

**TERMS & CONDITIONS**

*Flash Technology, LLC Lighting, Monitoring and Related Products and/or Services*  
Rev V (10/23/2017)

**1. DEFINITIONS.**

- a. *Flash* means the Flash Technology, LLC.
- b. *Terms* means these Terms and Conditions for Lighting, Monitoring and Related Products and/or Services.
- c. *Proposal* means the proposal or quotation document provided to Customer by Flash into which these Terms are incorporated by reference.
- d. *Customer* means the purchaser to whom the Proposal is addressed and to whom these Terms apply, including, where applicable, all individual and/or corporate guarantors.
- e. *Custom-built* means equipment set forth in the Proposal which is built by Flash to Customer's specifications.
- f. *Product* means the applicable lighting, monitoring and related equipment to be sold by Flash to Customer.
- g. *Price* means the price to be paid by Customer for the Products and/or Services listed in the Proposal, including any changes agreed to in writing by the parties.
- h. *Services* means any services, including but not limited to installation services, consulting services, NOTAM repairs and maintenance, lighting inspections, change orders and/or site survey services or training to be furnished by Flash to Customer as set forth in a Proposal.
- i. *Rigging* means the labor, materials and machinery required to remove or install any Products located on a tower or tall structure.
- j. *Shipping Date* means the shipping date(s) that Flash has communicated to Customer.
- k. *Xenon Light Source Equipment* means any system that uses xenon flashtubes.
- l. *LED Light Source Equipment* means any system comprising light emitting diodes (LEDs).
- m. *Monitoring Material* means a device used to provide remote monitoring of assets, including FTM, FTW Products and/or modem, Wi-Fi, batteries, and network switches included in LED Light Source Equipment (excludes SMART card).
- n. *Replacement Material* means any product shipped as spare parts or replacement.

**2. PROPOSAL, ACCEPTANCE AND GOVERNING PROVISIONS.**

A Proposal will automatically expire if not accepted by Customer within sixty (60) days from its date or any extension of such date approved in writing by Flash, and Customer's acceptance of the Proposal, by purchase order or signature, shall constitute Customer's offer and will evidence Customer's intent that the sale of the Products shall be governed by the Proposal and the Terms. Flash's acceptance of Customer's offer is conditioned upon Customer's acceptance of the Terms set forth herein and Customer's agreement to be bound by and comply with the Terms. The Terms, the Proposal, and all referenced attachments constitute the entire agreement between Customer and Flash ("Agreement"), and no amendment shall be binding unless in writing and signed by the parties. The failure of Flash to object to provisions contained in any purchase order or other document of Customer's shall not be construed as a waiver by Flash of the Terms or an acceptance of any such provisions. Any conflicting or additional terms or conditions set forth by Customer in a purchase order or other document are not binding upon Flash, and Flash hereby expressly objects thereto. No purchase order shall be binding upon Flash until accepted by a written acknowledgment.

### 3. PRICES.

Prices are subject to adjustment by Flash if: (a) the required down payment has not been made with Customer's acceptance of the Proposal, or (b) shipment is delayed by Customer beyond the estimated delivery date(s). Prices for Products do not include any special packing or crating materials, which may be required for Custom-built equipment or international delivery. All costs of special packing shall be paid by Customer prior to shipment.

### 4. TAXES.

Prices do not include any applicable foreign, federal, state or local taxes. Unless Customer has provided Flash with documentation of exemption, the amount of such taxes payable or paid by or assessed against Flash will be payable by Customer.

### 5. PAYMENT TERMS.

(a) The Price for all Products or Services shall be paid to Flash in accordance with the payment schedule shown in the Proposal. Absent specific agreement to the contrary, all amounts owed to Flash shall be payable within thirty (30) days of shipment. (b) Overdue payments shall accrue interest at the rate of 16% per annum (or the maximum percentage allowed by applicable law, if lower) from the due date. Customer shall also be required to pay Flash any and all collection costs and expenses Flash incurs (including without limitation reasonable attorneys' fees) to collect overdue payments. (c) Flash may make partial shipments of Products, and pro-rata payments shall be due for such partial shipments of Products. Flash may, at its option, decline to deliver Products or Services whenever, for any reason, Flash has concerns about a Customer's financial responsibility. In such event, Flash may require payment in full prior to shipping a Product or providing any Services.

### 6. DELIVERY.

(a) Flash will deliver Products FOB Origin, with delivery to the initial carrier constituting delivery to Customer. All transportation charges will be Customer's responsibility; however, upon Customer's request, Flash will prepay transportation charges and add them to the Customer invoice (together with an administrative fee payable to Flash). Customer shall have sole responsibility for filing any claims with any carrier for delay, loss or damage. (b) Any estimated or "firm" delivery dates or periods are predictions made by Flash of the times within which it is likely the Products will be shipped; however, due to the difficulties inherent in predicting future delivery dates or periods, Flash does not promise, guarantee or otherwise obligate itself to have the Products shipped on or before that time. **Flash will endeavor to meet the Shipping Date, but shall not be liable in damages or otherwise, nor shall Customer be relieved of performance, because of failure to meet them.** However, as to Products which, without Customer's fault, have not been shipped to Customer within thirty (30) days after the estimated or "firm" delivery dates or periods applicable to such Products, Customer may, by providing written notice to Flash, delete from this Agreement any such Products that have not been shipped to Customer before Flash

receives Customer's written notice of deletion, and the Price shall be proportionately reduced. **The foregoing right is Customer's exclusive remedy for any delays in shipment.**

#### **7. TITLE, INSURANCE AND RISK OF LOSS.**

Both title to the Products and risk of loss or damage passes to Customer upon delivery to the initial carrier.

#### **8. RETURN OF PRODUCTS.**

Flash may, in its discretion, accept standard Products returned for credit (shipping prepaid) within sixty (60) days of receipt of such Products. In such instance, Flash shall impose a restocking fee of twenty-five (25%) of the sale price. Flash does not accept returns of Custom-built Products.

#### **9. PRODUCT OBSOLESCENCE.**

A product is labeled "**discontinued**" when Flash stops selling it and a product is labeled "**obsolete**" when support limitations have been set. In most cases, obsolete products are no longer candidates for in-house repairs and restricted to 2 years of technical support and spare parts availability from the date the product was labeled obsolete, whereas there are no such limitations placed on discontinued products. If resources are available beyond 2 years, Flash will continue to provide specific support on a case-by-case basis as long as it is commercially reasonable to do so. Call Flash Sales at (800) 821-5825 for questions about whether a product is obsolete or discontinued.

#### **10. PATENT LIABILITY.**

Customer agrees that Flash has the right to defend, or at its option to settle, and Flash agrees, at its own expense to defend or, at its option, to settle, any claim, suit or proceeding brought against Customer on the issue of infringement of any United States patent by any Product, or any part thereof, supplied by Flash to Customer under this Agreement. Flash agrees to pay, subject to the limitations hereinafter set forth in this paragraph, any final judgment entered against Customer on such issue in any such suit or proceeding defended by Flash. Customer agrees that Flash at its sole option shall be relieved of the foregoing obligations unless Customer notifies Flash promptly in writing of any such claim, suit or proceeding, and at Flash's expense gives Flash proper and full information and assistance to settle and/or defend any such claim, suit or proceeding. If the Product, or any part thereof furnished by Flash to Customer hereunder becomes, or in the opinion of Flash may become, the subject of any claim, suit or proceeding for the infringement of any United States patent, or in the event of any adjudication that such Product or part infringes any United States patent, or if the use, lease or sale of such Product or part is enjoined, Flash may at its option and its expense: (a) procure for Customer the right under such patent to use, lease or sell, as appropriate, such Product or part, or (b) replace such Product or part, or (c) modify such Product or part, or (d) remove such Product or part and refund the aggregate payments and transportation costs paid therefore by Customer, less a reasonable sum for use, damage and

obsolescence. Flash shall not be liable for any costs or expenses incurred without Flash's written authorization. The foregoing constitutes the entire liability of Flash and Customer's sole and exclusive remedy for intellectual property infringement related to the Products. Notwithstanding the foregoing, the remedy described in this paragraph shall not apply to any suit or proceeding alleging infringement resulting from or related to Flash's compliance with Customer's specifications or design or the use of Products in combination with other goods or materials. In no event shall Flash's total liability to Customer under, or as a result of compliance with, the provisions of this section exceed the aggregate sum paid to Flash by Customer for the allegedly infringing Product or part.

## 11. WARRANTY.

Supplier warrants new Materials purchased by the Customer hereunder to be free from defects in material and workmanship, as follows:

- Two (2) years from date of shipment for Xenon Light Source Equipment
- One (\*1) year from date of shipment for High Intensity Xenon Light Source Equipment
- Five (5) years from date of shipment for LED Light Source Equipment.

(All Light Source Equipment is tested at the factory for compliance with standards set by the FAA, DGAC, or ICAO, and the serial numbers of such Products are recorded in accordance with such standards.)

\*High Intensity Xenon Light Source Equipment requires completion of the High Intensity extended warranty form supplied with the system in order to be eligible for the second year of warranty.

**Monitoring Materials** – Two (2) years from the date of shipment.

**Replacement Materials** – Ninety (90) days from the date of shipment.

**Warranty Activation** – To activate warranty for Light Source Equipment and Monitoring Materials call Flash Technology Customer Support at (800) 821-5825. Refer to the warranty activation card supplied with product or system manual for specific instructions.

**Warranty Returns** – A RMA number must be requested from Flash Technology prior to return or advance of any Product. No returned product will be processed without the RMA number. Failure to follow the full RMA policy may result in additional charges and delays. To initiate a RMA call Flash Technology Technical Support at (800) 821-5825.

**All Products** – For a period defined above from the date of delivery of Products, Flash warrants to the Customer that the Products manufactured by Flash shall be free from defects in design, material and workmanship and shall be in accordance with the specifications agreed to by the parties. During such period, subject to the right to inspect such Product, Flash agrees to repair or replace, at Flash's sole discretion, such warranted Product as is found to be defective, subject to the conditions of this Agreement. For returns, the warranted Product must be properly authorized for return with a Return Materials Authorization (RMA) and RMA number, packed and returned to

Flash, transportation prepaid. For Products that cannot reasonably be returned, the Customer has the obligation to provide photographic or other evidence to document a claim.

If Flash fails to repair or replace any defective Product, the Customer agrees that the exclusive measure of damages shall be the reasonable cost of the repair or replacement of the defective Product at that time. Flash's warranty obligation is conditioned on the Customer's payment of all amounts due under the corresponding purchase terms and the Customer's compliance with its obligations thereunder.

Repair or replacement of defective Products does not re-start the warranty periods defined above; it carries the longer of the ninety (90) day spare parts warranty or the remaining warranty of the original serial number of the product replaced, whichever is longer.

The Customer's warranty rights under this Agreement shall apply only if Flash receives prompt written notice of any alleged defect within the applicable warranty period defined above, the Product has been installed and operated in accordance with Flash's written instructions, and Flash's examination discloses that such Product has not been damaged through accident or negligence, misuse, alteration, or improper maintenance, repair, or installation.

No warranty shall apply: (a) to any Products that have been repaired, worked upon, disassembled or altered by persons not authorized by Flash in such a manner as to injure the stability or reliability of such Products, (b) to any Products that have been subject to misuse, negligence or accident other than by Flash, (c) to any Products that have not been connected, installed, electrically grounded, used, maintained, inspected or adjusted by appropriately qualified personnel in accordance with the written instructions furnished by Flash, (d) with respect to any Product that has had its serial number altered, effaced or removed, (e) to damage resulting from: Force Majeure; intentional acts, such as sabotage, terrorism, or vandalism; accidents; extreme weather (including earthquakes, flooding, high winds, hurricanes, tornados, hail, or lightning strikes); the impact of ambient chemicals; and/or flying objects, or (f) to ordinary wear resulting from use and exposure. Replacement of any original Flash parts with non-Flash parts will take the Products out of compliance and void this warranty.

***THE FOREGOING WARRANTIES ARE IN LIEU OF, AND FLASH EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED IN FACT OR BY LAW, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, AND THE FOREGOING WARRANTIES STATE FLASH'S ENTIRE AND EXCLUSIVE LIABILITY AND THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, IN CONNECTION WITH THE SALE OR FURNISHING OF SERVICES OR PRODUCTS, THEIR DESIGN, SUITABILITY FOR USE, INSTALLATION OR OPERATION.***

***Without limiting the foregoing, Flash shall in no event be liable for rigging or other labor charges connected with repair or replacement of defective Products or Services covered by these warranties, or for any third party engineering or consulting fees. Equipment furnished by Flash***

*but not bearing its trademark or trade name shall carry no warranties, except those, if any, extended by and enforceable against the manufacturer at the time of delivery to Flash.*

#### **12. LIMITATION OF LIABILITY.**

Flash shall not be liable under any theory of relief for: (i) any indirect, incidental, special or consequential damages whatsoever (including without limitation, loss of anticipated value of a business or its reputation) or (ii) any damage or loss in excess of the price actually paid by Customer.

#### **13. FORCE MAJEURE.**

Flash shall not be liable for delay in performance or failure to perform any of its obligations, if the delay or failure results directly or indirectly from Force Majeure. Force Majeure means any law, order, regulation, direction, request, action or failure to act of Customer or of any government having jurisdiction over Flash, its subcontractors and/or its suppliers; failure or delay of transportation; suspension or cancellation of any required license; insurrection; riots, national emergencies; war; acts of public enemies, strikes or other labor difficulties; inability to obtain necessary labor, manufacturing facilities, materials or components from Flash's usual sources; fires, floods, earthquakes, lightning or other catastrophes; acts of God; extreme weather conditions; or any cause of like or different kind beyond the control of Flash. Flash shall notify Customer in writing if performance of any of its obligations under this Agreement is delayed by reasons of Force Majeure.

#### **14. PROPRIETARY INFORMATION.**

Flash retains title to and ownership of all engineering and production prints, drawings, technical data, and other information and documents that relate to the Products sold to Customer and any intellectual property rights embodied therein. Unless advised by Flash in writing to the contrary, all such information and documents disclosed or delivered by Flash to Customer are to be deemed proprietary to Flash and shall be used by Customer solely for the purpose of inspection, installation, maintenance and use of the Products purchased hereunder and not used by Customer for any other purpose. Customer shall maintain such proprietary information with a standard of care no less stringent than it uses with its own confidential information.

#### **15. TERMINATION/SUSPENSION.**

Without prejudice to its other rights, Flash may immediately terminate this Agreement by giving notice to Customer or suspend the performance of Flash's obligations if Customer:

- a. Breaches this Agreement and fails to remedy that breach within 14 days of a request by Flash; or
- b. Ceases business operations, is unable to pay Customer's debts as they fall due, makes an assignment for the benefit of creditors, commences winding-up, has a receiver or liquidator appointed over any of Customer's assets, or becomes subject to a bankruptcy or insolvency proceeding.

**16. OTHER CONDITIONS.**

- a. Modifications of Products may be made by Flash or its suppliers prior to delivery for reasons such as improvement in performance, simplifications in design, availability of materials, etc., but not to such an extent that the performance will be materially affected.
- b. Customer shall not assign this Agreement, or any rights thereunder, without the prior written consent of Flash.
- c. Flash shall not be deemed to have waived any term or condition of this Agreement or to have assented to any exception to or modification of such terms and conditions unless such waiver or assent is in writing. Flash's failure at any time to require strict performance by Customer of any provision in this Agreement shall not waive or diminish Flash's right thereafter to demand strict performance therewith or with any other provision. Waiver of any default shall not waive any other default.
- d. In the event that any part of this Agreement is or becomes invalid or illegal in whole or in part, such part shall be deemed amended so as to, as nearly as possible, be consistent with the intent expressed in the Agreement. If this is impossible, such part shall be deemed to be deleted, but shall not in any way invalidate any of the remaining provisions of this Agreement.
- e. Notices shall be mailed, certified mail, or sent by fax to Customer at the address given on the cover sheet of the Proposal and to Flash, Attention: Director of Finance, Flash Technology, 332 Nichol Mill Lane, Franklin, TN 37067, Fax: 615.261.2600. Notice shall be effective from date of receipt by addressee.
- f. This Agreement, including without limitation the Proposal and all schedules attached hereto and/or incorporated herein by reference, conclusively supersedes all prior agreements, writings and negotiations with respect to the subject matter hereof.
- g. The rights and duties of the parties to this Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.
- h. All disputes, differences, or questions arising out of or relating to this Agreement, or the validity, interpretation, breach, violation, or termination of this Agreement shall be resolved solely by arbitration through the CPR Institute for Dispute Resolution ("CPR") by a single arbitrator in Nashville, Tennessee. The arbitration proceedings shall be governed by and decided in accordance with the CPR Rules for Non-Administered Arbitration then in effect, unless the parties shall mutually agree otherwise in writing. Any evidentiary rules not expressly provided by the CPR Rules shall be determined in accordance with the Federal Rules of Evidence. Notwithstanding anything to the contrary provided in this Agreement, the arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. § 1, et seq. The arbitration proceeding must be completed through the rendering of the award within six months of the selection of the arbitrator. The award of the arbitrator may be monetary damages, an order requiring performance of obligations under this Agreement or an award of injunctive, declaratory, or equitable relief or any other appropriate award or remedy. However, in no event may the arbitrator issue an award of any form of exemplary or punitive damages, nor may the arbitrator make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. The award rendered by the arbitrator shall be final and binding upon the parties, and judgment may be entered by any competent court having jurisdiction. The award of the arbitrator shall be accompanied by a written explanation of the basis for the award. Notwithstanding anything to the contrary provided in this paragraph and without prejudice to the above procedures, any of the parties may apply to any court of competent jurisdiction for injunctive or other equitable relief if such action is necessary to avoid irreparable damage or to preserve the status quo.

**17. SERVICES.**

- a. Consulting Services. Flash will, on an exception basis and at Customer's request, furnish a representative to consult regarding the installation of the Products. Charges for furnishing such representative shall be at Flash's per diem rate in effect at the time, plus transportation and reasonable living expenses, including standard general and administrative charges. Such consulting service shall not include the furnishing or arranging for the furnishing of any equipment, materials or services required for the actual installation of Products.
- b. Services. Flash will provide Services to Customer as set forth in a Proposal and/or Agreement.