

# FASTBLUE COMMUNICATIONS, INC. STANDARD TERMS AND CONDITIONS

**These Standard Terms and Conditions** (these “Terms”) govern the relationship between you (“Customer”) and Fastblue Communications, Inc., a California corporation (“FASTBLUE”). FASTBLUE and Customer may sometimes each be referred to herein as a “party” and may sometimes be jointly referred to herein as the “parties.” By entering into a Customer Service Order Agreement with FASTBLUE (each, a “Service Order”) with respect to any Services (as defined below), Customer acknowledges and agrees that (i) Customer has read, understands and accepts these Terms and (ii) these Terms shall apply to and govern all such Services and each such Service Order. These Terms together with the applicable Service Order constitute the “Agreement.”

**1. Services.** Subject to these Terms, FASTBLUE will provide (or arrange for the provision of) certain telecommunication services for Customer from one or more third-party telecommunications service providers (each a, “Telecom Service Provider”), in each case as described in the applicable Service Order (the “Services”). In the event of a conflict between these Terms and any Service Order, these Terms will control with respect to such conflict.

**2. Term of Service Orders; Charges for Early Termination.** Except as otherwise specified in a Service Order, the term of each Service to be provided under each Service Order shall be as set forth in the table labeled “Product and Service Description & Charges” in such Service Order. Customer may terminate a Service Order (or any Service described therein) prior to the expiration of the applicable term set forth in such Service Order; provided, however, that if (i) Customer terminates a Service Order (or any Service described therein) early for any reason other than a material breach of the Service Order or these Terms by FASTBLUE or (ii) if FASTBLUE terminates a Service Order (or any Service described therein) pursuant to Section 5 below, then Customer will be obligated to pay an early termination fee with respect to each Service so terminated, which fee shall be calculated as the number of months remaining in the then current term for such Service multiplied by the monthly recurring charge (“MRC”) for such Service as set forth in the applicable Service Order. Except as otherwise specified in a Service Order upon the expiration of the term of any Service described in a Service Order, such Service Order shall automatically renew with respect to such Service for an additional one (1) year term unless Customer provides FASTBLUE with written notice of its desire not to renew such Service Order with respect to such Service at least sixty (60) days before the end of the then current term for such Service.

**3. Payment Terms.** FASTBLUE will submit invoices to Customer on a monthly basis. All amounts stated on an invoice for Customer are due and payable to FASTBLUE within thirty (30) days from Customer’s receipt of invoice. FASTBLUE may send out its invoices as early as sixty (60) days before the applicable service date. If payment for properly invoiced charges is not received thirty (30) days after receipt of invoice, Customer will be considered past due, and interest on the unpaid past due balance will accrue at the rate of one and one-half percent (1.5%) per month or the maximum rate allowed by law, whichever is less. Customer will be liable to FASTBLUE for any costs and/or expenses incurred directly or indirectly, including reasonable attorney’s fees and expenses, in the collection of all properly invoiced amounts due and owing to FASTBLUE. If notice of a dispute as to charges is not received in writing by FASTBLUE within thirty (30) days after Customer’s receipt of invoice, such invoice shall be deemed to be correct and binding upon Customer.

**4. Taxes and Surcharges.** Customer will be responsible for all applicable taxes, fees and surcharges (“Taxes”) that are levied or imposed as a result of FASTBLUE’s provision of the Services. Any Taxes levied or imposed on FASTBLUE as a result of FASTBLUE’s provision of the Services will be added to the invoice(s) for Customer, as permitted by law. If Customer is exempt from payment of any Taxes, Customer may provide FASTBLUE with a valid exemption certificate. FASTBLUE reserves the right to reject Customer’s tax-exempt status if FASTBLUE finds that Customer does not have legal standing as a tax-exempt entity. FASTBLUE will apply Customer’s legal tax-exempt status starting the period immediately following receipt of the valid tax-exempt certificate(s). Customer shall not receive credit for any Taxes already paid to FASTBLUE. Customer will immediately notify FASTBLUE in writing if Customer’s tax-exempt status changes during the term of any Service Order. Customer shall pay such Taxes and indemnify FASTBLUE from any liability or expense incurred by FASTBLUE in connection with such Taxes.

**5. Suspension of Services and Customer Events of Default.** FASTBLUE shall have the right to suspend the Services upon at least ten (10) days’ written notice if: (i) Customer fails to pay any charges (including any interest charges) owed to FASTBLUE within forty-five (45) days after receipt of invoice; or (ii) Customer becomes insolvent or if

any petition is filed or proceedings commenced by or against Customer relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors (each an “Event of Default”). If the Event of Default is not cured within thirty (30) days after suspension of the Services, FASTBLUE shall have the right to immediately terminate any or all Services and Service Orders in full. In the event FASTBLUE exercises such termination right, Customer shall be responsible for payment of the early termination fee(s) described in Section 2 above.

**6. Service Level Agreements.** FASTBLUE will provide to the Customer the same service level agreement(s) as are provided to FASTBLUE by the Telecom Service Provider(s) set forth in the applicable Service Order, and the terms and conditions of such service level agreement(s) are hereby incorporated into the applicable Service Order by reference.

**7. Representations and Warranties of FASTBLUE; Customer Acknowledgement Regarding Telecom Services.**

- a) Subject to clause (b) below, FASTBLUE represents and warrants that: (i) it will perform the Services in a professional manner and in accordance with industry standards; (ii) the Services and/or other materials provided by or on behalf of FASTBLUE will comply in all material respects with the specifications and requirements set forth in the applicable Service Order; (iii) the Services and/or other materials provided by or on behalf of FASTBLUE will not violate, infringe or misappropriate any third party patents, trade secrets, trademarks, copyrights or other proprietary rights; and (iv) FASTBLUE will comply with all applicable federal, state, local and foreign laws in the performance of the Services.
- b) Notwithstanding clause (a) above or any other provision of these Terms or any Service Order, Customer acknowledges and agrees that (i) as a component of the Services to be provided to Customer by FASTBLUE, FASTBLUE shall be acting as a reseller of certain third-party telecommunication products and services, including data center hosting services, dedicated internet access services, private line services and certain other additional telecommunication services (collectively, “Telecom Services”), (ii) FASTBLUE has no control or responsibility for the acts or omissions of the Telecom Service Providers who may provide such Telecom Services to Customer including, without limitation, with respect to any use or disclosure by such parties of any confidential information or intellectual property rights, any security measures implemented by such parties, any insurance coverage maintained or not maintained by any such party, any such party’s practices with respect to data processing or data protection, or any bodily injury or death or physical damage to tangible property caused by any such party or its employees or agents, (iii) any Telecom Services resold by FASTBLUE to Customer shall be performed solely by the Telecom Service Provider obligated to provide such Telecom Services and FASTBLUE shall have no obligation to directly provide such Telecom Services to Customer or, except as may otherwise be explicitly provided for in these Terms, have any liability with respect to the performance of such Telecom Services and (iv) Customer’s exclusive rights and remedies with respect to the performance of Telecom Services by any Telecom Service Provider shall be as provided in the applicable service level agreement(s) provided by each Telecom Service Provider (as described in Section 6 above).

**8. Indemnification.** Subject to Section 7(b) above, Customer and FASTBLUE, shall each defend, indemnify and hold harmless the other party and its parents, subsidiaries, and affiliates, and their respective officers, directors, members, stockholders, employees, contractors and agents from and against all claims, losses, and liabilities, including reasonable attorneys’ and experts’ fees and court and settlement costs (“Claims”): (i) arising from or in connection with the gross negligence or willful misconduct of the respective indemnifying party, its employees, agents, or contractors in connection with these Terms, any Service Order or the provision of Services; (ii) arising from or in connection with failure to obtain approval, consent, or authorization to enter into any Service Order, (iii) based on the respective indemnifying party’s violation of any law or any rule or regulation; (iv) arising from or in connection with actual or alleged infringement or misappropriation of any intellectual property rights of a third party; (v) based on libel, slander, infringement of copyright, trademark, trade name or trade secret arising out of the content of Customer’s transmissions using FASTBLUE’s services and/or equipment; or (vi) based upon fraud arising out or in connection with these Terms, any Service Order or the Services. This indemnification provision shall survive the expiration or termination of any Service Order.

**9. Limitations of Liability and Damages.**

- a) SUBJECT IN ALL CASES TO SECTION 7(b) ABOVE AND SECTION 9(c) BELOW, EXCEPT FOR FASTBLUE’S OBLIGATIONS WITH RESPECT TO INDEMNIFICATION AND CONFIDENTIALITY AS SET FORTH HEREIN (EACH AN “EXCLUDED CLAIM”), WHICH EXCLUDED CLAIMS ARE EXPRESSLY NOT LIMITED, FASTBLUE’S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO

THE APPLICABLE SERVICE ORDER(S) OR THESE TERMS WILL NOT EXCEED THE TOTAL AMOUNTS PAID OR PAYABLE BY CUSTOMER TO FASTBLUE WITH RESPECT TO THE ONE HUNDRED EIGHTY (180) DAY PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

**b) EXCEPT FOR EXCLUDED CLAIMS OR AS OTHERWISE SPECIFICALLY SET FORTH IN THESE TERMS, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY, ITS EMPLOYEES, SUBCONTRACTORS AND AGENTS OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**c) Customer acknowledges that, with respect to Telecom Services (i) FASTBLUE is acting only as a reseller of services and equipment provided by certain Telecom Service Providers and (ii) FASTBLUE's sole liability under these Terms and the applicable Service Orders with respect to any Services and/or equipment provided solely by any Telecom Service Provider (including, without limitation, for interruption of any such Service or failure of any such equipment) shall be limited, in each instance, to the service credits and/or other remedies set forth in the applicable service level agreement from such Telecom Service Provider.**

**10. Disclaimer of Warranties.** EXCEPT AS OTHERWISE PROVIDED HEREIN, THERE ARE NO AGREEMENTS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORILY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE RELATING TO THE SERVICE(S). ALL SUCH WARRANTIES ARE EXPRESSLY EXCLUDED AND DISCLAIMED. FASTBLUE ALSO DOES NOT WARRANT ANY SERVICE, EQUIPMENT, OR SOFTWARE PROVIDED BY A THIRD PARTY FOR WHICH FASTBLUE IS A RESELLER OR AGENT.

**11. Dispute Resolution.** If there is any dispute arising out of or relating to these Terms or any Service Order(s), the parties shall submit the dispute to the Judicial Arbitration and Mediation Services ("JAMS"), or its successor, for mediation in Orange County, California. The parties shall cooperate with JAMS and with one another in selecting a mediator, and in scheduling the mediation proceedings. If the parties are unable to resolve the dispute after two mediation sessions, no more than thirty (30) days apart, either party may submit the matter to JAMS, or its successor, for final and binding arbitration in Orange County, California. The arbitrator shall be selected from a list of arbitrators provided by JAMS following a request by the party seeking arbitration for a list of five arbitrators or experts. If the parties cannot agree on an arbitrator within ten (10) business days of receiving the list of arbitrators/experts, then the arbitrator/expert shall be appointed by JAMS. The parties shall bear equally the costs of mediation and arbitration. No claim, action, suit or arbitration of any kind may be commenced against either party more than one (1) year after the date upon which such claim, action, suit or cause of action first accrued or occurred.

**12. Governing Law.** These Terms and each Service Order shall be governed by and construed in accordance with the laws of the State of California. Each party hereby irrevocably submits to the personal jurisdiction of any state or federal court located in Orange County, California in any suit, action or proceeding arising out of or relating to these Terms or any Service Order.

**13. Confidentiality.** Each party shall: (1) protect and keep confidential any information obtained from the other party in connection with any Service Order or related to the Services that is identified as confidential or proprietary or that, given the nature of the information or the manner of its disclosure, reasonably should be considered confidential or proprietary (including, without limitation, all information relating to the other party's technology, customers, business plans, marketing activities and finances); (2) use that information only for the purpose(s) for which it was originally disclosed and in any case only for the purpose of fulfilling its obligations under any Service Order; and (3) return all that information to the other party promptly upon the termination or expiration of all outstanding Service Orders. All that information will remain the disclosing party's exclusive property, and the receiving party will have no rights to use that information except as expressly provided in this paragraph.

**14. No Publicity.** FASTBLUE shall not use any tradename, trademark, service mark, logo or commercial symbol of Customer or any of its affiliates in connection with any advertising, sales, promotion, press releases, or other publicity without Customer's prior written approval.

**15. Assignment.** Neither party may assign its rights or obligations under these Terms or any Service Order without the other party's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

Notwithstanding the foregoing, a party may assign its rights and obligations under these Terms and under any Service Order without the consent of the other party in connection with a sale or transfer of all or substantially all of such party's stock or assets, provided that (i), the assigning or transferring party provides written notice to the other party. Subject to this restriction, these Terms and each Service Order shall inure to the benefit of and be binding upon the heirs, successors, subcontractors, and assigns of the respective parties.

**16. Notices.** Except as otherwise provided in an applicable Service Order, any notice or other communications required or permitted to be given by either party under these Terms or a Service Order must be given in writing to the other party at the address set forth in the table labeled "Customer Information and 24/7 Technical Contact" on the applicable Service Order. Notice may be delivered by personal delivery, certified mail (return receipt requested), nationally recognized overnight courier service, or email, and will be deemed received: (i) if by overnight courier service, one (1) business day after deposit with a reputable overnight courier with all charges prepaid; (ii) if by certified mail, three (3) business days after deposit with the mail carrier; and (iii) if by personal delivery, facsimile, or email, on the day of, as applicable, delivery, facsimile transmission (with electronic confirmation to the sender), or email transmission (provided that if the email is not sent on a business day, notice will be deemed received on the next following business day). A party may change its notice address by giving notice in accordance with this paragraph.

**17. Survival.** Any provision in these Terms which by its nature extends beyond the termination or expiration of the applicable Service Order shall remain in effect until fulfilled and shall apply to both parties' successors and assigns.

**18. General Provisions.** These Terms, together with each Service Order and any exhibits and addenda attached thereto, contains the entire agreement between the parties and supersedes all prior agreements, understandings and discussions, whether written or oral, between the parties relating to the subject matter thereof. No modification or amendment to these Terms, or any waiver of any rights hereunder, will be effective unless in writing and signed by an authorized representative of Customer and FASTBLUE. If any provision of these Terms is held invalid or unenforceable by a court of competent jurisdiction, such provision shall be excluded from these Terms and the balance of these Terms shall be enforceable. These Terms do not create or confer any rights or benefits enforceable by any person not a party to a Service Order.