

# FuseTalk Inc. Installation/Upgrade Agreement

## Preamble:

- 1) This agreement is reached between FuseTalk Inc. ("FuseTalk Inc.") and you, (hereinafter "Customer," "You" or "Your") in order to allow you to install and/or configure any of FuseTalk Basic, Standard, Education and Enterprise Edition in the Customer's environment.

## Software

THE SOFTWARE IS BEING PROVIDED TO YOU IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF FUSE TALK INC.'S LICENSE AGREEMENT WITH YOU. AS SUCH, ANY AND ALL WARRANTIES IN RESPECT OF THE SOFTWARE, DOCUMENTATION AND/OR SERVICES PERFORMED BY FUSE TALK INC. SHALL BE AS IN SAID LICENSE AGREEMENT, OR AS OTHERWISE PROVIDED BY FUSE TALK INC.

## Limitation of Liability

- 2) Notwithstanding any other term to the contrary in this Agreement, FUSE TALK INC. SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY CLAIMING THROUGH YOU FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES HOWSOEVER CAUSED (INCLUDING DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, INCREASED COSTS OF OPERATION, LITIGATION COSTS AND THE LIKE, OR ANY OTHER PECUNIARY LOSS) WHETHER BASED UPON A CLAIM OR ACTION IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, IN CONNECTION WITH THE SUPPLY OF THE SERVICES, USE OR PERFORMANCE OF ANY SOFTWARE, OR THE PROVISIONS OR FAILURE TO PROVIDE SUPPORT SERVICES, REGARDLESS OF WHETHER FUSE TALK INC. HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FUSE TALK INC.'S ENTIRE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE FEES ACTUALLY PAID BY YOU TO FUSE TALK INC. FOR THE PROVISION OF SERVICES FROM WHICH DAMAGES RESULT.

## Terms and Conditions

- 3) Unless stated otherwise elsewhere in this proposal/statement of work, prices contained within this proposal/statement of work shall be valid for 30 days from the date of the proposal/statement of work. Prices quoted are exclusive of all applicable taxes. Any applicable taxes shall be additional and shall be included in Your invoices.
- 4) Accounts are payable within thirty (30) days of receipt of a valid invoice by You. Payments received later than 30 days from due date shall incur a

late payment charge of 2% of the outstanding balance per month (or 24% per annum).

- 5) Any reasonable disbursements made by FuseTalk Inc. on Your behalf such as long distance fax and phone charges, auto expenses (@ \$.30/km), travel, accommodation, meals, translation, photocopies, or couriers/postage are not included in the installation fee and shall be charged as incurred. Such disbursements shall be authorized in advance by You and shall be payable within thirty (30) days of receipt of a valid invoice by You.
- 6) You will ensure that development and/or test environments are ready for FuseTalk installation, including an available Windows or Linux server, or ColdFusion Server appropriate to the FuseTalk Edition being installed and a database also appropriate to the FuseTalk Edition being installed.
- 7) You will provide FuseTalk Inc. with remote access to Your environment in order to complete installation of the Product(s). You will provide FuseTalk Inc. with, at a minimum, remote desktop or VNC access to the server on which the Product(s) will be installed, system administrator or DBO username and password for the database, the URL and password of the ColdFusion administration console and FTP access to upload the necessary files.
- 8) You shall designate a technical representative who will be available to liaise with FuseTalk Inc. during regular business hours during the period of time scheduled for the installation.
- 9) You acknowledge that FuseTalk Inc. is relying on You and/or Your third parties with respect to the supply of information, work, equipment, materials, decisions, software or approvals necessary for the proper provision of installation services by FuseTalk Inc. to You (the "Services"). In the event of deficiency in, or unplanned delays in, delivery of such information, work, equipment, materials, decisions, software or approvals exceeding 3 working days, You shall agree to reasonable modifications to the services, prices or terms described in our proposal as may be required.
- 10) The installation services provided to You by FuseTalk Inc. do not include ongoing maintenance and support. Such maintenance and support must be purchased separately.
- 11) You shall assume sole and exclusive responsibility for any access codes or passwords provided by You to FuseTalk Inc. for use in connection with the installation services.
- 12) FuseTalk Inc. warrants that the personnel performing the installation services herein will be specialists in a manner consistent with industry standard. The provisions of this Section 9 are in lieu of all warranties and

representations expressed or implied by statute, common law or otherwise and whether as to merchantability, fitness for purpose or otherwise. All such other warranties and representations are hereby excluded.

- 13) FuseTalk Inc. shall be responsible for the return of all materials supplied by You at Your request.
- 14) You authorize FuseTalk Inc. to use authorized copyrighted and trademarked information or Software as necessary for the purpose of the installation service provided by FuseTalk Inc. You assume all liability associated with the use of information content that you supply, and warrant that You unimpeded right to use and modify (if applicable) all material and Software You provide to FuseTalk Inc.. You shall indemnify FuseTalk Inc. from any claims, demands, actions, causes of action, damages, loss, deficiency, cost, liability, and expense which may be made or brought against FuseTalk Inc, for or by reason of Your breach of this section 11, including, without limitation all expenses and legal fees on a solicitor-and-client basis, incidental to or in respect of the foregoing.
- 15) Neither party shall assign this Agreement to any third party without the prior written consent of the other party.
- 16) You agree that while installation services are being provided hereunder, and for a period of one year following completion of installation services governed by this Agreement, You shall not solicit for employment any employee or subcontractor of FuseTalk Inc. performing services hereunder on behalf of FuseTalk Inc.
- 17) You acknowledge that, due to the lack of control which FuseTalk Inc. has over the functionality, operations, and access relating to Your internal and external information and networking systems (the "Systems"), You acknowledge Your responsibility to ensure that Your Systems are protected, by means of a backup system, and such other procedures and systems which are considered prudent in the information technology field, to protect Your Systems from malfunctions arising from system crashes, breach of security, loss of privacy, or other damage to Your systems caused by hazards to which information and networking system are exposed, whether through the services provided by FuseTalk Inc., or otherwise.
- 18) This Agreement constitutes the entire Agreement between the parties and supercedes all other communications between the parties relating to the subject matter of this Agreement.
- 19) This Agreement shall be governed by the courts and laws of the Province of Ontario and the Laws of Canada applicable therein.

- 20) Unless otherwise indicated, all dollar amounts referred to in this Agreement are in lawful money of the United States, and any amount advanced, paid or calculated is to be in US currency.
- 21) Failure or delay by either Party to exercise any of its rights, powers or remedies under this Agreement shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy. Any waiver must be made in writing. The rights, powers and remedies of each Party in this Agreement are cumulative and in addition and without prejudice to any other right, power or remedy available to either Party.
- 22) Neither Party shall be liable for any failure to fulfill its obligations under this Agreement caused by or resulting from conditions or causes beyond its reasonable control in the nature of force majeure.
- 23) This Agreement may be terminated by you before the start of the installation service process upon thirty (30) days' prior written notice to FuseTalk Inc. Either party may immediately terminate this Agreement if the other party is insolvent, or, is in default in the performance of any of its obligations under this Agreement or breaches any provision thereof and such breach or default continues or has not been corrected to the satisfaction of the non-defaulting party within seventy-two (72) hours of receipt of written notice. Upon termination of this Agreement, You shall pay in full for all completed work up to and including said date of termination.
- 24) The representations, warranties and covenants of each Party contained in this Agreement shall survive termination of this Agreement.
- 25) If either Party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees.

Executed at Ottawa on \_\_\_\_, 2010

Executed at \_\_\_\_\_ on \_\_\_\_, 2010

**FUSETALK INC.**

**CUSTOMER**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

I have authority to bind the corporation.

**Office USE ONLY**

**Scheduled Date of Implementation:** \_\_\_\_\_  
**FuseTalk Tech Support Contact:** \_\_\_\_\_  
**Payment Option:** \_\_\_\_\_

**Information Required**

The installation would be performed after the purchase of the product on a date confirmed and agreed upon by both parties.

Technical Contact Information (for any issues or questions)

Name of Contact: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

**FTP Information**

URL: \_\_\_\_\_  
Username: \_\_\_\_\_  
Password: \_\_\_\_\_  
Directory: \_\_\_\_\_  
Other Information: \_\_\_\_\_

**Database Information**

Database Type: \_\_\_\_\_  
DBO Username: \_\_\_\_\_  
DBO Password: \_\_\_\_\_  
Datasource Name: \_\_\_\_\_  
Server Name: \_\_\_\_\_  
Other Information: \_\_\_\_\_

\*A database would have to be created on the server for us to access; we will not create that. We only supply and install the tables into the database.

**ColdFusion Administrator Information**

URL: \_\_\_\_\_  
Username: \_\_\_\_\_  
Password: \_\_\_\_\_  
Other Information: \_\_\_\_\_

\*If you are going to be running FuseTalk in a Hosted Environment, you will probably not have access to the ColdFusion Administrator, but you might have access to another administration module that has the same functionality. If so, please provide that information above.

**Remote Desktop/VNC/PCAnywhere Access Information**

URL: \_\_\_\_\_  
Username: \_\_\_\_\_  
Password: \_\_\_\_\_  
Other Information: \_\_\_\_\_

URL: TEST Application: \_\_\_\_\_