

FlashByte Terms and Conditions of Service

The Service Order ("SO"), which may be a document labeled "Invoice" showing new services as line items, or a document labeled "Service Order" detailing new services, or a similar document with any title referring to a named customer and address and FlashByte services of any kind, and these Terms and Conditions form the agreement between FLASHBYTE DIGITAL, LLC, a California Limited Liability Company ("FlashByte"), and Customer for purchase and use by Customer of telecommunications, data communications and related services offered by FlashByte. This agreement may be executed by facsimile, agreed to via web form check box, agreed to by incorporation into initial or later Disclaimer of Responsibility and Release signed by Customer and/or in multiple counterparts (to each of which FlashByte hereby agrees as though signed separately by an authorized officer), and forms the entire agreement between Customer and FlashByte unless superseded in writing by a subsequent contract. Should a conflict exist between these terms and conditions and the Service Order, the Service Order shall control.

1. Service Rates and Charges. The rates and charges for the Service are set forth in the SO.
2. Customer agrees to pay all fees and charges incurred on its account for the Service, including any and all incremental and usage based fees for usage based services, if any, and including any and all taxes and surcharges imposed on FlashByte or directly on Customer for the delivery of the Service. FlashByte reserves the right to change the rates and charges for any renewal term by providing Customer thirty (30) days written notice in advance of the effective date of the change. Prices for the Services do not include any taxes. Applicable taxes shall be itemized and applied to billing invoice.
3. Billing and Payment.
 - 3.1. Service Billing. Service(s) Billing is invoiced monthly in advance and will commence when any portion of the service is delivered to Customer and is operational (IP Packets can be passed, calls can be connected, emails can be received, or websites can be updated, etc.). Billing is by month for a calendar month, or any part of a month at beginning and end of service. Customer will properly pay in advance an entire month's service fees regardless of when service actually begins during the first month. The service start date may be adjusted if the situation requires an adjustment based on the date service becomes active. Activation of a portion of a package including "add-on" or "free" services constitutes activation of service regardless of the completion date of delivery of the rest of the services included in a package. Service Billing is due and payable by credit card, check or money order at the time the Service order is placed.
 - 3.2. Equipment Billing. Equipment Billing is due and payable at the time Equipment order is placed.
 - 3.3. Payment Terms. All charges shall be due in U.S. Dollars upon receipt of invoice. Accounts are in default if payment of all amounts due is not received within ten (10) days after date of invoice. Past due charges shall accrue interest at a rate of one and one-half percent (1½%) per month or the highest rate allowed by applicable law, whichever is lower. Accounts unpaid after fifteen (15) days after date of invoice may have the Service interrupted or terminated. Such interruption of Service for failure to pay does not relieve Customer of the obligation to pay for the outstanding balance and for the remaining balance owed under the SO term for Service. Customer agrees to pay a fee of up to \$50 to reactivate service following interruption. If Customer defaults or service is terminated for violation of these Terms of Service, Customer agrees to pay FlashByte its reasonable expenses, including legal and collection agency fees, incurred in enforcing its rights. Customer shall not pay installers or at the FlashByte office in cash, but may pay by check or money order. Refunds, if any, shall consist solely of credit on Customer's next due invoice if FlashByte is able to provide service to Customer's location or in FlashByte's sole business discretion will be able to provide such service within a reasonable time. If FlashByte does not in its business discretion consider such provision of service likely within a reasonable time, refunds shall be made within 120 days of such decision by FlashByte. If Customer cancels an order after payment and before installation, an additional administrative charge of \$100 shall apply.
 - 3.4. Credit Terms. All Services provided to Customer shall at all times be subject to credit approval or review by FlashByte. For Services with toll charges customer may be required to pay a deposit, or place a credit card on file for billing or be given a toll limit based on credit history.
4. For Customers with VoIP Service, Voice Service WARNING: LIMITATION FOR 911 EMERGENCY DIALING. 911. Customer acknowledges FlashByte's Services do not support traditional 911 emergency dialing, whereby calls are automatically routed to an emergency 911 operator with the caller address appearing on the operator's computer. NO ADDRESS OR LOCATION INFORMATION IS AVAILABLE TO OPERATOR WHEN MAKING A 911 CALL WITH THIS VOICE SERVICE. FlashByte advises Customer to maintain an alternative means of accessing traditional 911 services such as traditional telephone services or cellular phone services, and to advise all users, employees, staff etc. of 911 limitations.
5. For All Customers: LIMITATIONS.
 - 5.1. Outages due to Electrical, Internet or other General Failures. End-User acknowledges Services will not function in the absence of electrical power, access to the Internet or other general failures associated with the Internet and VOIP network. End-User acknowledges that the Services will not function if there is an interruption of End-User's electrical power. End-User acknowledges that there is no warranty for a specific level of service availability unless specifically stated in writing elsewhere and no refunds or credits will be given for outages regardless of the cause.
 - 5.2. Non-Voice Systems with VOIP or Voice Service. End-User acknowledges that the Voice Services are not set up to function with out-dialing

systems including home security systems, medical monitoring equipment, satellite television systems, credit card machines and facsimile systems. By consenting to these terms and conditions, End-User waives any claim against FlashByte for interruption or disruption of such systems by the Services.

6. Term and Termination. These terms are effective on the date Customer's completed SO is accepted by FlashByte through the initiation of Service, and thereafter for the term indicated on the SO. For purposes only of determining any refund due after cancellation by customer, these terms are effective upon customer's paying for service. Acceptance of the SO is subject to approval by FlashByte management and availability of FlashByte facilities, including connectivity and building and/or roof access at Customer's location(s). At the end of the initial term, the SO shall automatically renew for successive terms as initially contracted in the SO until terminated, except that annual discounts given a Customer are automatically terminated and Customer shall be automatically converted to monthly billing if the annual renewal amount is not paid by 15 days after end of the prior year. Either party may terminate the SO and Customer's use of Service by providing the other party with at least thirty (30) days written notice prior to the automatic renewal date. FlashByte may also immediately with appropriate notice in the circumstances restrict, suspend or terminate the SO or Customer's use of the Service at any time for Customer's violation of these Terms. All customer-initiated termination notices must be sent in writing to FLASHBYTE DIGITAL, LLC, a California Limited Liability Company, ATTN: Billing, at the address, which may change from time to time, on page 1 of the Service Order. If Customer terminates service prior to the end of the initial term, or if FlashByte terminates service for a violation of this agreement at any time, Customer will be responsible for early termination fees equal to the fees for the balance of the initial term plus one month.

7. Service/Portal Discontinuance. Upon expiration, cancellation or termination of the Services provided herein, Customer shall relinquish and discontinue use of any IP addresses, extensions assignments, telephone numbers, voice mail access numbers and/or web portals, web sites, URLs or domain names assigned by FlashByte or its vendors.

8. Relocation/Move. A move is relocation of service to a new location serviceable by FlashByte. The original service is terminated and a new service is provisioned and installed at the new location. The Customer will be responsible for early termination fees as described in section 6, if applicable, except that if service is successfully installed at the new location, the early termination fee will be waived. As with all newly installed services, Customer will be charged an installation fee and may be required to commit to a new term if less than 6 months remain on the initial term of the original service.

9. Customer Requirements. Unless otherwise specified on the SO, Customer will provide and maintain its own network edge security/gateway devices (i.e., firewall and/or router), and setup and maintenance of Customer's own network including IP addressing and other software configurations. Customer understands free website hosting provided along with many of FlashByte's service packages consists only of providing space (analogous to a parking space for a car in a garage owned by a city, licensed to a parking service company, regulated by many levels of government and based on decades of common practice in the industry) on the Internet for Customer's website. Customer will be responsible for creating, designing, building, developing, launching, maintaining, supporting, and in all other ways dealing with its own websites (the cars in the analogy), for interacting with software as needed for that (analogous to mechanics, the DMV, other drivers, etc.), and for all other work leading to a website being able to be hosted by FlashByte (which in the analogy provides space in a parking lot, as licensed by the actual owner, and a service equivalent only to the security gate code to the parking lot). Customer also understands FlashByte and affiliated companies provide the other services in the analogy other than web hosting for separate fees (they are also "mechanics" and advisers about tools and legalities). When Customer is informed that a service requested is a service requiring payment of a separate fee, Customer is free to hire FlashByte, its affiliated companies, or any other company to provide those services, but all such persons will become subject to this Agreement when they access the Internet with websites through FlashByte's hosting service. Customers also understand they are free to use other website hosting services as they wish, under whatever terms those other services require, and there is no discount for not using the "add-on" or "free" included services, including Web hosting services, dial-up backup services, or any particular portion of the services included in a package of services. Customer understands that using any of the services provided in a package of services is equal for all billing and customer responsibility issues to using all of the services. Customer understands FlashByte technology and professional service technicians make utmost efforts to provide broadband Internet service at higher speeds, with greater stability, and in locations that are inaccessible to other technologies and technicians. Because of those efforts if not because of Customer's innate personal good faith and fair dealing, Customer will treat all FlashByte employees and agents with professional courtesy, will not shout at or use swear words or substitute initials for swear words at those persons, either in writing or in person, will not by implication, innuendo or explicit words threaten said workers or FlashByte, whether with legal, physical, governmental action or other danger of any kind, and will at all times attempt to express appreciation for all services rendered, even if working with the Internet and website development is an unfamiliar skill in which Customer is not professionally trained and/or even if Customer is frustrated by circumstances and/or even if believes s/he knows better what should be done that is not being done and/or is not being done as quickly or well as Customer believes it should be. Customer will provide 120 VAC power with uninterruptable power supply for FlashByte service equipment, as required, including all equipment placed in or on customer's location. If customer moves or gives notices of termination of service, or if Customer receives notice from FlashByte of termination of Customer's service due to breaches of this Agreement, Customer will immediately during business hours at Customer's sole expense provide access for FlashByte equipment installers to all equipment for its removal or will remove the equipment at Customer's own expense and risk and return it undamaged to FlashByte within 48 hours. Any damage to FlashByte's equipment or knowing interference with FlashByte personnel's removal of equipment after any such notice shall be deemed to be intentional and malicious on the Customer's part and shall subject Customer to an award of punitive and exemplary damages. Failure to return all FlashByte equipment undamaged within 48 hours of notice of termination, or to make an appointment within 48 hours to have FlashByte personnel remove such equipment, will subject Customer to liquidated damages of \$800 for replacement of the equipment. Customer and FlashByte agree that damages actually suffered by FlashByte due to retention of said equipment by Customer beyond time of notice of termination of service are difficult to calculate, including legal and collection fees, special delivery charges to obtain replacement equipment, cost of replacement equipment, necessity of obtaining such equipment from alternate vendors rather than FlashByte's ordinary vendors with whom it has volume discounts, lost business due to inability to obtain or timely obtain replacement equipment, special labor charges, and numerous other damages, so this liquidated damages amount is agreed to as a reasonable estimation of the actual expected amount of FlashByte damages due to the wrongful act of Customer of retaining possession of FlashByte's

equipment.

10. Service Level Agreement. FlashByte will use a "best effort" approach to provide Service and avoid downtime. FlashByte's Services do not have specific performance guarantees and no refunds or credits will be given for outages unless separate specifically stated Service Level Agreements are made for payment of extra fees. For all accounts not specifically provided with a separate SLA there is no guarantee of service level. All services are provided on a best effort basis. Lack of availability or customer use of any particular portion of the services provided will not release customer from the obligation to make payments and honor all agreements regarding the account, regardless of whether or not Customer notified or attempted to notify FlashByte of the circumstances.

11. Acceptable Use. Acceptable Use. Services provided under this Agreement are for the Customer's sole use and may not be resold or used for free or paid public access without a separate agreement providing for such use. Customer shall at all times comply with and conform its use of the Service to the FlashByte Acceptable Use Policy ("AUP") as set forth at FlashByte's website, www.flashbyte.us, as updated from time to time. In the event Customer violates FlashByte's AUP, FlashByte shall have the right to suspend Service. Such interruption of Service for violation of the AUP does not relieve Customer of the obligation to pay for Service and to pay reconnection fees if any are due and assessed because of the interruption of service. Customer hereby agrees to be bound by the AUP of all parent or uplink access or content providers accessed through FlashByte services, and acknowledges that FlashByte can at any time include provisions of uplink providers AUP into its own as needed in order for FlashByte to comply with the AUP of the uplink or content providers.

11.1. Changes to the Agreement, Services or Plan. FlashByte reserves the right to make changes to the terms and conditions of this Agreement, the Services and/or the Plan ("Change of Service"). In the event of a Change of Service, or modification to this agreement FlashByte will post changes to the website currently located at <http://www.flashbyte.us>. Notice will be considered received by Customers and such changes will become binding to Customers, on the date the changes are posted to the website ("Change Date"), and no additional notice will be required. FlashByte will nonetheless post all changes thirty (30) days in advance of the effective date of change. If Customer does not send FlashByte notification of desire to terminate this agreement or uses the Service within or after 30 days after the Change Date, Customer is deemed to have accepted and consented to the change of terms and conditions of the Service. Customer may request a Plan change at anytime, subject to any applicable change of service fee and additional terms and conditions. In no case will an activation or installation fee be credited after the initial payment by customer for a Plan change or notice by customer of cancellation. For a Plan change to a plan that requires a purchase of Equipment or installation, an equipment or installation charge will apply. FlashByte may decrease prices for the Services or Plans, or remove or change substantially particular portions of the services package deemed to be "add-on" or "free" without providing any prior notice to Customer.

12. Building Access. Customer acknowledges responsibility for all necessary approvals, permission from property manager or owner, and applicable permits and/or use fees to be attained, if any, for full access by FlashByte, including roof access if required, prior to installation of Service and while Service is provided.

13. Technical Support. FlashByte provides technical support to Customers via telephone and email for Services and Equipment provided. The amount, type, and level of such support is subject to sole discretion of FlashByte and supplied on a "best efforts" basis as deemed by FlashByte to be appropriate for good of the entire network, not individual Customers. Other technical support is not provided or implied, but may be arranged by separate agreement for added fees.

14. EQUIPMENT:

14.1. FlashByte Service Equipment/Property. Any FlashByte provided equipment, software, installation devices, materials, and cabling placed upon Customer's premises for Service shall remain the sole property of FlashByte whether or not labeled as such. This includes all FlashByte equipment of whatever nature, and specifically includes but is not limited to equipment for receiving, relaying, providing backup and redundancy in obtaining, receiving or relaying, and obtaining original signals. Customer agrees to return all such FlashByte property undamaged, to the FlashByte address given at the end of this Agreement or any new FlashByte address as Customer shall be notified, or to allow FlashByte to make other reasonable arrangements for provision of primary delivery, backup, or redundancy service to other customers from such equipment, at FlashByte's option, within 48 hours of notice termination of service for whatever reason. Customer shall be responsible for a regular installation fee for FlashByte removal of Equipment. Customer may not copy software or any portion thereof.

14.2. Export Compliance. Customer agrees to comply with US Export laws concerning the Equipment and the transmission of technical data and other regulated materials via the Services.

14.3. Voice and Other Equipment. To provide the Voice and backup power for Internet Services, FlashByte may provide or sell Equipment other than Internet transmission, reception, and use equipment to Customer. All sold Equipment shipments are F.O.B. "FlashByte's Facility." FlashByte's liability for delivery shall cease, and title (if applicable) and all risk of loss of damage shall pass to Customer upon delivery to carrier. Customer may be provided a twelve (12) month MANUFACTURER'S WARRANTY from the date of purchase of for Voice Equipment or Voice Service. Customer shall be required to obtain authorization from FlashByte to return any Equipment. FlashByte will provide replacement Equipment only if the Equipment is deemed to be defective and covered under the MANUFACTURER'S WARRANTY. FlashByte will not cover replacement for lost, stolen, mistreated or modified sold Equipment. Equipment returned by Customer that is not covered under warranty may be refused by FlashByte, and Customer will be responsible to pay return shipping charges. If equipment was provided by FlashByte Customer will be responsible for replacement charges. FLASHBYTE DOES NOT MANUFACTURE ANY EQUIPMENT AND THEREFORE DOES NOT PROVIDE ANY MANUFACTURER'S WARRANTY ON ANY EQUIPMENT. FLASHBYTE DOES NOT SELL EQUIPMENT OTHER THAN TELEPHONES AND BACKUP POWER SYSTEMS. ALL INTERNET SERVICE EQUIPMENT, INCLUDING WITHOUT LIMITATION RADIOS, ANTENNAS, POLES, TRIPODS, WIRELESS ROUTERS, WIRELESS ANTENNAS, LAND-BASED RELAY EQUIPMENT, TELEPHONE SWITCH BOXES, SOLAR PANELS, CABLES, ATTACHMENT DEVICES OF ALL KINDS, AND ALL OTHER EQUIPMENT USED FOR INTERNET AND DIGITAL PHONE

SERVICES INSTALLED AT THE CUSTOMER'S LOCATION IS LEASED FREE WITHOUT A MONTHLY FEE TO THE CUSTOMER BUT REMAINS THE PROPERTY OF FLASHBYTE AND IS SUBJECT TO RETURN AS PROVIDED ELSEWHERE IN THIS AGREEMENT.

15. Voice Service Tolls, Numbers, IP Addresses, Domain Names and URLs. and Equipment Information.

15.1. Tolls. Every call to or from Equipment using Voice Services that originates or terminates in the Public Switched Telephone Network ("PSTN") or SIP service provider is subject to then-applicable toll charges associated with Customer's Plan as stated on the Service Order ("SO"). Customer acknowledges that many countries charge a premium for calling mobile/special services numbers. It is the sole responsibility of Customer to verify that a number they are calling is covered in any service package before calling these types of numbers. FlashByte will bill at established or reasonable rates for any call not covered in a customer calling plan. If you have any question about the rates for a particular number or are not sure if it is covered with your unlimited long distance it is the customer's responsibility to contact FlashByte and verify the billing status of any call (dial "611" from our network or call us at 366-4800). The entire cost of any premium call including "976" or "900" calls will be billed to the customer, and service may be interrupted immediately until payment is received for all toll calls if FlashByte deems the credit status of the customer does not merit further extension of ability to make these types of calls.

15.2. Telephone Numbers, IP Addresses, Domain Names and URLs. All Telephone Numbers, IP Addresses, Domain Names and URLs ("Number/Address") provided by FlashByte to the Customer shall be leased and not sold. Customer is not to use any FlashByte Number/Address with any other device other than FlashByte Equipment without express written permission of FlashByte. FlashByte reserves the right to change, cancel or move any Number/Address at its sole discretion. If, however, the Customer chooses to 'port' their existing PSTN phone number into the FlashByte VoIP service, the Customer shall be able to 'port' the number out of the FlashByte network upon termination of service upon settlement of any undisputed outstanding invoices, subject to technical possibility and availability of such a 'port' from the supplier FlashByte has used to acquire the number. FlashByte does not guarantee that any particular number will be able to be ported into the FlashByte system, and all ports or transfers of numbers and/or addresses are subject to the terms and conditions of whatever provider FlashByte is cooperating with to provide related services.

16. Lost, Stolen, Altered or Broken Equipment. Customer shall not modify any FlashByte Equipment in any way without the express written permission of FlashByte, including modifying settings, software, or configuration data, as well as physical or material modifications. Customer shall not use the Equipment except with the Services provided hereunder. Except as otherwise provided for hereunder, Customer is responsible for all lost, stolen or broken Equipment and may be required to purchase a replacement to continue service. Replacement charges will be based on the fair retail price of equipment, plus applicable shipping costs and taxes and labor costs involved with replacement. Customer shall immediately notify FlashByte of any lost or stolen Equipment and shall cooperate with FlashByte in all reasonable aspects to eliminate actual or potential unauthorized use of the Equipment. At FlashByte's sole option, failure to report lost or stolen equipment in a timely manner will cause Customer to be responsible for all service fees accrued until the time that FlashByte is informed of the loss or theft and can effect a termination of the Services with consequences defined elsewhere in this Agreement. Customer shall be responsible for liquidated damages for unusable or unreturned equipment as provided in Paragraph 9.

17. Assignment. Any assignment of this Agreement without prior written approval shall be void. Assignment shall be automatically approved for either party upon acquisition, merger or reorganization.

18. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but, if any provision of this Agreement shall be held to be prohibited or invalid in any jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect and such prohibited or invalid provision shall remain in effect in any jurisdiction in which it is not prohibited or invalid.

19. Arbitration. Any controversy, claim, or dispute between the parties arising out of or in connection with this Agreement, which cannot be amicably settled between the parties, for damages shall be settled by binding arbitration in accordance with the Rules of Conciliation and Arbitration for the International Chamber of Commerce by an arbitration board consisting of three (3) arbitrators selected in accordance with said Rules. Arbitration proceedings shall take place in Los Angeles, CA. The Arbitration award shall be final and binding on both parties to this Agreement and shall not be subject to any appeal. All actions for injunctive relief to enforce this Agreement may be filed in any court of competent jurisdiction in the then-headquarters county of FlashByte.

20. WARRANTY. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES AND EQUIPMENT ARE AT CUSTOMER'S OWN RISK. FLASHBYTE DOES NOT MAKE, AND HEREBY DISCLAIMS ANY AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. FLASHBYTE DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. FLASHBYTE IS NOT A MANUFACTURER AND CANNOT BE RESPONSIBLE FOR MANUFACTURER DEFECTS.

21. Indemnification and Limitation of Liability. FlashByte agrees to indemnify and hold Customer harmless from and against all losses, claims, demands, damages (to person or property), and causes of action (including reasonable legal fees) resulting from the intentional or grossly negligent acts or omissions, or strict liability, of FlashByte, its officers, agents, employees, or subcontractors. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, FLASHBYTE SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR LOSS OF GOODWILL, HOWEVER CAUSED. IN NO EVENT SHALL FLASHBYTE'S TOTAL LIABILITY HEREUNDER EXCEED THE AMOUNTS PAID BY CUSTOMER TO FLASHBYTE IN THE PRIOR TWELVE (12) MONTHS.

22. Force Majeure and Acts of Nature. Neither party shall be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including act of war, acts of God, earthquake, flood, embargo, riot, terrorism, sabotage, labor shortage or dispute,

governmental act, acts of Nature, loss of connectivity to customer location for any reason including without limitation, loss of line of sight, Radio Frequency interference, legal restrictions, physical restrictions or failure of the Internet, provided that the delayed party: (a) gives the other party prompt notice of such cause; and/or (b) uses its commercially reasonable efforts to promptly correct such failure or delay in performance; and (c) gives further notice, within a reasonable amount of time, where failure or delay in performance is not commercially reasonable to correct therefore resulting in a permanent failure.

23. Governing Law and Dispute Resolution. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF CALIFORNIA APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY IN THE STATE OF CALIFORNIA.

24. Entirety of Agreement. This Agreement, the SO(s), the Disclaimer, Acceptance of Responsibility, Release, and Waiver and all references herein constitute the entire agreement between the parties with respect to the subject matter hereof, and supersede all prior or current agreements, or proposals, oral or written, all previous negotiations, and all other communications between the parties with respect to the subject matter hereof.

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