

**TERMS AND CONDITIONS &  
ACCEPTABLE USE POLICY  
FLASHLIGHT MEDIA, LLC.**

These terms and conditions (the "Agreement"), and any amendments to such, governs your participation as a user (the "Client") of the website or associate websites, products or services associated with Flashlight Media, LLC (the "Project"). The Client covenants and agrees as a condition precedent to accessing this website to be bound by this Agreement, as may be amended by Flashlight Media, LLC ("FLASHLIGHT MEDIA, LLC"), from time to time.

**1. DEFINITIONS**

- 1.1. "Client" means any individual who is party to this Agreement personally, and/or through a representative or agent, including the person who completes this Agreement.
  - 1.1.1. No other person is authorized to access or discuss the client's account with Flashlight Media, LLC, or request work, unless Flashlight Media, LLC has received written or emailed authorization from the client for this additional person to have account access.
  - 1.1.2. The client who completes this form is fully responsible for all account charges incurred by anyone whom the client authorizes on the account.
- 1.2. "Website" means the website and online services operated by FLASHLIGHT MEDIA, LLC and situated at [www.FlashlightMedia.com](http://www.FlashlightMedia.com) or at client's domain name hosted on Flashlight Media, LLC servers.
- 1.3. "Online Services" means providing multimedia hosting services (also commonly known as but not limited to "shopping carts", "educational software", "scheduling software", "forum software", "database management tools", "podcasting", "audio/video player", "website builder", "web hosting" and any additional services developed by FLASHLIGHT MEDIA, LLC) described in the Order for the fees stated in the Order.
- 1.4. "Flashlight Media, LLC" means all affiliates of Flashlight Media, LLC; including all affiliates, directors, officers, employees, owners, agents, and Flashlight Media, LLC.

**2. WEBSITE AND ONLINE SERVICES**

- 2.1. FLASHLIGHT MEDIA, LLC will permit the Client to participate in Website and Online Services, subject to compliance with the terms and conditions in this Agreement and Acceptable Use Policy by FLASHLIGHT MEDIA, LLC, from time to time, and incorporated by reference in this Agreement.
- 2.2. The Client will be issued a unique username and password to access portions of the Online Services, neither of which may be used by any person other than the Client. You must take reasonable security precautions. You must protect the confidentiality of your password, and you should change your password periodically. We recommend that you create a complex password which includes at least one symbol and a capital letter.
- 2.3. It is expressly agreed that the parties intend by this Agreement to establish a relationship between FLASHLIGHT MEDIA, LLC and the Client, but that it is not the intention of either party to undertake a joint venture or to make the Client in any sense an agent, employee, or partner of FLASHLIGHT MEDIA, LLC. The parties expressly agree that this Agreement does not in any way create a partnership, nor have the parties granted to each other any right or authority to assume or create any obligation of responsibility, express or implied, on behalf of or in the name of the other, or to bind the other in any manner whatsoever.
- 2.4. It is further agreed that the Client has no authority to create or assume in FLASHLIGHT MEDIA, LLC's name or on its behalf any obligation, express or implied, or to act or purport to act as its agent or representative for any purpose whatsoever and the Client shall not hold itself out as having any such authority.

**3. ACCEPTABLE USE POLICY**

- 3.1. Client agrees to use the service in compliance with applicable law and FLASHLIGHT MEDIA, LLC's Acceptable Use Policy (the "AUP"). Client agrees that FLASHLIGHT MEDIA, LLC may, in its reasonable commercial judgment consistent with industry standards, amend the AUP from time to time to further detail or describe reasonable restrictions and conditions on Client's use of the Services. Amendments to the AUP are effective on the earlier of FLASHLIGHT MEDIA, LLC's notice to Client that an amendment has been made, or the first day of any Renewal Term that begins subsequent to the amendment. In the event of a dispute between FLASHLIGHT MEDIA, LLC and Client regarding the interpretation of the AUP, FLASHLIGHT MEDIA, LLC's commercially reasonable interpretation of the AUP shall govern.
- 3.2. Client agrees that the following uses are not acceptable uses under the AUP. The following list is nonexclusive, and FLASHLIGHT MEDIA, LLC reserves the right to amend this list at any time at its sole discretion. You may not publish or transmit via FLASHLIGHT MEDIA, LLC's service any content that FLASHLIGHT MEDIA, LLC reasonably believes:
  - 3.2.1. Constitutes child pornography;
  - 3.2.2. Constitutes pornography;
  - 3.2.3. Is excessively violent, incites violence, threatens violence, or contains harassing content or hate speech; Is unfair or deceptive under the consumer protection laws of any jurisdiction, including chain letters and pyramid schemes;
  - 3.2.4. Is defamatory or violates a person's privacy;
  - 3.2.5. Creates a risk to a person's safety or health, creates a risk to public safety or health, compromises national security, or interferes with an investigation by law enforcement;
  - 3.2.6. Improperly exposes trade secrets or other confidential or proprietary information of another person;
  - 3.2.7. Is intended to assist others in defeating technical copyright protections;
  - 3.2.8. Infringes on another person's trademark, service mark, copyright, patent, or other property right;
  - 3.2.9. Promotes illegal drugs, violates export control laws, relates to illegal gambling, or illegal arms trafficking;

- 3.2.10. Is otherwise illegal or solicits conduct that is illegal under laws applicable to you or to FLASHLIGHT MEDIA, LLC;
  - 3.2.11. or Is otherwise malicious, fraudulent, discriminatory or may result in retaliation against FLASHLIGHT MEDIA, LLC by offended viewers.
  - 3.2.12. Is directly opposed to or contrary to the religious and moral principles or beliefs of FLASHLIGHT MEDIA, LLC and its users.
  - 3.3. Excessive Utilization of Network Resources
    - 3.3.1. The excessive use or abuse of FLASHLIGHT MEDIA, LLC's network resources by one subscriber may have a negative impact on all other subscribers. You may not use the Service or take any action that will result in excessive consumption or utilization of the system or network resources, or which may weaken network performance, as determined in FLASHLIGHT MEDIA, LLC's sole discretion. Such prohibited actions include, but are not limited to:
      - 3.3.1.1. Using the Service to host a website which attracts excessive traffic, or excessive storage usage.
      - 3.3.1.2. In the event that FLASHLIGHT MEDIA, LLC detects excessive use by you, FLASHLIGHT MEDIA, LLC may restrict your access to FLASHLIGHT MEDIA, LLC's network, increase the fees associated with your Service, including upgrading you to a higher class of Service, or terminate your Service.
  - 3.4. FLASHLIGHT MEDIA, LLC is under no duty, and does not by this AUP undertake a duty, to monitor or police our Clients' activities and disclaims any responsibility for any misuse of the FLASHLIGHT MEDIA, LLC network.
  - 3.5. You may not engage in illegal, abusive, or irresponsible behavior, including, but not limited to: Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures (including those belonging to FLASHLIGHT MEDIA, LLC and its Clients) without express authorization of the owner of the system or network; Monitoring data or traffic on any network or system without the authorization of the owner of the system or network; Interference with service to any user, host or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks; Use of an Internet account or computer without the owner's authorization, including, but not limited to Internet scanning (tricking other people into releasing their passwords), password robbery, security hole scanning, and port scanning; Forging of any TCP-IP packet header or any part of the header information in an e-mail or a newsgroup posting; or Any conduct that is likely to result in liability against the FLASHLIGHT MEDIA, LLC's network.
  - 3.6. Client agrees to not use the FLASHLIGHT MEDIA, LLC trade name or trademark in any way whatsoever without FLASHLIGHT MEDIA, LLC's express written authorization. Client acknowledges that use of the FLASHLIGHT MEDIA, LLC name without its written consent is strictly prohibited.
- 4. ACCOUNT CHARGES AND BILLING**
- 4.1. FLASHLIGHT MEDIA, LLC may but are not required to, upon request, provide free estimates, free proposals, a one-hour free consultation for new clients, and up to two hours per year of free tech support for hosting clients.
  - 4.2. Any feature or specification not explicitly included in a written Order or estimate provided by FLASHLIGHT MEDIA, LLC is not included in the price quoted. If Client requests a feature or specification, FLASHLIGHT MEDIA, LLC may choose to create it at no additional cost, choose to create it at an agreed upon cost to Client, or choose not to fulfill Client's request.
  - 4.3. Payments made to Flashlight Media, LLC are not refundable. If a payment is bounced, refused, canceled, or charged back for any reason, a \$75 charge will be added to the client's account and Client remains liable for entire account balance.
  - 4.4. Fees are payable in advance on the first day of each billing cycle. Client's billing cycle shall be monthly or annually as indicated on the Order, beginning on the Service Commencement Date. FLASHLIGHT MEDIA, LLC may require payment for the first billing cycle before beginning service. **Past due balances accrue finance charges at the rate of 2% per month until the balance is paid in full.**
  - 4.5. If the Order provides for credit/debit card billing, Client authorizes FLASHLIGHT MEDIA, LLC to bill subsequent fees to the credit/debit card 30 days prior or after the first day of each successive billing cycle during the Term of this Agreement; otherwise FLASHLIGHT MEDIA, LLC will invoice Client via electronic mail to the Primary Client Contact listed on the Order. Invoiced fees may be issued on or before the 1st day of each billing cycle, and the fees shall be due on the 14th day following invoice date, but in no event earlier than 30 days prior each billing cycle. Payments must be made in United States dollars. Client is responsible for providing FLASHLIGHT MEDIA, LLC with changes to billing information (such as credit card expiration, change in billing address). Fees not disputed within thirty (30) days of due date are conclusively deemed accurate.
  - 4.6. While an account is past due, client's access to their account may be disabled without notice. Client agrees to pay FLASHLIGHT MEDIA, LLC's reasonable reinstatement fee of \$150.00 following a suspension of service for non-payment, and to pay FLASHLIGHT MEDIA, LLC's reasonable costs of collection of overdue amounts, including collection agency fees, attorney fees and court costs
  - 4.7. **I hereby authorize FLASHLIGHT MEDIA, LLC to charge my provided credit card the balance currently due on my account automatically thirty (30) days prior to renewal.**
  - 4.8. Being the authorized cardholder or the Client, I understand and agree to the terms set forth in this agreement, agree to pay, and specifically authorize to charge my credit card for the services provided. I further agree that in the event my credit card becomes invalid, I will provide a new valid credit card upon request, to be charged for the payment of any outstanding balances owed. I furthermore confirm that I have received all services and goods to satisfactory conditions.
- 5. FEE INCREASE**
- 5.1. FLASHLIGHT MEDIA, LLC may increase its fees for services by giving notice to Client of the new fees at least sixty (60) days in advance, and if Client does not give a notice of cancellation as provided in Section 16 below, the Client shall be deemed to have accepted the new fee structure.
- 6. GUARANTEES AND DISCLAIMERS**

- 6.1. Should the client, or anyone not affiliated with Flashlight Media, LLC, make any changes to the project or to the server on which the project resides, or upload any files to the server where the project resides, we shall disclaim all responsibility for any problems with the appearance and functionality of the project, including typos, code errors, etc. Time spent addressing these and any other website issues will be billed at our current hourly rate.
- 6.2. The client is responsible for notifying FLASHLIGHT MEDIA, LLC via email if the client makes any change to the website code. If the client changes website code without informing us, we may overwrite or correct those changes, intentionally or inadvertently, and this may cause extra expense to the client.

**7. PROJECT OWNERSHIP**

- 7.1. FLASHLIGHT MEDIA, LLC may utilize code, images, or other products previously created or obtained by Flashlight Media, LLC. Any such products are, and shall remain, the exclusive property of Flashlight Media, LLC or their owner, although the client shall have license to display and utilize such items solely on the project we create for them. Flashlight Media, LLC retains full ownership of products that it owns, and the exclusive right to copy, implement, distribute, modify, and sell them.
- 7.2. The Client guarantees that FLASHLIGHT MEDIA, LLC has full ownership or right to use any text, images, etc. that the client provides for the project. We are not responsible for any liability arising from the use of copyrighted or trademarked items on the client's website.
- 7.3. FLASHLIGHT MEDIA, LLC reserves the right to display the client's name and a screenshot of the project on its website.

**8. FRAUD**

- 8.1. If FLASHLIGHT MEDIA, LLC determines, in its sole discretion, that the Client's account in Website and Online Services has been used in a manner which FLASHLIGHT MEDIA, LLC considers to be fraudulent or which might bring the reputation or standing of FLASHLIGHT MEDIA, LLC into disrepute either with the general public or with the Clients or potential Clients of FLASHLIGHT MEDIA, LLC, or otherwise that the Client has engaged in activities which might be considered fraudulent, FLASHLIGHT MEDIA, LLC may but will not be obligated to (a) suspend or terminate the Client's membership or contract in Website and Online Services, without notice and (b) release to any third party, information relating to the identity and location of the Client if required to do so in order to enforce these terms and conditions.

**9. DMCA COPYRIGHT INFRINGEMENT TAKEDOWN NOTICE**

- 9.1. We will respond to legitimate requests under the Digital Millennium Copyright Act ("DMCA"), and we retain the right to remove user content on FLASHLIGHT MEDIA, LLC that we deem to be infringing the copyright of others. If you become aware of user content on FLASHLIGHT MEDIA, LLC that infringes your copyright rights, you may submit a properly formatted DMCA request (see 17 U.S.C. § 512) to FLASHLIGHT MEDIA, LLC.
- 9.2. Misrepresentations of infringement can result in liability for monetary damages. You may want to consult an attorney before taking any action pursuant to the DMCA. Any DMCA request should be sent to this contact information:
- 9.3. Copyright Agent
  - 9.3.1. Taylor Law Offices, PLLC  
1112 W. Main St. Ste. 101  
Boise, ID 83702
- 9.4. Please send our Copyright Agent the following information:
  - 9.4.1. The electronic or physical signature of the owner of the copyright or the person authorized to act on the owner's behalf;
  - 9.4.2. Identification of the copyrighted work claimed to have been infringed, or a representative list of such works;
  - 9.4.3. The URL or Internet location of the materials claimed to be infringing or to be the subject of infringing activity, or information reasonably sufficient to permit us to locate the material;
  - 9.4.4. Your name, address, telephone number and email address;
  - 9.4.5. A statement by you that you have a good faith belief that the disputed use of the material is not authorized by the copyright owner, its agent or the law; and
  - 9.4.6. A statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or are authorized to act on the copyright owner's behalf.
- 9.5. If we remove your user content in response to a copyright or trademark notice, we will notify you via FLASHLIGHT MEDIA, LLC's email system and offer to provide you with a copy of the notice. If you believe your user content was wrongly removed due to a mistake or misidentification of the material, you can file a counter-notice with us that includes the required information under 17 U.S.C. § 512(g)(3).
- 9.6. Upon receiving a counter-notice we will forward it to the complaining party and tell them we will restore your content within 10 business days. If that party does not notify us that they have filed an action to enjoin your use of that content on FLASHLIGHT MEDIA, LLC before that period passes, we will consider restoring your user content to the site.
- 9.7. It is FLASHLIGHT MEDIA, LLC's policy to close the accounts of users we identify as repeat infringers. We apply this policy at our discretion and in appropriate circumstances, such as when a user has repeatedly been charged with infringing the copyrights or other intellectual property rights of others.

**10. THIRD PARTY RELATIONSHIPS**

- 10.1. FLASHLIGHT MEDIA, LLC does not guarantee Client server accessibility with its hosted outgoing (SMTP) mail server; which could be denied access due to Client's internet service provider, anti-virus software, or computer settings may block usage of this server. In such cases, FLASHLIGHT MEDIA, LLC suggests using the ISP's outgoing mail server.
- 10.2. FLASHLIGHT MEDIA, LLC' hosting accounts include third-party software, such as webmail. Such software is developed and supported by third parties independent of Flashlight Media, LLC, and makes no guarantees about the functionality or reliability of such software. FLASHLIGHT MEDIA, LLC does not provide free tech support for such software.

#### **11. COVENANTS, REPRESENTATIONS AND WARRANTIES**

- 11.1. The Client represents and warrants that:
  - 11.1.1. It is at least 18 years of age and it has the authority and capacity to enter into and to be bound by this Agreement;
  - 11.1.2. none of the Client's information contains false or deceptive material; and
  - 11.1.3. it is not now a party to any agreement or business relationship which may conflict with this Agreement.
- 11.2. The Client covenants and agrees that:
  - 11.2.1. it will, at all times, comply with all laws applicable in the jurisdiction where the Client is situated or where the Client directly or indirectly conducts its business;
  - 11.2.2. it will not enter into any agreement or business relationship or otherwise incur any obligation which might, in the opinion of FLASHLIGHT MEDIA, LLC, conflict with this Agreement;
  - 11.2.3. it will, at all times, comply with the terms of this Agreement, and the FLASHLIGHT MEDIA, LLC Policies, as updated, amended and replaced by FLASHLIGHT MEDIA, LLC, from time to time, in its sole discretion;
  - 11.2.4. it will not, without the express written consent of FLASHLIGHT MEDIA, LLC, use or permit any person for who it is in law responsible to use any third-party trade-names or trade-marks;
  - 11.2.5. it will at all times comply with the terms and conditions of any agreement in which the Client elects to participate; and
  - 11.2.6. it will, at all times and from time to time provide FLASHLIGHT MEDIA, LLC with written confirmation of a valid physical address, telephone number, electronic mail address and such other identifying or financial information as FLASHLIGHT MEDIA, LLC may reasonably require.

#### **12. INDEMNIFICATION**

- 12.1. The Client covenants and agrees to indemnify and save harmless FLASHLIGHT MEDIA, LLC and their respective directors, officers, employees, and affiliates including Flashlight Media, LLC (collectively, the "Indemnified Group") from and against any and all claims or judgments, including all associated legal fees, expenses and disbursements actually incurred, arising out of any breach of this Agreement or the exercise by the Client of any right under this Agreement or any act or omission of the Client, a Sub-Client or anyone for whom the Client is in law responsible, including without limitation any damages, losses, special, consequential or otherwise, arising in any manner (including those arising from or incidental to any liability or other lawsuit, claim, demand or other action brought) as a consequence of any act or omission of the Client or any person for whom the Client is in law responsible, whether or not the Indemnified Group or any of them are named as a party defendant in any such proceedings and whether or not the Indemnified Group or any of them are alleged to be negligent or otherwise responsible for any damage or injury to persons or property. The obligation of the Client to defend and indemnify as set out in this paragraph will survive termination of this Agreement for any reason and will not be otherwise limited by any other term or condition of this or any Agreement.
- 12.2. Client has the responsibility and obligation of immediately notifying FLASHLIGHT MEDIA, LLC of any potential lawsuit, actual lawsuit, violation of law, legality issues or any violation of code which would impact FLASHLIGHT MEDIA, LLC or another Client in any way within five (5) business days or the nondisclosing party takes 100% liability and obligation for any and all damages, costs, attorney fees and any other such liability regardless of any liability on FLASHLIGHT MEDIA, LLC's part.

#### **13. DISCLOSURE OF INFORMATION**

- 13.1. FLASHLIGHT MEDIA, LLC or its directors, may, from time to time, disclose to the Client certain information relating to FLASHLIGHT MEDIA, LLC's business; business and marketing plans, strategies and methods which may not be standard industry practice or which are not generally known in the industry; or studies, charts, plans, tales or compilations of business and industrial information acquired or prepared by or on behalf of FLASHLIGHT MEDIA, LLC (all collectively referred to as the "Confidential Information"). The Client acknowledges that Confidential Information will be provided at the sole discretion of FLASHLIGHT MEDIA, LLC, and nothing in this Agreement obligates FLASHLIGHT MEDIA, LLC, its directors, agents or employees to disclose or grant to the Client access to any Confidential Information.
- 13.2. Unless expressly authorized in writing by FLASHLIGHT MEDIA, LLC, the Client covenants and agrees:
  - 13.2.1. The Client acknowledges that FLASHLIGHT MEDIA, LLC remains the sole and exclusive owner of all right, title and interest in and to the Confidential Information. The Client agrees that the Confidential Information will not be copied or otherwise reproduced without the express prior written consent of FLASHLIGHT MEDIA, LLC.
- 13.3. The Client acknowledges and agrees that:
  - 13.3.1. the provisions of this Section and the Client's agreement with the same are of the essence and constitute a material inducement to FLASHLIGHT MEDIA, LLC to enter into this Agreement;
  - 13.3.2. the provisions of this Section shall be construed independently of any other provision of this Agreement, and the existence of any claim or cause of action the Client may have against FLASHLIGHT MEDIA, LLC, whether predicated on this Agreement

or otherwise, shall not constitute a defense to the enforcement by FLASHLIGHT MEDIA, LLC of the provisions of this Section;

13.3.3. that any breach of this Section would cause irreparable harm to FLASHLIGHT MEDIA, LLC for which damages might not be an adequate remedy, and the Client therefore agrees that in the event of any such breach FLASHLIGHT MEDIA, LLC will be entitled to seek, in addition to any other right accruing to FLASHLIGHT MEDIA, LLC under this Agreement or otherwise in law or equity, injunctive relief against the Client without the necessity of proving actual damages; and

13.3.4. notwithstanding any other provision of this Agreement, this Section shall survive the termination of this Agreement, however caused.

13.3.5. The Client agrees to indemnify and save harmless FLASHLIGHT MEDIA, LLC against any and all loss, costs or expenses, inclusive of court costs and legal/attorney fees, which FLASHLIGHT MEDIA, LLC may incur as the direct or indirect result of any unauthorized disclosure of the Confidential Information by the Client or any person for whom the Client is responsible, in law.

#### **14. DISCLAIMER AND LIMITATION OF LIABILITY AND DAMAGES**

14.1. FLASHLIGHT MEDIA, LLC disclaims any and all warranties, conditions, representations, indemnities and guarantees with respect to any matter, whether express or implied (including without limitation any warranty of profitability, satisfactory quality, merchantability, fitness for any particular purpose, title and non-infringement).

14.2. FLASHLIGHT MEDIA, LLC DOES NOT WARRANT OR REPRESENT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. TO THE EXTENT PERMITTED BY APPLICABLE LAW. ALL SERVICES ARE PROVIDED ON AN "AS IS" BASIS.

14.3. Notwithstanding any other provision of this Agreement, FLASHLIGHT MEDIA, LLC additionally disclaims all obligations and liabilities on the part of FLASHLIGHT MEDIA, LLC and those for whom it is in law responsible for any damages, including, but not limited to, indirect, special, and consequential damages, attorneys' and experts' fees, and court costs (even if FLASHLIGHT MEDIA, LLC has been advised of the possibility of such damages, fees or costs), arising out of or in connection with this Agreement.

14.4. In no circumstance will FLASHLIGHT MEDIA, LLC be liable to the Client for any consequential, indirect, special, punitive or incidental damages or lost profits of the Client or the Client's successors or assigns (including without limitation claims for loss of goodwill, use of or reliance on the services provided hereunder, stoppage of other work or impairment of other assets) arising out of breach or failure of express or implied warranty, breach of contract, misrepresentation, negligence, strict liability in tort or otherwise. Without limiting the foregoing, FLASHLIGHT MEDIA, LLC will not be liable for any failure or delay resulting from any governmental action, fire, flood, material shortage, transportation interruption of any kind, defects, product defects of any kind, work slowdown, actions or inaction of Client or third parties, Client's equipment or software and/or any third party equipment or any other condition affecting production or delivery in any manner beyond the control of FLASHLIGHT MEDIA, LLC.

14.5. Client has the responsibility and obligation of immediately notifying FLASHLIGHT MEDIA, LLC of any potential lawsuit, actual lawsuit, violation of law, legality issues or any violation of code which would impact FLASHLIGHT MEDIA, LLC or another Client in any way within five (5) business days or the nondisclosing party takes 100% liability and obligation for any and all damages, costs, attorney fees and any other such liability regardless of any liability on FLASHLIGHT MEDIA, LLC's part.

14.6. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGE OF ANY KIND, OR FOR DAMAGES THAT COULD HAVE BEEN AVOIDED BY THE USE OF REASONABLE DILIGENCE, ARISING IN CONNECTION WITH THE AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING ELSE IN THE AGREEMENT TO THE CONTRARY, THE MAXIMUM AGGREGATE LIABILITY OF Flashlight Media, LLC AND ANY OF ITS EMPLOYEES, AGENTS OR AFFILIATES, UNDER ANY THEORY OF LAW (INCLUDING BREACH OF CONTRACT, TORT, STRICT LIABILITY, AND INFRINGEMENT) SHALL BE A PAYMENT OF MONEY NOT TO EXCEED THE AMOUNT PAYABLE BY CLIENT FOR THREE MONTHS OF SERVICE.

#### **15. TERM**

15.1. The service term of the Agreement shall begin on the date the Client agrees to the written or emailed proposal (the "Service Commencement Date"). Term automatically renews monthly, quarterly, or annually (based on your proposal agreement) from the Service Commencement Date unless terminated in accordance with the following section.

#### **16. TERMINATION**

16.1. Client agrees that FLASHLIGHT MEDIA, LLC may suspend services to Client without notice and without liability if: (i) FLASHLIGHT MEDIA, LLC reasonably believes that the services are being used in violation of the AUP; (ii) Client fails to cooperate with any reasonable investigation of any suspected violation of the AUP; (iii) FLASHLIGHT MEDIA, LLC reasonably believes that the suspension of service is necessary to protect its network or its other Clients, or (iv) as requested by a law enforcement or regulatory agency.

16.1.1. Client shall pay FLASHLIGHT MEDIA, LLC's reasonable reinstatement fee of \$250.00 if service is reinstated following a suspension of service under this subsection.

16.2. Client must provide cancellation notice at least thirty (30) days prior to the automatic yearly renewal date.

16.3. The Agreement may be terminated by Client without further notice and without liability if FLASHLIGHT MEDIA, LLC fails in a material way to provide the service in accordance with the terms of the Agreement and does not cure the failure within ten (10) days of Client's written notice describing the failure in reasonable detail.

- 16.4. The Agreement may be terminated by FLASHLIGHT MEDIA, LLC prior to the expiration of the Initial Term or any Renewal Term without further notice and without liability as follows:
- 16.4.1. Upon ten (10) days-notice if Client is overdue on the payment of any amount due under the Agreement;
  - 16.4.2. Client materially violates any other provision of the Agreement, including the AUP, and fails to cure the violation within fourteen (14) days of a written notice from FLASHLIGHT MEDIA, LLC describing the violation in reasonable detail;
  - 16.4.3. Upon one (1) days-notice if Client's Service is used in violation of a material term of the AUP more than once, or
  - 16.4.4. Upon one (1) days-notice if Client violates Section 11 (Client Information) of this Agreement.
- 16.5. Either party may terminate this agreement upon ten (10) days advance notice if the other party admits insolvency, makes an assignment for the benefit of its creditors, files for bankruptcy or similar protection, is unable to pay debts as they become due, has a trustee or receiver appointed over all or a substantial portion of its assets, or enters into an agreement for the extension or readjustment of all or substantially all of its obligations.

**17. GENERAL**

- 17.1. The Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the state of Idaho, excluding its conflict of law rules. The Client agrees to the exclusive jurisdiction of the courts of Idaho, county of Ada, with respect to any dispute arising as a direct or indirect consequence of this Agreement.
- 17.2. From time to time, FLASHLIGHT MEDIA, LLC may amend, supplement or replace this Agreement or the FLASHLIGHT MEDIA, LLC Policies in part or in whole, with no Notice to the Client. If the Client has not terminated this Agreement, the Client will be deemed to have consented to the same.
- 17.3. Any notice or other communication ("Notice") permitted or required by this Agreement by FLASHLIGHT MEDIA, LLC will be in writing and given by personal delivery or transmitted by facsimile or electronic mail to the receiving party at the address on file for the Client or the physical or electronic mail of the upper management of FLASHLIGHT MEDIA, LLC. Any such Notice will be deemed to have been received on the date on which it was transmitted by facsimile or delivered or received by physical mail.
- 17.4. No term or condition of this Agreement will be deemed waived and no breach excused, unless such waiver or consent excusing the breach is in writing and signed by the non-breaching party.
- 17.5. In the event that any term, covenant, provision or condition of this Agreement is declared indefinite, invalid, illegal or unenforceable by a court having jurisdiction, then this Agreement with respect to the remaining terms, covenants, provisions, or conditions will continue in force and effect and the indefinite, invalid, illegal or unenforceable term shall be rewritten as closely as possible while still being enforceable, if possible, if not, then it shall be struck.
- 17.6. This Agreement will inure to the benefit of and be binding upon the respective successors, heirs and assigns of FLASHLIGHT MEDIA, LLC and the Client.
- 17.7. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this agreement, supersedes any previous or contemporaneous representations, negotiations, understandings, and agreements, oral or written. It serves as an amendment to any other written, and only written, agreement between the parties.

If you have questions about these Terms and Conditions or the practices of this site, please contact:  
Flashlight Media, LLC at 208-358-8870  
or via our Contact Form at  
FlashlightMedia.com

By agreeing to your written or emailed proposal, you are agreeing to this Acceptable Use Policy / Terms of Service.

FLASHLIGHT MEDIA, LLC RESERVES THE RIGHT TO CHANGE THESE TERMS AND CONDITIONS AT ANY TIME.

ALL CHANGES WILL BE POSTED TO THIS PAGE.

\*THANK YOU AND WELCOME TO FLASHLIGHT MEDIA, LLC\*

Last Updated: MARCH 24, 2023