



In addition to this Subscriber Agreement, you, individually, and You, on behalf of every member of your household, current and future, every visitor to or guest in your household, and any other person who uses the Services, agree to be bound by the terms of service applicable to the residential Hyper Fusion service(s) to which You subscribe hereafter, "Service" or "Services", as well as the Hyper Fusion Acceptable Use Policy for any specific services you may subscribe to regardless of what it is, this Agreement applies to all services and general policies and terms. This agreement maybe updated from time to time and as such, by continuing to consume Your services constitutes your Agreement to the current Subscriber Agreement as posted at the following URL:

<https://www.hyperfusiontech.com/docs/>

By logging on to our front end website, logging into Your Fusion Portal, paying a bill, consuming your services, letting our field staff onto the site to conduct service, these are all evidence of Your acceptance and understanding and agreement to this Subscriber Agreement. You also further understand that if You violate this Agreement at any time Hyper Fusion reserves the right to suspend or terminate services.

1. 1.Payment of Bill - Hyper Fusion would prefer You pay your bill by check, money order, or your banks online bill payment feature, however, we do allow you to pay your subscription fees and all other fees aside from your activation fee and any setup fees using any Visa, MasterCard, American Express or Discover credit or debit card to make a one time payment, or by setting up an automatic payment subscription. Any invoices over \$999 must be made by direct bank wire.
  - a) Credit / Debit Auto Pay Terms - When you create a new auto payment subscription, your payment details are securely stored with Authorize.NET ( A Visa Company) and You must authorize this transaction. Hyper Fusion Staff WILL NEVER ask you for a credit or debit card number, either over the phone, thru email, or any other communication method. If someone is claiming to be Hyper Fusion staff and asking for your credit or debit card number, IT IS NOT US, and we would like you to directly contact a live customer support agent and report the issue.
  - b) Direct Bank Wires - Payments over \$999 may only be made via direct bank wire from your bank to the Hyper Fusion account and must be setup with a live support agent before doing so. Any payment made PRIOR to a written request from the customer to Hyper Fusion run the risk of being lost among all the other transactions and will not guarantee the payment is applied to your account in a timely manner if you do not CONTACT US BEFORE SENDING A DIRECT BANK WIRE TO ENSURE PROPER PROCESSING no returns, refunds, or otherwise will be issued.
  - c) Activation Fee - Activation fee for a new Service request where a new Hyper Fusion circuit infrastructure has to be installed ( meaning, there is not already a fixed point wireless receiver or fiber TAP for Fusion Fiber services and we have to install one ) be paid by check, money order, or Direct Bank Wire. If your new rental or real estate purchase already has one of our data circuits attached to it and was live before you obtained the property you can pay our Activation Fee from within your Fusion Portal by directly making contact with a live support agent by credit or debit card.
  - d) Returned Payment Fee - If any payment is returned NSF, hot check, bad payment, what ever the case, if Your payment fails, a \$50 surcharge will be assessed to your account

and you will not be allowed to make your payment by any other means other than by credit or debit thru our online Fusion Portal, by cashiers check or money order. All credit / debit and personal check writing payment methods will be restored upon six (6) successful on time payments. The second time it happens, there will be a surcharge of \$200 and ALL future payments MUST be made by money order or direct bank wire for a forty (\$40) dollar surcharge on Your account each month. Upon the third offense, Hyper Fusion will completely terminate ALL services and You will be marked in our ban list and never be allowed services in perpetuity.

2. Refund Policy - If you do not dispute any charge within seven (7) days of payment and you have had live services installed and working, absolutely no refunds of any kind for subscription fees will be given. You further hereby agree that you will not reverse, stop pay, dispute, or chargeback any fees. If any attempt to do so is made, this agreement will be presented and the chargeback will be won by Hyper Fusion.
3. Hyper Fusion Property - There are several items that Hyper Fusion installs for every account that we connect, regardless of services. Collectively known as "Issued Equipment". Hyper Fusion maintains ownership of all issued equipment unless listed on an invoice, in which case, the customer owns a sold product. Each circuit type and its generally installed equipment are as follows and all circuits generally require a POE power supply; except for the "cable home wiring" as defined at 47 C.F.R. §76.5(II) ("Wiring") and the face plate we install. The current network access circuit types we install are;
  - a) Fixed Point Wireless NAC - This includes the wireless receiver, the mount, a POE and the ESD Ethernet Surge Protector.
  - b) Fiber to the Home ( FTTH ) - This includes the exterior fiber grounding enclosure and the fiber access device and a POE.
4. Fair Residential Use - All web servers including, but not limited to, peer-to-peer file sharing (i.e. Torrents), streaming multimedia appliances (i.e. online multiplayer game servers), applications that broadcast a video stream that multiple outside remote users connect to, or any other algorithmic system designed to provided data services to users and/or devices outside the subscriber's premises are not allowed under home residential connections. Hyper Fusion reserves the right to limit and/or restrict access to any subscriber who may be utilizing significantly higher data traffic streams then other subscribers on any given device, whether it be a fixed wireless radio, a fiber network access point, and/or an ethernet access point. We do this in order to guarantee a high level of performance and reliability for all of our subscribers.
5. Privacy Protection - Hyper Fusion holds all customer data to the highest safety measures to ensure protection of all our subscribers. We do NOT under any circumstance sell or give up customer data to ANY party for ANY reason, other then the primary account holder and/or their authorized representative unless presented with a court order or official court request to do so. Hyper Fusion also does NOT under any circumstance hold customer payment in any of our systems. We use a third party payment provider that stores all customer billing data, card data, and bank account data and then only issues Hyper Fusion the result of the charge that You the subscriber requested. No Hyper Fusion staff can directly force or charge a customers credit or debit card.
6. Canceling Services - If you wish to cancel any Hyper Fusion Services you MUST do so by logging into your Fusion Portal and creating a new ticket with Cancel Service in the subject line and a brief description as to why. Within fifteen ( 15 ) business days Hyper Fusion will come and recover its owned property as described in section 3. If you do not allow Hyper

Fusion staff to recover our property a five hundred ( \$500 ) surcharge for loss of circuit will be assessed to your account. If you have used a credit or debit card on your account in the past this account will be charged for the funds. Further action legal action may be pursued as well. Including, but not limited to, reporting any unpaid amounts to your credit report, civil lawsuits, and even criminal prosecution for theft of services and service equipment. You may also incur not only your own legal expenses, but reasonable attorneys fees as stated by Texas law.

7. **Forced Service Termination** – There are several actions that may result in Hyper Fusion force terminating your services. As Hyper Fusion is a private business, we reserve the right to refuse service to any person or entity at any time. Should your account be force terminated for any of the reasons listed below, you will receive a letter in the mail disclosing the reasons as to your service termination. If the subscriber does not allow us on to the premise to recover our equipment, the standard equipment non-return fee of \$500 applies. The following items could result in termination of your services;
  - a) Using your service to conduct illegal or nefarious activities.
  - b) Posting about outages or other account issues on ANY and ALL social media platforms, specifically Facebook and the Lampasas Breaking News Group or any Lampasas groups.
  - c) Downloading, viewing, or transferring any illegal or illicit materials.
  - d) Using our services to engage in collaboration or services related to any hate groups or any other related activities
  - e) Non-payment of bill, fees, or any invoices.
  - f) Screenshoting and reposting any communications from HFT Chat, our portal, or any other private data or information relating to your service.
  - g) Using any HFT platform to advertise any other service or try and convince current subscribers to cancel services due to your poor experience.
  
8. **Service Outages** - From time to time your Services may go out. Our standard residential service DOES NOT guarantee service. As such, no service credits are given for outages under any circumstances unless approved by a Hyper Fusion staff member. If You subscribe to dedicated services or our SOHO plans, outage credits are issued at a prorated per day rate according to your SLA. If your dedicated circuit or SOHO service is down for more than sixty (60) minutes you will be given a prorated credit for that days service and it will be applied to your account upon your request. YOU MUST OPEN ANEW PORTAL TICKET REQUESTING YOUR SERVICE CREDIT TO GET IT, ITWILL NOT BE AUTOMATICALLY APPLIED FOR YOU.
  
9. **Losses Due to Equipment** - HYPER FUSION SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL ORPUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOST BUSINESS,REVENUE, PROFITS, OR GOODWILL) ARISING FROM THE USE,DEPLOYMENT, AND/OR FUNCTIONALITY OF ITS EQUIPMENT, WIRING,SUBSCRIBER PURCHASED DEVICES, OR CONVEYED DEVICES. HYPERFUSION HEREBY DISCLAIMS ANY AND ALL CLAIMS ARISING FROM OR ASSOCIATED WITH THE FAILURE, OPERABILITY, PERFORMANCE,DEFECTS OR LOSS, LIABILITY OR DAMAGES ARISING FROM USE OFSUBSCRIBER PURCHASED DEVICES OR CONVEYED DEVICES, ANY OFWHICH SHALL REMAIN MATTERS EXCLUSIVELY BETWEEN THESUBSCRIBER AND THE MANUFACTURER OF SUCH DEVICES.
  
10. **Service Rate Special Terms** - Those customers with Account ID numbers 250 and less are privileged under the terms of service at the time of launch as Hyper Fusion was in beta testing at that time. As of Jan 1st, 2018 we have been in full production launch and

there for all future customers WILL be subject to rate increases.

11. Subscriber Property Damage - Should any Hyper fusion staff damage your home during the course of any installation of new infrastructure is required, we have a solid general liability insurance policy that covers these damages. Should a natural event occur ( ie, storm, tornado, hail, asteroids, or other act of God ),subscriber shall be liable for any damages or repairs to the subscribers property or premise. Hyper Fusion will only replace our delivery infrastructure ( ie, wireless receivers, fiber NID's mounts, ESD Surge Protectors, grounding rods,etc ). Should any other damage occur, this are and should be covered by the homeowners insurance policy. Any damages caused by storms knocking over masts and damaging roofs are NOT THE responsibility of Hyper Fusion.
12. Taxes, Surcharges, and Fees - Subscriber agrees to pay any local, state or federal taxes and surcharges imposed or levied on or with respect to the Services, the Equipment, Wiring, Subscriber Purchased Devices, Conveyed Devices, or installation or service charges incurred with respect to the same. Most fees are added to the following months invoice. (NOTE: If you incur a fee, you will receive an email about it and be sure to check your SPAM box. If your on auto pay an do not manually pay any extra charges on your account, it will cause your service to interrupt and your account will be charged a re-activation fee.
  - a) If any payment is made by credit or debit card, a convenience fee of 3.5% of the total owed will be added to your account. You can avoid this fee by using your banks bill pay system or by mailing in a personal / business check, money order, or cashiers check.
  - b) If any payment is returned for any reason a \$50 returned payment fee will be added to your account.
  - c) If you subscriber to a ranch circuit, \$20 per month will be added to your account for the access point and \$10 per "node" ( radio on small out building ) will be charged.
  - d) Some Texas counties assess a Franchise Tax, residents of applicable markets will have this fee listed on their invoice if your county assesses a Franchise Tax. ( this is seperate and in addition to any Texas State Franchise fees, which Hyper Fusion does not pass on to subscribers and pays this bill "out of pocket".
  - e) Some Texas counties assess a PPP, or personal property tax on the physical items we own. Currently, as Hyper Fusion's primary office is located in Texas, all Burnet Market ( Burnet County ) subscribers will have a \$5.00 Burnet County surcharge fee added.
  - f) If your services are suspended for any reason, a \$30 re-activation fee will be added to your account.
  - g) Texas charges 8.5% for sales taxes and we add that to every Texas subscribers invoice.
  - h) A \$20 trip charge will be added to all accounts for all repair, fine tune, or any other related onsite service call that occurs after initial installation. Residents of our Kempner Market and Williamson Market will be assessed a \$30 trip charge.
13. Access to Premise - Notwithstanding anything to the contrary, Subscriber agrees to allow Hyper Fusion and our agents the right (A) to install hardware in, (B) send software downloads to, and (C) install, access, configure, maintain, inspect or upgrade Subscriber Purchased Devices, Conveyed Devices, or any other Subscriber-provided equipment to the extent necessary to provide Service. Subscriber warrants that Subscriber is either the owner of such equipment or that Subscriber has the authority to give Hyper Fusion access to it. Additionally,should subscriber cancel, subscriber agrees expressly to give Hyper Fusion or its agents permission to access the premises to recover Hyper Fusion Property.
14. Recording of Communications - Hyper Fusion records all telephone calls and stores all SMS / MMS exchanges, emails, tickets, and call logs for training and quality assurance purposes. We store this information securely with our 3rd party communications providers.
15. Account Notification Communications - From time to time when Hyper Fusion or one of its agents makes a change to Your file, by default, all subscriber accounts are set to receive Email notifications, SMS Alerts, and Automated appointment related calls. Our policy changes and updates will be posted by on our website and we will mass email ONLY

when this Subscriber Agreement or general policies changes or other important operational changes are made, otherwise, all other non-important notifications or outage notifications can be found on our website under our news feed or on our HFT Chat platform;

<https://www.hyperfusiontech.com/company-news/>

16. Social Media Networks – Hyper Fusion maintains a Facebook profile page expressly for the single purpose of creating links to official posts on our website. We will NEVER conduct subscriber care or other official communications with any subscriber over ANY social media platform at any time for any reason. Nothing posted or contained on ANY social media platform is NEVER to be considered any official announcement and any such announcements will only EVER be official if they are posted on our Hyper Fusion front end website ONLY.
  
17. Non-Interference - Hyper Fusion operates highly specialized and advanced equipment to deliver our internet. Additionally, we have highly advanced proprietary hardware and software that controls the way in which your data circuit operates. As such, each circuit type carries specific non-interference operation clauses to ensure a high level of Service delivery is maintained. Additionally, whether our managed router service or if subscriber elects to use a privately owned router Hyper Fusion NEVER guaranteed wireless internet transmission (Wi-Fi). There are too many homes in to close an area in most places for it to work ideally. Our data services and what the subscriber pays for end at the service plate. Subscriber is responsible for distribution of internet services thru their structure and incorrect operation of such is not the liability of Hyper Fusion.
  - a) Fixed Point Wireless - In most cases, our residential fixed point wireless service operates in the 5GHz spectrum, as such, we highly recommend that you completely disable your 5GHz transmitter on your home router as it will interfere with your wireless receiver. Otherwise, contact support to be informed of your receiver stations 5GHz channel so you can avoid interference.
  
  - b) Fiber To The Home - Some older microwaves can interfere with the fiber network access device we install in residential homes. As such, our engineers are as mindful as possible to place no equipment in the kitchen.
  
18. Indemnification: In requesting and accepting Hyper Fusion Services, Subscriber agrees to defend, indemnify, and hold Hyper Fusion, including its officers, directors, employees, affiliates, subsidiaries, and authorized agents (individually and collectively, "Hyper Fusion Indemnitees") harmless from and against any and all demands, claims, suits, judgments, expenses (including without limitation reasonable attorney or witness fees), loss, damages to, or destruction of personal, real, or intellectual property, bodily injury or death of any person, and other liabilities arising from:
  - a) The installation, operation, provision, or other use of Hyper Fusion Services and/or Equipment;
  - b) Any violation of Hyper Fusion's Terms of Service, Acceptable Use Policy, or other published policies or requirements;
  - c) The negligence, willful misconduct, violation of a third party's rights, or failure to comply with applicable law by (i) Subscriber, (ii) members of Subscriber's household, or (iii) Subscriber's guests, or (iv) any other person using the Services provided to Subscriber;
  - d) Libel or slander resulting from any use of the Services by (i) Subscriber, (ii) members of Subscriber's household, (iii) Subscriber's guests, or (iv) any other person using the Services provided to Subscriber;

- e) Infringement or misappropriation of any patent, copyright, trademark, trade-name, service mark, trade secret, or other intellectual property rights (whether by transmission or material or otherwise) by (i) Subscriber, (ii) members of Subscriber's household, (iii) Subscriber's guests, or (iv) any other person using the Services provided to Subscriber, including that effected through a combination of Subscriber's use of the respective Service(s) with facilities, equipment, or services provided or used by Subscriber or obtained from third parties;
- f) Any unauthorized, unlawful, or fraudulent use of or access to the Services, except as otherwise provided by applicable law; and
- g) Any infringement or invasion of the right of privacy of any person or persons, caused or claimed to have been caused, directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, or use of the 911 or E-911 service features and the equipment associated therewith, or by the use of any Voice Services furnished by Hyper Fusion in connection with the 911 or E-911 service, including but not limited to, the telephone number, address or name associated with the telephone used by persons accessing 911 or E-911 service thereunder, and/or that which arises out of the negligence or other wrongful act of (i) Subscriber, (ii) members of Subscriber's household, (iii) Subscriber's guests, or (ii) any other person using the Services provided to Subscriber.
- h) The foregoing defense and indemnity obligations exclude damages to the extent caused by the gross negligence or willful misconduct of the Hyper Fusion Indemnitees. Subscriber agrees that Hyper Fusion Indemnitees are not liable for any damages or liability resulting from the loss of Services (whether Internet, Cable, Voice, or other Services), nor will Subscriber make any claims or undertake any actions against Hyper Fusion Indemnitees for loss of Service. Subscriber shall be solely responsible for any damage to or loss of Hyper Fusion Equipment, unless such damage or loss is caused solely by the negligence or willful misconduct of Hyper Fusion Indemnitees.

LIMITATION OF LIABILITY. THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION APPLY TO ANY ACTS, OMISSIONS AND NEGLIGENCE OF Hyper Fusion AND ITS THIRD PARTY SERVICE PROVIDERS, AGENTS AND SUPPLIERS (AND EACH OF THEIR RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS OR REPRESENTATIVES). UNDER NO CIRCUMSTANCES SHALL HYPER FUSION BE LIABLE TO CUSTOMER FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SERVICE OR ANY ACTS OR OMISSIONS ASSOCIATED THEREWITH, INCLUDING ANY ACTS OR OMISSIONS BY THIRD PARTY SERVICE PROVIDERS OR ANY MANUFACTURER OF SUBSCRIBER PURCHASED DEVICES OR CONVEYED DEVICES, AGENTS OR SUBCONTRACTORS OF Hyper Fusion, OR RELATING TO ANY SERVICES FURNISHED, WHETHER SUCH CLAIM IS BASED ON BREACH OF WARRANTY, CONTRACT, TORT OR ANY OTHER LEGAL THEORY, AND REGARDLESS OF THE CAUSES OF SUCH LOSS OR DAMAGES OR WHETHER ANY OTHER REMEDY PROVIDED HEREIN FAILS. Hyper Fusion's ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO THE USE OF THE SERVICES OR ANY BREACH BY Hyper Fusion OF ANY OBLIGATION Hyper Fusion MAY HAVE UNDER THESE TERMS OF SERVICE OR APPLICABLE LAW, SHALL BE CUSTOMER'S ABILITY TO TERMINATE THE SERVICE OR TO OBTAIN THE REPLACEMENT OR REPAIR OF ANY DEFECTIVE EQUIPMENT PROVIDED BY Hyper Fusion. IN NO EVENT SHALL Hyper Fusion's LIABILITY TO CUSTOMER FOR ANY CLAIM ARISING OUT OF THIS SUBSCRIBER AGREEMENT EXCEED THE AMOUNT PAID BY CUSTOMER DURING THE PRECEDING THIRTY (30) DAY PERIOD.

SUBSCRIBER ALSO AGREES THAT IT SHALL NOT BE PERMITTED TO BRING ANY

CLAIM WHAT SO EVER AGAINST Hyper Fusion THAT RESULTS IN WHOLE OR IN PART FROM SUBSCRIBER'S FAILURE TO COMPLY WITH THIS SUBSCRIBER AGREEMENT. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS SUBSCRIBER AGREEMENT.

19. **ARBITRATION.** The following provisions are important with respect to the agreement between Subscriber and Hyper Fusion regarding Hyper Fusion's Services memorialized by this Subscriber Agreement.

This Subscriber Agreement requires the use of arbitration to resolve disputes and otherwise limits the remedies available to Subscriber in the event of a dispute.

Subject to the "Exclusions" paragraph below, Hyper Fusion and Subscriber agree to arbitrate disputes and claims arising out of or relating to this Subscriber Agreement, the Services, the Equipment, or marketing of the Services Subscriber has received from Hyper Fusion. Notwithstanding the foregoing, either party may bring an individual action on any matter or subject in small claims court.

THIS SUBSCRIBER AGREEMENT MEMORIALIZE A TRANSACTION IN THE STATE OF TEXAS COMMERCE. THE FEDERAL ARBITRATION ACT GOVERNS THE INTERPRETATION AND ENFORCEMENT OF THESE ARBITRATION PROVISIONS, THE LAWS OF THE GREAT STATE OF TEXAS, AND THE COUNTY OF BURNET, TEXAS.

A party who intends to seek arbitration must first send to the other a written notice of intent to arbitrate, entitled "Notice of Intent to Arbitrate" ("Notice"). The Notice to Hyper Fusion should be addressed to: Hyper Fusion, LLC, c/o Legal Dept, 3400 South Water Street, Burnet, TX 78611, ("Arbitration Notice Address"). The Notice must: (1) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought. If we do not reach an agreement to resolve the claim within 30 days after the Notice is received, Subscriber or Hyper Fusion may commence an arbitration proceeding, in which all issues are for the arbitrator to decide (including the scope of the arbitration clause), but the arbitrator shall be bound by the terms of this subscriber agreement.

The arbitration shall be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this Subscriber Agreement, and the arbitration shall be administered by the AAA. The AAA Rules and fee information are available at "[www.adr.org](http://www.adr.org)," by calling the AAA at 1-800-778-7879, or by writing to the Arbitration Notice Address.

HYPER FUSION SHALL BEAR THE COST OF ANY ARBITRATION FILING FEES AND ARBITRATOR'S FEES TO START FOR CLAIMS OF UP TO \$75,000. SUBSCRIBER IS RESPONSIBLE FOR ALL OTHER ADDITIONAL COSTS THAT SUBSCRIBER INCURS IN THE ARBITRATION INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES OR EXPERT WITNESS COSTS UNLESS OTHERWISE REQUIRED OF HYPER FUSION UNDER APPLICABLE LAW. SHOULD ARBITRATOR FIND IN FAVOR HYPER FUSION, SUBSCRIBER AGREES TO PAY ALL COSTS AND REASONABLE FEES ASSOCIATED WITH THE ARBITRATION PROCESS.

If the arbitrator's award exceeds \$75,000, either party may appeal such award to a three-arbitrator panel administered by the AAA and selected according to the AAA Rules, by filing a written notice of appeal within 30 days after the date of entry of the arbitration award. The appealing party must provide the other party with a copy of such appeal concurrently with

its submission of the appeals notice to AAA. The three-arbitrator panel must issue its decision within 120 days of the date of the appealing party's notice of appeal. The decision of the three-arbitrator panel shall be final and binding, except for any appellate right which may exist under the Federal Arbitration Act.

The parties may agree that arbitration will be conducted solely on the basis of the documents submitted to the arbitrator, via a telephonic hearing, or by an in-person hearing as established by AAA rules. SUBSCRIBER AGREES THAT, BY ENTERING INTO THIS AGREEMENT, SUBSCRIBER AND HYPER FUSION ARE WAIVING THE RIGHT TO A TRIAL BY JUDGE OR JURY OR ANY OTHER CIVIL SUIT FILING. Unless Hyper Fusion and Subscriber agree otherwise in writing, all hearings conducted as part of the arbitration shall take place in Burnet, TX.

The arbitrator may award injunctive relief only in favor of the party seeking relief, only to the extent sought, and only to the extent necessary to provide the specific relief warranted by such individual's claim. The parties agree that the arbitrator must give effect to the terms of this Subscriber Agreement.

SUBSCRIBER AND HYPER FUSION AGREE THAT CLAIMS MAY ONLY BE BROUGHT IN SUBSCRIBER'S INDIVIDUAL CAPACITY AND NOT ON BEHALF OF, OR AS PART OF, A CLASS ACTION OR REPRESENTATIVE PROCEEDING.

Furthermore, unless both Subscriber and Hyper Fusion agree otherwise in writing, the arbitrator may not consolidate proceedings or more than one person's claims and may not otherwise preside over any form of a representative or class proceeding. If this specific paragraph is found to be unenforceable, then the entirety of these arbitration provisions shall be null and void and rendered of no further effect with respect to the specific claim at issue.

Severability. If any clause within these arbitration provisions is found to be illegal or unenforceable, that specific clause will be severed from these arbitration provisions, and the remainder of the arbitration provisions will be given full force and effect.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN THE EVENT SOME OR ALL OF THESE ARBITRATION PROVISIONS IS DETERMINED TO BE UNENFORCEABLE FOR ANY REASON, OR IF A CLAIM IS BROUGHT THAT IS FOUND BY A COURT TO BE EXCLUDED FROM THE SCOPE OF THESE ARBITRATION PROVISIONS, BOTH PARTIES AGREE TO WAIVE, TO THE FULLEST EXTENT ALLOWED BY LAW, ANY TRIAL BY JURY.

For purposes of the foregoing sentence only, in the event such waiver is found to be unenforceable, it shall be severed from this Subscriber Agreement, rendered null and void and of no further effect without affecting the rest of the arbitration provisions set forth herein.

EXCLUSIONS. SUBSCRIBER AND HYPER FUSION AGREE THAT THE FOLLOWING CLAIMS OR DISPUTES SHALL NOT BE SUBJECT TO ARBITRATION: (1) ANY INDIVIDUAL ACTION BROUGHT BY SUBSCRIBER OR BY HYPER FUSION ON ANY MATTER OR SUBJECT THAT IS WITHIN THE JURISDICTION OF A COURT THAT IS LIMITED TO ADJUDICATING SMALL CLAIMS. (2) ANY DISPUTE OVER THE VALIDITY OF ANY PARTY'S INTELLECTUAL PROPERTY RIGHTS. (3) ANY DISPUTE RELATED TO OR ARISING FROM ALLEGATIONS ASSOCIATED WITH UNAUTHORIZED USE OR RECEIPT OF SERVICE. THE FOREGOING ARBITRATION PROVISIONS SHALL SURVIVE THE TERMINATION OF THIS SUBSCRIBER AGREEMENT.



Subscriber has one year to bring a claim against Hyper Fusion after the date on which the claim arose or, unless applicable law provides that the normal statute of limitations for that claim may not be shortened by agreement. If subscriber does not bring a claim within this period, subscriber waives, to the fullest extent permitted by law, all rights subscriber has to such claim and hyper fusion will have no liability with respect to such claim and must be argued in arbitration and subscriber agrees to forego the right of a civil suit filing or trial by jury.

Subscriber may opt out of this Section, in which case the normal statute of limitations will apply. To opt out, Subscriber must notify Hyper Fusion in writing by sending a letter to Hyper Fusion addressed to Hyper Fusion, LLC, c/o Legal Dept, 3400 South Water Street, Burnet, TX 78611, within 30 days of (a) the date that this provision becomes effective, if Subscriber is an existing customer, or (b) the date that Subscriber first subscribes to the Service(s). Subscriber's written notice must include Subscriber's name, address, and Hyper Fusion account number as well as a clear statement that Subscriber does not wish this Section to apply.

This Section shall survive the termination of this Subscriber Agreement.

20. Force Majeure - Hyper Fusion shall not be liable for any failure of performance or equipment of any kind (including Hyper Fusion Equipment) due to causes beyond its control, including but not limited to: acts of God, fire, flood, or other catastrophes; loss of electrical power; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over Hyper Fusion, or of any department agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority; national emergencies; insurrection; riots, wars; unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, or other labor difficulties.
21. Survival of Terms - In addition to the terms that are specifically noted in this Subscriber Agreement as surviving termination of this Subscriber Agreement, all representations, warranties, indemnifications, and limitations of liability shall survive this Subscriber Agreement. Hyper Fusion's right to contact Subscriber shall also survive this Subscriber Agreement unless Subscriber opts out in the manner described in this Subscriber Agreement. All other obligations of Subscriber and Hyper Fusion under this Subscriber Agreement also survive termination if they relate to the period before termination or, if by their terms, they would be expected to survive such termination.
22. Entire Agreement - This Subscriber Agreement (including the Terms of Service and other policies incorporated herein by reference) constitutes the entire agreement between the Subscriber and Hyper Fusion. No undertaking, representation or warranty made by an agent or representative of Hyper Fusion in connection with the sale, installation, maintenance or removal of Hyper Fusion's Services or Equipment shall be binding on Hyper Fusion except as expressly included herein. Subscriber agrees that, if any portion of this Subscriber Agreement is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible, and if severed or rendered null and void thereby, the remaining portions will remain in full force and effect. If Hyper Fusion fails to insist upon or enforce strict performance of any provision of this Subscriber Agreement, it does not thereby waive any provision or right. Neither the course of conduct between the parties nor trade practice shall act to make any portion of this Subscriber Agreement unenforceable.