

## Customer License Agreement

**IMPORTANT: BEFORE PURCHASING, DOWNLOADING, INSTALLING OR USING THE SOFTWARE, PLEASE CAREFULLY READ THIS LICENSE, WHICH CONTAINS THE TERMS AND CONDITIONS UNDER WHICH YOU ARE ACQUIRING A LICENSE TO USE THE FUSIONZONE SOFTWARE. IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS OF THE LICENSE, DO NOT DOWNLOAD OR INSTALL THE SOFTWARE. IF YOU DOWNLOAD, INSTALL OR OTHERWISE USE THE SOFTWARE, YOU WILL BE ACQUIRING A LICENSE TO USE THE SOFTWARE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LICENSE, AND YOU WILL BE CONSIDERED TO HAVE ACCEPTED AND AGREED TO THESE TERMS AND CONDITIONS.**

### TERMS AND CONDITIONS

By the purchase of a license for the use of the fusionZONE Inc. software, you, called in this Agreement the "CUSTOMER", agree to be bound by the provisions of this Agreement. This Agreement shall be deemed to have been signed by fusionZONE Inc. (hereinafter "FUSIONZONE") and CUSTOMER and to be binding on both upon the downloading, installation or other use of the SOFTWARE by the CUSTOMER.

#### 1. DEFINITIONS:

A. AGREEMENT means the terms and conditions of this license agreement and any subsequent agreements which are subject to this license agreement, together with the terms and conditions set out on any INVOICE or web page through or by which the CUSTOMER has purchased the license for the SOFTWARE. This Agreement shall be deemed to be amended, modified, or varied, as the case may be, by terms and conditions on any INVOICE by or through which the CUSTOMER has purchased this License.

B. CUSTOMER means the person, partnership, corporation or any other entity purchasing a license hereunder.

C. INVOICE means any document, paper or electronic, for the purpose of collecting payment of SOFTWARE purchased by CUSTOMER.

D. SOFTWARE means the generally available commercial release version of the software described on FUSIONZONE'S web site or set out in the INVOICE, together with all upgrades and enhancements provided to CUSTOMER.

**2. GRANT OF LICENSE:** Subject to the terms and conditions of this Agreement FUSIONZONE hereby grants CUSTOMER a non-exclusive, non-transferable license to use the SOFTWARE until license is terminated. CUSTOMER may install on one (1) web server for one (1) domain the number of copies of the SOFTWARE specified at the time of purchase from FUSIONZONE or as specified in the INVOICE. CUSTOMER may make an additional copy of the SOFTWARE only for back-up or archival purposes. No other right to reproduce the SOFTWARE is granted. CUSTOMER covenants and agrees that the SOFTWARE will only be used in accordance with the provisions of this Agreement.

**3. RESTRICTIONS:** CUSTOMER agrees that its use of the SOFTWARE shall be restricted to installation on one (1) web server for one (1) domain. Except as specifically permitted in this Agreement, CUSTOMER shall have no right to copy, change, alter, amend, reverse engineer, decrypt, decompile, reverse translate, disassemble, publish, disclose, display or make available, or in any other manner decode the SOFTWARE, in whole or in part, or otherwise use the SOFTWARE in any manner whatsoever, and shall take all reasonable steps to ensure CUSTOMER's employees, consultants and agents comply with this section. CUSTOMER shall not distribute, lease, rent, grant in a security interest in, assign or otherwise transfer the SOFTWARE. CUSTOMER shall not modify or create any derivatives of the SOFTWARE or merge all or any part of the SOFTWARE with another program. CUSTOMER shall have no right to sub-license the SOFTWARE or any copies thereof. In addition, the license granted herein shall not constitute a sale, lease, rental or any other transfer of the SOFTWARE or any copies or part thereof.

**4. TITLE:** Any and all rights to the SOFTWARE and its contents, including title, ownership rights and intellectual property rights shall remain the sole and exclusive property of FUSIONZONE INC. and/or its suppliers, and CUSTOMER acquires only the limited rights granted in this Agreement.

**5. SUPPORT PLAN:** FUSIONZONE shall provide support to CUSTOMERs who purchase a support plan for the period specified at the time the Software was licensed from FUSIONZONE or as specified on the face of the INVOICE. CUSTOMER shall receive applicable single point (0.x) improvements, updates or modifications made by FUSIONZONE to

the SOFTWARE. Where requested by CUSTOMER and after the payment of the applicable fee, FUSIONZONE shall provide telephone support confined to the use or installation thereof in accordance with the terms of the SOFTWARE support plan then available and discounts on upgrade license fees for x.0 upgrades. CUSTOMER shall also be provided with unlimited access to a web site containing training information and such other information as FUSIONZONE deems appropriate in its sole discretion.

**6. LIMITED WARRANTY:** Once CUSTOMER has downloaded the SOFTWARE, CUSTOMER is deemed to have "opened" the SOFTWARE and will not be entitled to any refund or other right of return. FUSIONZONE warrants to CUSTOMER that the SOFTWARE will perform substantially in accordance with its accompanying documentation for a period of 30 days from the date of purchase. FUSIONZONE does not warrant, guarantee or represent that (i) the SOFTWARE will meet CUSTOMER's requirements, (ii) the installation and operation of the SOFTWARE will be uninterrupted or error free, or (iii) defects will be corrected. CUSTOMER acknowledges that, due to the public nature of the Internet and the lack of control FUSIONZONE has over the CUSTOMER's web site, CUSTOMER has the responsibility to secure its web site from breach of security, loss of privacy, or other damage to its web site and systems to which the CUSTOMER's web site offers access, howsoever caused.

**7. DISCLAIMER OF WARRANTY:** CUSTOMER HEREBY EXPRESSLY AGREES AND ACKNOWLEDGES THAT, EXCEPT AS PROVIDED IN SECTION 6, THE SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY REPRESENTATIONS, CONDITIONS, WARRANTIES OR COVENANTS OF ANY KIND IN RESPECT OF THE SOFTWARE OR ANY WORK OR SERVICES PERFORMED BY FUSIONZONE OR ITS EMPLOYEES, CONSULTANTS OR AGENTS, INCLUDING WITHOUT LIMITATION, ANY EXPRESS, STATUTORY OR IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND EXCLUDED, AND THAT THE ENTIRE RISK OF THE USE OF THE SOFTWARE SHALL BE BORNE BY CUSTOMER, PROVIDED THAT THIS DISCLAIMER AND EXCLUSION IS LIMITED SO AS NOT TO APPLY IN ANY JURISDICTION IN RELATION TO A WARRANTY WHICH IS LEGALLY INCAPABLE OF EXCLUSION IN SUCH JURISDICTION.

**8. INDEMNIFICATION:** FUSIONZONE will, at its sole option, defend any action or proceeding brought against CUSTOMER to the extent that it is based upon a claim that the SOFTWARE used within the scope of this Agreement infringes upon a valid copyright or patent of the United States or Canada, and FUSIONZONE will pay damages, reasonable costs and legal fees attributable to such claim which are awarded against CUSTOMER providing that the CUSTOMER promptly notifies FUSIONZONE in writing of the claim, or notice of claim, and that FUSIONZONE has complete control of the defense and/or settlement of such claim and the full co-operation of CUSTOMER. The foregoing states FUSIONZONE's entire liability to CUSTOMER with respect to infringement. In the event any such claim is made, FUSIONZONE may at its option and expense, in addition to its obligation to defend and indemnify, either (i) procure for CUSTOMER the right to continue the use of the SOFTWARE or (ii) replace or modify the SOFTWARE to make its use non-infringing.

**9. LIMITATION OF LIABILITY:** NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT TO THE CONTRARY, FUSIONZONE SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES HOWSOEVER CAUSED (INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR REVENUE, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, INCREASED COSTS OF OPERATION OR OTHER COMMERCIAL OR ECONOMIC LOSS, LITIGATION COSTS AND THE LIKE) WHETHER BASED UPON A CLAIM OR ACTION IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, IN CONNECTION WITH THE SUPPLY, USE OR PERFORMANCE OF THE SOFTWARE, REGARDLESS OF WHETHER FUSIONZONE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY ARE FORESEEABLE, PROVIDED THAT, IN THOSE JURISDICTIONS WHERE LIMITATIONS ON LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES ARE NOT PERMITTED OR CURTAILED, IN SUCH JURISDICTIONS LIABILITY OF THE FUSIONZONE SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO YOU.

**10. MISUSE:** Any warranties given hereunder will not apply in the event that (i) the SOFTWARE is not used in accordance with FUSIONZONE's instructions, (ii) the SOFTWARE has been altered, modified or converted by CUSTOMER without the prior written approval of FUSIONZONE, (iii) the failure to perform relates to the malfunction of CUSTOMER's equipment on or with which the SOFTWARE operates or (iv) part or all of the SOFTWARE becomes inoperative as a result of any other cause beyond the reasonable control of FUSIONZONE.

**11. ASSIGNMENT:** FUSIONZONE may assign its rights hereunder without consent of or notice to CUSTOMER. CUSTOMER may not transfer, assign, sub-license or pledge its rights or obligations hereunder without the written consent of FUSIONZONE, said consent not to be unreasonably withheld.

**12. TERMINATION:** FUSIONZONE may terminate this Agreement immediately if CUSTOMER is in default of any of its obligations set forth in this Agreement which it fails to cure within fifteen (15) days after service of notice of the default. Either party may terminate this Agreement in the event that (i) the other party is in default of any of its material obligations hereunder and such default is not remedied within 30 days of receipt of written notice thereof or (ii) the other party is adjudicated bankrupt or becomes insolvent, makes any assignment for the benefit of creditors, proceedings are instituted by the other party seeking relief, reorganization or rearrangement under any laws relating to insolvency, bankruptcy or similar laws of any jurisdiction, a receiver, liquidator or trustee is appointed in respect of any property or assets of the other party or an order is made for the liquidation, dissolution or winding up of the other party. Upon termination or expiration of this Agreement, CUSTOMER shall cease all use of the SOFTWARE, shall return to FUSIONZONE all copies of the SOFTWARE or destroy all copies of the SOFTWARE and all related documentation in CUSTOMER's possession, and shall so certify to FUSIONZONE.

**13. GENERAL:** Neither party shall be responsible for any failure or delay in complying with the terms of this Agreement resulting from events of force majeure beyond the control of either party which could not be avoided by exercise of due care. This Agreement shall be governed in accordance with the laws of the State of Georgia, USA, other than rules governing conflict of laws. CUSTOMER hereby covenants and agrees that it shall initiate any and all legal actions arising from this Agreement in the courts of the State of Georgia, USA. FUSIONZONE hereby covenants and agrees that it shall initiate any and all legal actions arising from this Agreement within the legal jurisdiction in which the CUSTOMER is located, with such location being deemed to be the CUSTOMER address set out in the INVOICE. The Convention of Contracts for the International Sale of Goods shall not apply to this Agreement nor to any dispute arising therefrom. The parties are not agents or legal representatives of each other. The provisions in this paragraph along with the provisions in Sections 4, 6 to 10, 12 and 13 shall survive termination of this Agreement. FUSIONZONE shall have the right to attend at the premises of CUSTOMER during business hours and upon reasonable prior notice in order to verify that the SOFTWARE is being used in compliance with this Agreement. This Agreement sets forth the entire agreement of the parties with respect to the subject matter contained herein, and no oral or written statement or representations not contained herein shall have any force or effect. The failure of a party to claim a breach of any term of this Agreement shall not constitute a waiver of such breach or the right of such party to enforce any subsequent breach of such term. If any provision of this Agreement is held to be unenforceable or illegal, such decision shall not affect the validity or enforceability of such provisions under other circumstances or the remaining provisions of this Agreement and such remaining provisions shall be reformed only to the extent necessary to make them enforceable under such circumstances.