

Fusion SD-WAN Service
End User Subscription Agreement
Effective June 1, 2017



This End User Subscription Agreement (“Agreement”) is made by and between Network Billing Systems d/b/a Fusion. (“Fusion”) or its authorized reseller (collectively referred to as “we,” “us,” or “our”) and you, as an end user (“End User,” “you,” or “your”) of the Fusion SD-WAN service (“Fusion SD-WAN Service”), and sets forth the terms and conditions under which the Fusion SD-WAN Service will be provided to you.

1. Entire Agreement.

This Agreement, together with all ordering documents referencing this Agreement and entered into and validly executed between us and you (each, a “Service Agreement”), and any other documents incorporated herein, constitute the entire agreement between us and you relating to your purchase of subscription(s) to use the Fusion SD-WAN Service and to use Fusion’s hardware products (“Equipment”) provided to you for use in connection with the Fusion SD-WAN Service (together, the “Service”); provided that no conflicting terms or conditions set forth on any Service Agreement or other ordering document (to which notice of objection is hereby given), or in any future correspondence between us and you, shall alter or supplement this Agreement unless Fusion agrees in writing to such terms. You may not modify this Agreement by making any typed, handwritten, or any other changes to it for any purpose. This Agreement may only be amended or modified by a writing signed by both parties.

2. Delivery; Subscription Start Date.

All deliveries of Equipment are FCA our facility. Delivery dates are estimates only and are not of the essence. The start date of your subscription to the Service shall be the earlier of (i) the date of your activation of the Service, and (ii) the date that is 30 days after the date of shipment by Fusion of the Equipment associated with the subscription.

3. Invoicing, Payments and Taxes.

You agree to pay the prices for the Service as set forth in the Service Agreement, together with shipping charges (if applicable) and any taxes, duties, excises and other charges, including VAT, due in connection with the sale, installation, provisioning or use of the Service. Payment is due thirty (30) days from the date of the invoice. All payments are to be made in U.S. dollars. In the event of late payment, we may charge you interest on the unpaid amount at the rate of 1.5% per month or the maximum amount permitted under applicable law, whichever is less; and you agree to pay our collection costs and expenses, including reasonable attorney fees.

4. Cancellation Policy.

ALL EXECUTED SERVICE AGREEMENTS ARE NON-CANCELLABLE AND ALL AMOUNTS PAID ARE NONREFUNDABLE.

5. Use of Service and Equipment.

You agree to abide by any terms of use for the Service published by Fusion. You may install and use the Equipment solely for the purposes of accessing and using the Service during the subscription period purchased by you. You agree not to disable or defeat any capacity-limiting feature of the Equipment, or otherwise use the Equipment at a greater capacity rate than the rate for which you have subscribed. You agree not to use the Equipment with any unsupported hardware or software (as described in the applicable documentation provided by Fusion); or use the Service other than as described in the documentation provided therewith; or use the Service for any unlawful purpose.

6. No Life Support.

The Service is not designed, intended, authorized, or warranted for use or inclusion in life support, nor in life endangering applications where failure or inaccuracy might cause death or personal injury; any such use or inclusion by you is fully at your own risk, and you shall indemnify and hold us and our suppliers harmless from all resulting or related costs, loss, liability, and expense (including without limitation court and reasonable attorney's fees).

7. Protection of Equipment; Return Upon Expiration.

The Equipment belongs to us. You may not sell, lease, abandon, or give away the Equipment; allow anyone other than Fusion or its agents to service the Equipment; or permit any other person to use the Equipment, other than on your behalf in connection with your use of the Service. You will be directly responsible for loss of the Equipment. Upon expiration or termination of this Agreement, you must return the Equipment to us in the same condition as when delivered to you, reasonable wear and tear excepted; and if we have not received the Equipment in such condition within 10 days thereafter, you will be deemed to have purchased the Equipment at Fusion's list price, and will pay us upon invoice as provided in Section 3 above.

8. Our Right to Audit; Use of Data.

You grant us the right to audit your use of the Service, in order to confirm compliance with this Agreement and other agreements you have with us. You acknowledge and agree that Fusion may use, on an aggregated, non-individually-identifiable basis, all information regarding networking characteristics, usage, performance and related data involved in the use of the Service.

9. Changes.

You acknowledge that Fusion may change the Service, either by physical replacement or by remote changes to its software or firmware, at its discretion at any time. Such change may interrupt your Fusion SD-WAN Service.

10. Proprietary Rights.

Except as explicitly set forth in this Agreement, you do not acquire any rights in or license to any component of the Service or any Fusion intellectual property rights. You shall not, and shall not encourage any third party to: (a) modify, adapt, alter, disassemble, reverse-engineer, decompile, disassemble, or attempt to derive the source code for the Service (including the Equipment), except to the extent that such activities are required to be permitted under applicable law; or (b) remove, alter, or obscure in any way the proprietary rights notices (including copyright, patent, and trademark notices and symbols) of Fusion or its suppliers affixed or contained on or within any Equipment. Without limiting the foregoing, any software provided to you or made available for your use (“Software”) is licensed only, is subject to any license agreement provided therewith, and Fusion retains title in all copies of the Software, and you do not obtain title to, or ownership of, any intellectual property rights in the Software or any copies thereof. Fusion reserves all rights not expressly granted by this Agreement.

11. Confidential Information.

You agree to treat any confidential information regarding the Service and any other information provided to you by us that would reasonably be understood to be confidential (“Confidential Information”) as strictly confidential, and use such Confidential Information only for the purposes of using the Service as permitted hereunder.

12. Limited Warranty.

Fusion warrants to you that the Equipment shall be free from defects in material and workmanship (the “Exclusive Warranty”) during your subscription of the Fusion SD-WAN Service. With respect to the Equipment, the Exclusive Warranty shall apply only to the extent it has been installed, used and maintained in the conditions specified by Fusion or, in absence thereof, at least in conditions consistent with generally accepted practices for this type of product; and not been subject to any unauthorized modification or repair or attempts thereto; and not been connected to or used in combination with other incompatible equipment or systems.

If any Equipment fails to meet the Exclusive Warranty, then upon your written request and pursuant to any warranty procedure published by Fusion, Fusion shall, at Fusion’s sole option and expense,

promptly either repair or replace the Equipment in question. The remedies specified in this Section shall constitute YOUR sole and exclusive remedy and Fusion's sole and exclusive liability for EQUIPMENT and Fusion's breach of the Exclusive Warranty hereunder.

We make NO other warranties or representations, express or implied, and we expressly exclude and disclaim any and all warranties which may be implied or otherwise created by operation of law including without limitation all implied warranties of uninterrupted or error-free use or operation, and merchantability, non-infringement and fitness for a particular purpose.