination of Services assuming all amounts due FluentCloud have been paid in full. FluentCloud shall have the right to offset against the security deposit, in part or in full, for any amounts due FluentCloud.

- 2.8. Telephone Numbers. FluentCloud offers both local numbers and toll-free numbers and will port existing numbers. In addition, Customers may choose to purchase custom vanity numbers. Each customer account includes either (i) one new or one existing local number; or (ii) one new or one existing toll-free number.
- 2.8.1. Local Telephone Number. One local number, either new or existing, is included in the purchase of services. FluentCloud will provide Customer with one (1) local telephone number per account. Additional local numbers are available and may be purchased or ported over for \$3.00 per month per number.
- 2.8.2. Toll-Free Number. FluentCloud has toll-free numbers available for an additional charge. Additional toll-free numbers are available and may be purchased for \$3.00 per month per number plus all applicable per minute usage charges.
- 2.8.3. Custom Vanity Number. In some rare cases, certain area codes are no longer readily available to FluentCloud (i.e. 212 area code for New York City). However, FluentCloud may sometimes be able to purchase these rare numbers from partners. Pricing for these custom vanity numbers vary and will be listed on the Customer Sales Order. FluentCloud does not guarantee the availability of specific numbers.
- 2.8.4. International Telephone Numbers. In some cases, FluentCloud may be able to obtain local inbound calling numbers from other countries. A minimum usage requirement of 475 minutes per International Telephone Number is required. All International numbers will incur a one-time setup fee, a monthly recurring fee, and a monthly rate per minute fee. The assignment of the International telephone number to a Customer does not constitute a transfer of ownership. FluentCloud reserves the right to deactivate the allocated phone numbers upon the termination of service and does not guarantee the right to port out numbers to another service provider. Please contact a FluentCloud representative for details regarding availability and pricing. Please note that all pricing is subject to change. Please note that e911 services are not available for International telephone numbers.
- 2.8.5. Number Port Fee. A one-time fee of \$15.00 will be charged per number ported over to our service from an existing service provider.
- 2.8.6. Number Disconnect Fee. At any time Customer may elect to remove a telephone number from their account. A one-time disconnect fee of \$10.00 will be charged for each telephone number removed from service.
- 2.8.7. Number Portability. FluentCloud will require a completed and signed Letter of Authorization (“LOA”) for any local numbers or toll-free numbers the customer wishes

to port. In addition, FluentCloud will require a recent, applicable copy of the Customer's phone bill which contains the Customer's Billing Telephone Number ("BTN") as well as a record of any other numbers that need to be ported. In some rare cases, a telephone number is not portable in which case FluentCloud will provide the Customer with a unique telephone number. Customer shall retain ownership of any purchased local or toll-free numbers and any existing numbers that were ported over to FluentCloud from a different service provider. By federal law, FluentCloud must release local and toll-free numbers back to the Customer in the event Customer elects to terminate service with FluentCloud. FluentCloud, its agents, affiliates, service providers and partners agree to comply with all state and federal laws regarding number portability.

- 2.9. Music On Hold: Customer shall assume liability for all music on hold recordings uploaded to FluentCloud. Customer agrees to conduct business in full compliance with all copyright laws. Furthermore, Customer agrees to indemnify FluentCloud for any copyright violations.
- 2.10. Ancillary Services. CallerID services are provided by FluentCloud based on availability of such services from FluentCloud's underlying providers. FluentCloud does not guarantee that such services are available for all numbers in all serving areas. Customer shall be responsible for purging stored voicemail messages and call recordings. FluentCloud shall not be liable or held responsible for any loss of voicemail messages or call recordings.
- 2.11. 30-Day Money Back Guarantee. FluentCloud offers a no-obligation, trial period which starts on the sooner of (i) the Service commencement date; or (ii) date payment is received and shall continue for a period of thirty (30) calendar days ("Trial Period"). During this Trial Period, Customer may try out the service without any obligation. Customer must terminate the Agreement prior to the expiration of the Trial Period in order to receive a full refund. Notwithstanding the foregoing, charges accrued for International Calls, Directory Assistance, and any other services not specifically included shall not be refunded.
- 2.12. Customer Service. FluentCloud offers basic technical support service to Customers 24/7/365. FluentCloud assumes no obligation to provide any support services for any third party products or services, or for problems with our Service caused by third party products or services.
- 2.13. Date of Live Service. Customer agrees to choose a go-live date on or before 30 days from the date on the signed Customer Order, unless otherwise agreed upon with a sales rep or the management team. Customer will be invoiced and payment will be due on this date. If Customer's FluentCloud account has not been activated by this date, Customer is still subject to invoice and payment will be due.

### 3. Service Use Restrictions

- 3.1 Prohibited Uses. Customer shall not use the Service, directly or indirectly,
- 3.1.1 for any unlawful purposes; use of the Services for transmission or storage of any information, data, or material in violation of any United States federal, state or local regulation or law is prohibited, such limitation shall include, without limitation, posting or disseminating content which is obscene, unlawful, threatening, defamatory, or infringes upon the intellectual property rights of any third party;
  - 3.1.2 to post, transmit or disseminate objectionable information, including, without limitation, any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, state, federal or international law or regulation;
  - 3.1.3 to knowingly disrupt the Service;
  - 3.1.4 to resell the Service or otherwise charge others to use the Service; the Service is for internal use only and Customer agrees not to use the Service for any other business enterprise in competition with the Service.
- 3.2 Fair Use. Any use of the Service or any other action that causes disruption in the network integrity of FluentCloud services or its vendor, whether directly or indirectly, is strictly prohibited and could result in termination of the Service. Examples of such prohibited uses include, but are not limited to, any autodialing, continuous or extensive call forwarding, continuous connectivity, or any other activity that would be inconsistent with normal business usage. Customer agrees to not use the Service in ways that violate laws, infringe the rights of others, or interfere with the users, services, or equipment of the Service. FluentCloud reserves the right to review usage of unlimited minute usage plans to ensure that Customer is not abusing such plans. FluentCloud may terminate service immediately if, in its sole discretion, determines Customer is abusing the unlimited minute plan.
- 3.3 Legal Compliance. Customer agrees to use the Service in a manner that complies with all applicable federal and state laws, including, but not limited to laws governing the use of call recording, call monitoring, call barging, and telemarketing. FluentCloud may not dispense any legal advice or provide Customer with any information regarding the legality of using the Service. The Customer may be subject to civil and/or criminal prosecution for the unlawful use of Service. Customer shall hold harmless and indemnify FluentCloud from and against any claims that arise out of Customer failing to

comply with applicable state and federal laws. Customer shall consult an attorney for legal advice.

- 3.4 Blocked Numbers. FluentCloud shall restrict Customer from making calls to 900 numbers and to certain rate centers located in rural areas that are known to be operated by free conference providers. Free conference providers are able to offer free phone service by passing along extremely high fees to service providers. Prior to dialing one of these restricted numbers you will hear a recording which will allow you to accept the charges to complete the call. Restricted calls will be billed at \$0.09/min. A detailed list of these numbers is included below. Please note that this list is subject to change without notice.

(218)237, (218)339, (218)486, (218)548, (218)632, (218)844, (218)862, (218)895,  
(218)936

(270)250, (270)200, (270)400, (270)402, (270)405, (270)406, (270)407, (270)431,  
(270)446, (270)572, (270)696, (270)834, (270)872, (270)943, (270)951, (270)960

(308)231, (308)344, (308)378, (308)526, (308)823, (308)831, (308)929

(319)256, (319)279

(402)590

(563)843

(605)475, (605)622, (605)715, (605)725

(641)210, (641)213, (641)235, (641)237, (641)262, (641)264, (641)297, (641)308,  
(641)309, (641)315, (641)388, (641)396, (641)410, (641)453, (641)509, (641)551,  
(641)552, (641)570, (641)594, (641)608, (641)612, (641)654, (641)665, (641)696,  
(641)710, (641)713, (641)715, (641)739, (641)765, (641)793, (641)795, (641)816,  
(641)826, (641)827, (641)865, (641)962, (641)982, (641)983, (641)985, (641)992

(712)278, (712)338, (712)353, (712)429, (712)432, (712)439, (712)451, (712)458,  
(712)472, (712)475, (712)541, (712)568, (712)580, (712)725, (712)726, (712)737,  
(712)775, (712)827, (712)858, (712)858, (712)872, (712)873, (712)876, (712)889,  
(712)941, (712)944, (712)945, (712)948, (712)951

(906)204, (906)232, (906)239, (906)294, (906)357, (906)481, (906)874

3.5 Termination. FluentCloud reserves the right to immediately terminate Service if Customer engages in any of the activities listed in Section 3.1 and Section 3.2 above. This Section 3.3 shall not limit FluentCloud's right to termination pursuant to Section 4 below. Customer agrees to indemnify, defend and hold harmless FluentCloud against all claims and expenses (including reasonable attorneys' fees) resulting from Customer's use of the Service, including, without limitation, the activities listed in Section 3.1 and Section 3.2 above, or from any other violation of FluentCloud policies by Customer. This provision shall survive the expiration or other termination of this Agreement.

#### 4. Cancellation of Services

4.1 Termination by FluentCloud. FluentCloud may terminate this Agreement immediately should Customer violate any of the terms of this Agreement. FluentCloud may also terminate this Agreement for any other reason by providing Customer with written notice of such termination no later than thirty (30) days before the termination. In the event that FluentCloud terminates this Agreement for any other reason than Customer's violation of any of the provisions of Section 3, Fixed Monthly Fees and Usage Fees will continue to accrue through the termination date, but all prepaid amounts will be refunded to Customer.

4.2 Termination by Customer. The Term of this Agreement shall be month-to-month and shall automatically renew for a period equal to the initial term on each anniversary unless written notice of cancellation is received by FluentCloud thirty (30) days prior to the end of each Term. Customer shall be liable for any amounts owed for services rendered through the termination date and furthermore Customer agrees to pay FluentCloud any amounts owed within three (3) business days of the terminate date.

4.3 Customer Obligation. Customer agrees that upon Termination of this Agreement,

4.3.1 Customer will pay FluentCloud in full for Customer's use of the Service up to the effective date of termination;

4.3.2 Customer will permit FluentCloud, its employees, agents, contractors and representatives to access Customer's Premise during regular business hours to remove all equipment and other materials furnished by FluentCloud; and

4.3.3 Upon request by FluentCloud, Customer agrees to return all equipment and materials furnished by FluentCloud upon FluentCloud's receipt of termination notice; and

4.1.1. Customer retains the sole responsibility for notifying FluentCloud of any and all requests to port out billable telephone numbers (also referred as "DIDs") to a different service

provider, whether port outs are known or unknown by Customer; and Customer remains responsible for all billable charges until such time that port outs have been completed. Customer shall retain ownership of any purchased local or toll-free numbers and any existing numbers that were originally ported over to FluentCloud from a different service provider. By federal law, FluentCloud must release local and toll-free numbers back to the Customer in the event Customer elects to terminate service with FluentCloud. FluentCloud, its agents, affiliates, service providers and partners agree to comply with all state and federal laws regarding number portability.

## 5. Service Level Agreement

5.1 Service Guarantee. FluentCloud and its vendors strive to provide the highest level of service. FluentCloud guarantees that our Services will be functioning 99.99% of the time in any given monthly billing period, excluding scheduled maintenance as outlined in Section 5.3 below. This guarantee shall include the ability to make and receive calls only and shall exclude any other ancillary features offered by FluentCloud. If FluentCloud fails to meet this service level guarantee, Customer shall be eligible for a credit. Credits will be calculated as a percentage of the fees incurred over the billing period affected by the service outage and will be applied at the end of the billing cycle. Credits shall be calculated at five percent (5%) of the monthly service fee for each hour of downtime, up to 100% of the total fees billed in the affected billing period. To obtain a credit, Customer must request a credit in writing from FluentCloud within thirty (30) days of the service outage. Credits shall be applied against future fees payable by Customer for the Service. This Service Guarantee is your sole and exclusive remedy for downtime in Services.

5.2 Customer Support. FluentCloud strives to deliver Customer's with the highest level of customer support. Accordingly, FluentCloud has established the following response times:

Priority	Response Time
Emergency	30 Minutes
Urgent	1 Hour
High	2 Hours
Normal	1 Day

As the setting of Priority for an incident carries such an important weight in the delivery of service, it is imperative that this is carried out in a consistent and fair manner for all customers. To ensure this, clear definitions exist to decide what priority any incident will come under, and this is based upon the business impact.

Priority	Definition
Emergency	A problem resulting in the complete outage of phone system which causes a critical business impact and there isn't a temporary solution or workaround to resolve the issue.
Urgent	A problem resulting in the complete failure of a phone system feature which causes a non-critical business impact and typically a large group of users are affected by the problem.
High	A problem that doesn't result in a failure of the complete system, does not impair the Client's ability to use critical functions, only minimally impairs Client's ability to use non-critical functions, and typically affects a small group of users.
Normal	General question, inquiry or problem that does not affect any user's ability to work.

\*Note that Internet outage is not an emergency priority as it is held with a 3rd party – your ISP, and while we will endeavor to chase this as quickly as possible it is in the end, outside of our control.

5.3 Maintenance and Other Planned Service Outages. Periodically FluentCloud will perform system updates to ensure we are running the most reliable and secure software possible. During these system updates it will be necessary to take the Service offline. FluentCloud will return services as quickly as possible and typical system maintenance is completed within fifteen (15) minutes. FluentCloud shall perform system updates and routine maintenance after normal business hours (10PM EST – 5AM EST). FluentCloud, will use its best effort to notify Customer up to two (2) days in advance of performing system maintenance so they can prepare for the planned service outage.

5.4 Limitation of Liability. FluentCloud shall not be liable or held responsible for any disruption in Service due to (i) Internet connectivity issues from Customer's Internet Service Provider (ISP), (ii) Disruption in service related to Customer error, (iii) Outage due to failure of previous telephone service provider to properly port over number(s) to FluentCloud; or (iv) power outage at Customer's Premise. FluentCloud shall have no liability, including as set forth in this Section, for interruption of the Service due to circumstances beyond FluentCloud's control, including, without limitation, acts of God, flood, natural disaster, regulation or governmental acts, fire, civil disturbances, strike or weather.

## 6. Personal Information and Privacy Statement

FluentStream respects your privacy and is committed to maintaining the privacy and confidentiality of personal data we collect. The purpose of our Privacy Statement is to

demonstrate our firm commitment to the privacy and protection of all persons who provide personal data to FluentStream and its affiliates. This Privacy Statement describes the ways we collect information from and about you, and what we do with the information, so that you may decide whether or not to provide information to us. By visiting FluentStream websites or otherwise providing your personal information to FluentStream via any other means, you are accepting and consenting to the practices described in this Privacy Statement. For purposes of this Privacy Statement, the term “visitor” includes visitors to our websites who are not yet customers, those who become customers, as well as those who do not become customers; whether you upload information to our websites, download it, or are merely visiting our websites. You can choose not to provide certain information when using our websites but then you might not be able to take advantage of many of its features.

6.1 Personal Data Collection. The information we collect may include your personal information, such as your name, contact information, financial account numbers, IP addresses, Live Chat Messages, Telephone conversations, product and service selections, and orders or other things that identify you individually. Personal information we gather is for internal use only and will not authorize the release of this information to anyone outside FluentStream (except to third party service providers to FluentStream who perform functions on our behalf but in such event personal information will only be shared to the extent reasonably necessary to perform their functions and they will not be authorized to use it for any other function), unless you have consented to such disclosure. Should you breach our terms and conditions or website terms, or if we are under a duty to disclose or share your personal data in order to comply with any legal obligation, we may disclose your information to a relevant authority. This may include exchanging information with other companies and organizations for the purposes of fraud protection and credit risk reduction. In particular, we may release the information we collect to third parties when we believe it is appropriate to comply with the law, to enforce our legal rights, to protect the rights and safety of others, or to assist with industry efforts to control fraud, spam, or other undesirable conduct. We may release the information we collect to third parties, where the information is provided to enable such third party to provide services to us, provided that the third party has agreed to use at least the same level of privacy protections described in this Privacy Statement, and is permitted to use the information only for the purpose of providing services to us.

6.2 Web Visit. When you visit our Website, our server logs your IP address (unique network addresses), the time and duration of your visit, and the time and duration of the pages on our website you view. If you arrive at our website by clicking a paid advertisement (including a paid search engine result) or a link in an email, then we will capture information that tracks your visit from that link. If you arrive at our Website by clicking a non-paid source, such as link in a non-paid search engine result or an unsponsored link

on another website, we may capture information that tracks your visit from that source, to the extent we are able to do so. We may also capture information about your computer system, such as your browser type and operating system. We will likely place a cookie on your hard drive during the web visit. A cookie is a unique alphanumeric identifier that we use to help us identify the number of unique visitors to our Website, whether or not those visitors are repeat visitors, and the source of the visits. Cookies cannot be executed as code or used to deliver a virus. Other servers cannot read them and personal information cannot be gathered from them. They are simply an identifier shared between you and us to allow us to improve the services we offer to you through our Website. If you do not wish cookies to be placed on your computer, then they can be disabled in your web browser. The option to do so is normally found in your browser's "security settings" section. However, please note, permanently disabling cookies in your browser may hinder your use of our Website as well as other websites and interactive services. We do not collect personal information about you as part of a web visit, but web visit information may be tied to other information (including personal information) we collect from you via chat, web forms, and the other means we describe in this Privacy Statement. We use information you provide to us via telephone calls, chat, email, web forms, and other communications to correspond with you about services you may be interested in purchasing. If you elect to purchase a service online using a web form, we will use the information to establish your account. Information you submit in writing, such as chat, email, and web form information is archived and may be tied to information that we collect about your web visits. Your telephone call may be recorded for training purposes and we may enter information you provide via telephone into our systems to use for the purposes described in this paragraph.

- 6.3 Links to non-FluentStream Websites. We may provide links to third-party websites for your convenience and information. The privacy practices of those sites may differ from FluentStream practices and are not controlled by FluentStream and covered by this Privacy Statement. We do not make any representations about third-party websites. We encourage you to review their privacy policies before submitting your personal data.
- 6.4 Sensitive Information. We will not intentionally collect or maintain, and do not want you to provide, any information regarding your medical or health condition, race or ethnic origin, political opinions, religious or philosophical beliefs, or other sensitive information.
- 6.5 Children's Online Privacy Protection. Our services are not designed for or directed to children under the age of 13, and we will not intentionally collect or maintain information about anyone under the age of 13.
- 6.6 Personal Information. We may use your information to process your service requests, handle orders, deliver products and services, process payments, communicate with you

about orders, provide access to secure areas of the Website, recommend merchandise and services that might be of interest to you, to personalize your visit to our Website, and to enable us to review develop and continually improve the products services and offers we provide online. We also use this information to prevent or detect fraud or abuses of our Website and to enable third parties to carry out technical, logistical, or other functions on our behalf.

- 6.7 Contact Information. We use visitor information to send information about our company to visitors and to get in touch with them when necessary. We also use the information we collect to improve the content of our websites and as training aides for our employees. Visitors are given the choice at the point when we request their information.
- 6.8 Financial Information. We may ask visitors to enter credit card or account information in order to process orders for services placed with FluentStream or its affiliates. Financial information provided via our website or via the MyFluentCloud portal is transferred over a secure connection. We collect this information on a transaction-by-transaction basis and will not authorize the release of the information with anyone not directly involved in processing the transaction. This information may be encrypted and stored for logging purposes in accordance with applicable regulatory requirements. Credit card numbers are used only for processing payments and are not used for any other purposes. When we use third party service providers for credit card processing services we will enter into a written agreement with such third party ensuring appropriate security and confidentiality measures are in place in safeguarding your personal data.
- 6.9 Opting Out of Communication. FluentStream gives you an opportunity to choose to opt-out of personal data being disclosed to third parties for a purpose incompatible with the purpose for which it was originally collected, including your opting out of receiving future marketing mailings. We will not use your contact information to correspond with you about our services if you ask us not to. Please send your request to us at FluentStream Technologies, LLC, 1523 18<sup>th</sup> Street, Suite 101, Denver, CO 80202. Please note that it may take up to seven days to remove your contact information from our marketing communications lists, so you may receive correspondence from us for a short time after you make your request.
- 6.10 Security Measures. FluentStream is committed to industry best practices approaches concerning security measures to prevent the loss, misuse, and alteration of the information in our possession. We use various security measures to protect the information we collect, as appropriate to the type of information, including encryption, firewalls, and access controls. We store information you provide to us on a computer

system located in a controlled facility with a limited access. Visitor textual information is encrypted during transmission, our company databases are accessible only by FluentStream employees, contractors and agents on a need to know basis and who have entered into and are bound by a confidentiality and nondisclosure agreement with FluentStream.

- 6.11 Data Integrity. Personal data we collect is relevant for the purposes for which it is to be used. FluentStream takes reasonable steps to ensure that data is reliable for its intended use, accurate, complete, and current.
- 6.12 Right To Access Personal Information. If you believe that any personal information we have about you is incorrect, or is, has been, or might be used inappropriately, please contact us. Please send your request to us at FluentStream Technologies, LLC, 1523 18<sup>th</sup> Street, Suite 101, Denver, CO 80202, and we will take steps to correct or delete the information, or restrict its use, as appropriate.
- 6.13 Verification. FluentStream utilizes the self-assessment approach to assure its compliance with its Privacy Statement. FluentStream regularly verifies that the privacy statement is accurate, comprehensive, prominently displayed, completely implemented, and conducts its self-assessment on an annual basis to ensure that all relevant privacy practices are being followed. Appropriate employee training is in place and internal procedures for periodically conducting objective reviews of compliance are in place. A statement verifying this self-assessment is signed by a corporate officer or other authorized representative at least once a year.
- 6.14 Inquiries or Complaints. If you have a question or complaint about this Privacy Statement or our information collection practices, please contact us at FluentStream Technologies, LLC, 1523 18<sup>th</sup> Street, Suite 101, Denver, CO 80202. We will investigate the matter and are committed to resolve any privacy concerns that you may have. Our business changes constantly and our Privacy Statement may also change from time to time. You should check our website frequently to see recent changes, however, we will never materially change our policies and practices to make them less protective of personal information collected in the past without your prior consent.

## **7. Emergency 911 Services**

- 7.1 Service Outage. Customer acknowledges and understands that Emergency 911 dialing services do not function during power failure or service disruption. Should there be an interruption in the power supply, the Service and Emergency 911 dialing will not function until power is restored.

- 7.2 Limitation of Liability. FluentCloud relies on third party vendors to route Emergency 911 calls. FluentCloud disclaims any and all liability or responsibility in the event Customer's personal information is not routed to the correct emergency service provider. Neither FluentCloud nor its officers or employees may be held liable for any claim, damage, or loss, and Customer hereby waives any and all such claims or causes of action, arising from or relating to Emergency 911 dialing services.

## 8. Limitation of Liability

FluentCloud, its officers, directors, employees or agents shall not be liable or held responsible for any direct, indirect, incidental, special, punitive or consequential losses or damages, including, without limitation, loss of profits, loss of earnings or loss of business opportunities, resulting directly or indirectly out of, or otherwise arising in connection with, the use of the Service by Customer.

## 9. Additional Provisions

- 9.1 Governing Law. This Agreement shall be governed by and construed and interpreted according to the laws of the State of Colorado, determined without reference to conflicts of law principles.
- 9.2 Costs of Enforcement. In the event that either Party shall bring an action with respect to any dispute arising hereunder, any alleged breach of the terms hereof, or the enforcement of the provisions and restrictions thereof, the prevailing Party in such action shall be awarded all reasonable costs and expenses incurred thereby, including reasonable attorneys' and other legal fees and costs, whether prior to the formal initiation of such action, prior to trial, at trial, or on appeal and for post-judgment proceedings.
- 9.3 Notices. Any notice or other communication given by any of the parties hereto to another relating to this contract shall be in writing and shall be deemed to have been duly given (i) on the date and at the time of delivery if delivered personally to the party to whom notice is given at the address specified below or at Customer's Premise; or (ii) on the date of delivery or attempted delivery shown on the return receipt if mailed to the party to whom notice is to be given by first class mail, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed as specified below or at Customer's Premise:

FluentCloud  
c/o FluentStream Technologies, LLC  
1523 18th Street, Suite 101  
Denver, CO 80202

FluentCloud Terms of Service Agreement

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Attn: Legal Department

- 9.4 Headings. The headings in the sections and subsections of this Agreement are inserted for convenience only and in no way alter, amend, modify, limit or restrict the contractual obligations of the Parties.
- 9.5 Severability. In the event that any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions of this Agreement and any other application thereof shall not in any way be affected or impaired thereby; provided, however, that to the extent permitted by applicable law, any invalid, illegal, or unenforceable provision may be considered for the purpose of determining the intent of the Parties in connection with the other provisions of this Agreement.
- 9.6 Enhanced Service Provider. FluentCloud does not directly provide Customer with voice origination and termination services. Voice connections with the Public Switched Telephone Network (PSTN) are provided by wholesale service providers that are in full compliance with all Federal Communications Commission (FCC), state, and local regulations.
- 9.7 Revised Terms of Service. From time to time, FluentCloud may revise the Terms of Service including, without limitation, any of the policies incorporated by reference. ***Pricing for the Service shall not change without prior written consent of the Customer with the exception of International calling rates which may change from time to time as allowed for in Section 2.2 of this Agreement.*** Notice of revisions to the Agreement shall be posted on the FluentCloud website and can be found at the following URL: <http://www.fluentcloud.com/terms-of-service> ("the Web site") and FluentCloud shall send out an email to Customer notifying them of a change to the Terms of Service. The Terms of Service shall be deemed given and effective on the date posted to the Web site. If Customer does not agree to the revised Terms of Service, Customer must terminate Service immediately, subject to the Cancellation provisions provided in Section 4.2 of this Agreement. Continued use of the Service after the revised Terms of Service are in effect is a confirmation of your acceptance of the revised Terms of Service and Customer hereby accepts and agrees to be bound by all such revisions.
- 9.8 Assignment. FluentCloud may assign its rights and obligations under this Agreement to any party without the consent of Customer. Customer may not assign or otherwise transfer its rights or obligations under this Agreement.
- 9.9 Complete Agreement. This Agreement, including the Customer Sales Order, HIPAA Business Associate Addendum and attachments hereto, constitutes the entire agreement between the parties regarding its subject matter. This Agreement supersedes all prior proposals, agreements or other communication between the parties, verbal or written, regarding

such subject matter. No other representation, warranty, term or condition, other than as expressly set forth in this Agreement, shall be binding on FluentCloud.

## HIPAA Business Associate Addendum

This HIPAA Business Association Addendum (this “**HIPAA Addendum**”) is an addendum to the Terms of Service (and incorporated therein by reference). This HIPAA Addendum defines the rights and responsibilities of each of us with respect to Protected Health Information as defined in the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder, including the HITECH Act and Omnibus Rule, as each may be amended from time to time (collectively, “**HIPAA**”). This Agreement shall be applicable only in the event and to the extent FluentStream meets, with respect to you, the definition of a Business Associate set forth at 45 C.F.R. §160.103, or applicable successor provisions.

**1. Defined Terms.** For the purposes of this HIPAA Addendum, capitalized terms shall have the following meanings:

“**Agreement**” shall have the same meaning as given in the Terms of Service.

“**Business Associate**” shall mean the FluentStream entity from which you purchase Services.

“**CFR**” shall mean the Code of Federal Regulations.

“**Individual**” shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

“**Privacy Rule**” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

“**Protected Health Information**” or “**PHI**” shall have the same meaning as the term “protected health information” in 45 CFR § 164.501, limited to the information received by Business Associate from or on behalf of Customer.

“**Required By Law**” shall have the same meaning as the term “required by law” in 45 CFR § 164.501.

“**Security Rule**” shall mean the Security Standards for the Protection of Electronic Protected Health Information, located at 45 CFR Part 160 and Subparts A and C of Part 164.

“**Secretary**” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

**2. Obligations and Activities of Business Associate.**

- (a) Business Associate shall not use or disclose Protected Health Information other than as permitted or required by this HIPAA Addendum or as permitted or Required by Law.
- (b) Business Associate agrees to provide those physical, technical, and administrative safeguards described in the Terms of Service and the other parts of the Agreement including those safeguards and Services selected by you. If Business Associate agrees as part of this HIPAA Addendum to carry out an obligation of yours under the Privacy Rule, then Business Associate will comply with the requirements of the Privacy Rule applicable to such obligation.
- (c) Business Associate agrees to mitigate, to the extent reasonably practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate or its agents or subcontractors in violation of the requirements of this HIPAA Addendum.
- (d) Within five Business Days of becoming aware, Business Associate agrees to report to you (i) Security Incidents (as defined in 45 C.F.R. §164.304 and as further described below), (ii) the Breach of unsecured PHI (as defined in §13402(h) of the HITECH Act), or (iii) an access, acquisition, use or disclosure of PHI in violation of this HIPAA Addendum.
- (1)** Both parties acknowledge that there are likely to be a significant number of meaningless or unsuccessful attempts to access Customer's Hosted System or Services, which make a real-time reporting requirement impractical for both parties. The parties acknowledge that Business Associate's ability to report on system activity, including Security Incidents, is limited by, and to, the Services which Customer has purchased.
- (2)** Certain FluentStream Services can provide detailed reporting of potential Security Incidents (including those listed above), and Customer is responsible for purchasing, implementing, and monitoring such Services for potential Security Incidents as appropriate based on Customer's use of the Services.
- (3)** Other than as included with and permitted by those Services Customer purchases, Business Associate undertakes no obligation to report unsuccessful security incidents or to monitor Customer's Services. Business Associate undertakes no obligation to report network security related incidents which occur on the FluentStream managed network but do not directly involve Customer's Hosted System. Where Customer has purchased Services or devices which include reporting on network and system security events, the parties agree that the following are illustrative examples of unsuccessful security incidents which, when they do not result in the unauthorized access, use, disclosure, modification or destruction of PHI need not be reported by Business Associate: pings against network devices, port scans, attempts to log on to a system or database with an invalid password or username, malware.
- (e)** Business Associate agrees to obtain from any agent, including a subcontractor to whom it provides Protected Health Information, reasonable assurances that it will adhere to the same

restrictions and conditions that apply to Business Associate under this HIPAA Addendum with respect to such information.

**(f)** All Protected Health Information maintained by Business Associate for you will be available to you in a time and manner that reasonably allows you to comply with the requirements under 45 CFR § 164.524. Business Associate shall not be obligated to provide any such information directly to any Individual or person other than you.

**(g)** All Protected Health Information and other information maintained by Business Associate for you will be available to you in a time and manner that reasonably allows you to comply with the requirements under 45 CFR § 164.526.

**(h)** You acknowledge that Business Associate is not required by this HIPAA Addendum to make disclosures of Protected Health Information to Individuals or any person other than you, and that Business Associate does not, therefore, expect to maintain documentation of such disclosure as described in 45 CFR § 164.528. In the event that Business Associate does make such disclosure, it shall document the disclosure as would be required for you to respond to a request by an Individual for an accounting of disclosures in accordance with 45 CFR §164.504(e)(2)(ii)(G) and §164.528, and shall provide such documentation to you promptly on your request. In the event that a request for an accounting is made directly to Business Associate, Business Associate shall, within 2 Business Days, forward such request to Customer.

**3. Permitted Uses and Disclosures by Business Associate.** Except as otherwise limited in this HIPAA Addendum or other portion of the Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, you as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by you.

**4. Specific Use and Disclosure Provisions.** Except as otherwise limited in this HIPAA Addendum or other portion of the Agreement, Business Associate may:

(a) use Protected Health Information for the proper management and administration of Business Associate or to carry out its legal responsibilities;

(b) disclose Protected Health Information for the proper management and administration of Business Associate, provided that disclosures are (i) Required By Law, or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; and

(c) use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

**5. Your Obligations.** You shall notify Business Associate of:

- (a) any limitations(s) in your notice of privacy practices in accordance with 45 CFR § 164.520 to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information;
- (b) any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information; and
- (c) any restriction to the use or disclosure of Protected Health Information that you have agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

You agree that you will not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by you.

You agree to comply with those security obligations identified in the Terms of Service, and to implement, purchase, or maintain appropriate safeguards (including security appliances, services, and practices) as required for you to comply with the Security and Privacy rules as applicable to you.

## **6. Term and Termination**

- (a) The term of this HIPAA Addendum shall continue for the term of the Agreement to which this HIPAA Addendum is incorporated by reference, and following termination of such Agreement until all Protected Health Information is destroyed or returned to you or your designee.
- (b) If Business Associate materially breaches the terms of this HIPAA Addendum, then you may terminate any related Services Agreement(s).
- (c) Upon termination of the Agreement for any reason Business Associate shall destroy all Protected Health Information which remains on your Service or otherwise in Business Associates possession. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate as well as Business Associate itself. Business Associate shall retain no copies of the Protected Health Information. In the event that Business Associate determines that destroying the Protected Health Information is infeasible, Business Associate shall promptly provide you notification of the conditions that make destruction infeasible. Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the destruction infeasible, for so long as Business Associate maintains such Protected Health Information. You shall bear the cost of storage of such Protected Health Information for as long as storage by Business Associate is required. This Section does not require Business Associate to segregate any Protected Health Information from other information maintained by you on Business Associate's servers and Business Associate may comply with this requirement by returning or destroying all of the information maintained on its servers by you. Upon your written request FluentStream shall either

physically destroy or multi-pass wipe any hard drive dedicated to your use, provided that FluentStream may charge you an additional fee at its then current rates for such additional services.

- (d) If you request contemporaneously with any termination event or notice, Business Associate will allow you to have access to your Service for a reasonable period of time following termination as necessary for you to retrieve or delete any Protected Health Information at your then current monthly recurring rate; provided, however, that if the security of your servers has been compromised, or the Agreement was terminated for your failure to use reasonable security precautions, FluentStream may refuse to allow you to have access to your Service but will use reasonable efforts to copy your data on to media you provide to FluentStream, and will ship the media to you at your expense. FluentStream's efforts to copy your data onto your media shall be billable at the rate of \$125 per hour.

#### **7. Miscellaneous.**

- (a) **Amendment.** Each of us agrees to take such action as is reasonably necessary to amend this HIPAA Addendum from time to time as is necessary for you to comply with the requirements of HIPAA as they may be amended from time to time; provided, however, that if such an amendment would materially increase the cost of Business Associate providing service under the Agreement, Business Associate shall have the option to terminate the Agreement on thirty (30) days advance notice.
- (b) **Survival.** Our respective rights and obligations under this HIPAA Addendum shall survive the termination of the Agreement.
- (c) **Interpretation.** Any ambiguity in the Agreement shall be resolved to permit you to comply with HIPAA and the Privacy Rule.