

Terms of Service

Lightning Bolt DSL, High Speed Internet Access
A Division of Lightning Bolt Technologies
Terms of Service Agreement
One-Year Agreement
Version 6.0 effective 9/1/2007

1. Service Agreement

- a. The following Terms and Conditions are incorporated into the signed Service Agreement between you ("You" or "Customer") and Lightning Bolt DSL ("LB DSL") that refers to these Terms and Conditions. These Terms and Conditions with the signed Service Agreement constitute a binding and enforceable legal agreement that details your rights and obligations as a broadband customer of LB DSL.
- b. Please review these Terms and Conditions. By signing the contract referencing these terms, you agree to be bound by the Terms and Conditions set forth in this document. Moreover, these terms and conditions supercede any and all written alterations to the contract referencing these terms unless an authorized LB DSL representative specifically initials such suggested alterations.
- c. Updates. This Service Agreement may be updated from time to time. You can review the most current version of these Terms and Conditions at any time at: <http://www.LBDSL.com/tos.html>
- d. If LB DSL makes a change to this Service Agreement that has a material impact on the Service, you will be provided notice of that change. Your continued use of the Service following such notice constitutes your acceptance of those changes.

2. LB DSL Broadband

- a. Customer understands and agrees that LB DSL will contract with one or more channel partners to provide broadband to Customer. Customer's broadband agreement is with LB DSL, and LB DSL has the discretion to determine the best means to obtain and/or modify the underlying service inputs to provide such broadband to customer. Moreover, LB DSL may assign its rights and obligations to third parties without Customer's consent. However, LB DSL shall provide notice of any such assignment.
- b. Operational Limits. Provisioning of service is subject to the availability and the operational limitations of the requisite equipment and associated facilities. You understand and agree that temporary interruptions of the service may occur as normal events in the provisioning of the Service and that LB DSL is not liable for such interruptions. You further understand and agree that LB DSL has no control over third party networks you may access in the course of your use of the service, and therefore, delays and disruptions of other network transmissions are, beyond the control of LB DSL. Moreover, Customer understands and agrees that LB DSL's obligation is to use its best efforts to fulfill Customer's service agreement. Should network or commercial limitations prevent LB DSL from such fulfillment, Customer does not have any claim for damages, whether actual, consequential, reliance or otherwise, against LB DSL.
- c. Customer agrees to provide LB DSL and its subcontractors reasonable access to its premises in order to install, maintain and repair broadband to Customer. Customer will be responsible for payment of service charges for visits by LB DSL or its subcontractors to Customer's premises when a service request results from causes not attributable to LB DSL or its subcontractors.

3. Renewal /Termination

This agreement shall be for the term of one year, unless a different term is indicated in a separate written document. Such term shall begin on the date LB DSL activates the Service outlined in this agreement. This agreement shall, upon expiration, be renewed upon identical terms in one-month increments by Customer's continued use of his account with LB DSL, unless written notice of cancellation is provided to our support department no later than thirty (30) calendar days prior to the expiration of this agreement. Termination by the Customer shall not create the right to a refund of any fees paid or payable. Such termination shall be effective upon the end of the current billing cycle, and any applicable termination fees as outlined in this Agreement shall then be due and payable. Should the parties decide and agree to continue service under this agreement after its expiration/termination, LB DSL may change Customer new commercially reasonable fees for the services which do not exceed 125% of the fees in effect immediately prior to the expiration/termination.

4. Pre-Installation Cancellation Fee

If Customer cancels an Order for Service prior to installation for any reason other than a failure by LB DSL to Provide a Service at transmission speeds at least equivalent to those included in the Minimum Expected Service Availability, the following charges will be assessed against the Customer and payable to LB DSL immediately:

- a. For Digital Subscriber Lines (DSL), including (but not limited to) ADSL, SDSL, IDSL, RADSL, or HDSL, a \$400.00 pre-installation cancellation fee shall be assessed against the customer and payable to LB DSL immediately.
- b. For T1 (or DS1) connections, including (but not limited to) Fractional T1 and Full T1 connections, the pre-installation cancellation fee shall equal the total number of remaining months in the term of the applicable Service Order(s), multiplied by the Monthly Recurring Charges, payable to LB DSL immediately.

5. Early Termination Fee

If service is terminated, either in whole or in part, prior to the selected term expiration, then Customer shall pay an early termination fee equal to the total number of remaining months in the term of the applicable Service Order(s), multiplied by the monthly recurring charges, to be paid by the Customer at the non-promotional rate. Customer agrees that the foregoing liquidated damages are fair and reasonable and that LB DSL's provisioning of the services would not be commercially viable but for these Customer commitments. Customer understands that a request to move service from the Customer's current location to another location shall constitute termination of current agreement. If LB DSL determines LB DSL cannot economically serve a move, shall constitute termination of service or may incur a relocation charge.

However, on all new (Excluding ISP switches) ADSL orders LB DSL will give Customer a 21 day period starting from the day the line becomes active, to use our service, and if LB DSL is unable to provide the quality of service Customer requires, Customer may cancel its line, return ALL equipment in NEW condition, and Customer will owe LB DSL nothing for standard Installation, and monthly service. This includes a refund of any payment Customer has made to Lightning Bolt, and a credit of any balance Customer's account has. (Note this is for ADSL ONLY, no other products, including SDSL, IDSL, T1, etc.) However, if the equipment is not returned within 14 days of cancellation, Customer will be billed for the equipment.

6. Other Charges

a. If an installation appointment is cancelled after 12:00 noon (in the time zone of the affected circuit) on the business day preceding the scheduled installation date or if the Customer is not available at the scheduled time and date to permit installation to proceed as scheduled, a \$150.00 charge will be assessed against Customer and payable to LB DSL.

b. Notice to Line Share ADSL Customers: Line Share ADSL connections are ordered by default as "Shared Connections". For the purposes of this agreement, "Shared Connection" shall be defined as an ADSL circuit that does not require the physical installation of a new, dedicated circuit at the service address; with a Shared Connection, the ADSL service is provided over the existing telephone wiring at the service location. Not all locations qualify for a shared connection. In the event that the Customer orders ADSL but does not qualify for the shared connection, the Customer hereby authorizes the LB DSL to order a dedicated ADSL circuit on their behalf, and agrees to pay all costs required (not to exceed an additional \$200.00) to complete the installation.

c. Installation Charge, These our standard non-promotional rates.

- \$125.00 for Residential Line Share ADSL packages
- \$150.00 for Business Line Share ADSL packages
- \$225.00 for Residential Dry ADSL packages
- \$325.00 for Business Dry ADSL packages
- \$350.00 for the SDSL, and IDSL packages
- \$500.00 for the T-1, and Fractional T-1 packages
- \$650.00 for the 2x Bonded T1's package
- \$775.00 for the 3x Bonded T1's package
- \$900.00 for the 4x Bonded T1's package
- \$1050.00 for the 5x Bonded T1's package
- \$1250.00 for the 6x Bonded T1's package
- \$1500.00 for the 7x Bonded T1's package
- \$1650.00 for the 8x Bonded T1's package
- \$350.00 for the wireless 1.0, 1.5, 2.0, and 3.0 packages
- \$600.00 for the wireless 4.5, and 6.0 packages

Ethernet Reach, Ethernet over Copper, Ethernet over Bonded SDSL, and DS3 services are quoted on a location by location basis, and will include install fees with each quote.

d. Field Technician Dispatch Charge. This charge is billed for the dispatch of a Field Technician to End User location to service non-Lightning Bolt service faults; Service upgrades and downgrades requiring the dispatch of a Field Technician. (The Field Technician Dispatch Charge does not include inside wire install or repair.)
\$299.00

e. Extra Time Charge. This charge is billed for each whole or partial fifteen (15) minute increment Field Technician is at the End User premises during a Service Setup (other than the time included as part of the Service Setup Charge) or Field Technician dispatch during which Field Technician provides services that include: installation or repair of inside wiring from RJ11 Wall Jack to NID or for tracing or toning across phone closets between the RJ11 Wall Jack and the NID; troubleshooting and/or repair of CPE, CPE configurations, or service setups. (These time charges are not included as part of the Service Setup or Field Technician Dispatch Charges.)
\$30.00

f. Cancellation Charge. This charge is billed for each End User Circuit order that is cancelled more than five (5) full business days after the acceptance of the order and prior to completion of service setup by Lightning Bolt.
\$400.00

g. End User Switch Charge. This charge is billed on each End User Circuit that Lightning Bolt switches from another qualifying DSL provider over to our network that does not involve the dispatch of a Field Technician.
ADSL \$75.00
SDSL, IDSL, T1 \$125.00

h. Missed Appointment Charge. This charge is billed when the Field Technician arrives at the End User premises and does not have full access to complete the installation of the End User Circuit, e.g., End User no-show, Lightning Bolt Field Technician's lack of access to the network interface device, or End User request for installation rescheduling or cancellation with less than one (1) full business day advance notice.
\$149.00

i. Returned check fee. This charge is billed for any check submitted as payment, which is returned to Lightning Bolt Technologies from a financial institute.
\$35.00

7. Equipment and Software

a. LB DSL shall not be responsible for the installation, operation, or maintenance of Customer premises equipment (CPE) or other equipment or software (including without limitation, cabling) not provided by LB DSL (collectively, "non-LB DSL equipment or software"). Customer shall be responsible for the use and compatibility of the non-LB DSL equipment or software. Impairment of the Customer's use of the services due to non-LB DSL equipment or software shall not relieve Customer of any obligations hereunder. LB DSL shall not be responsible for any changes in service which may cause non-LB DSL equipment or software to become obsolete, require modification or alteration, or which may otherwise impact performance of equipment or software.

b. Other than all software and hardware provided to you by LB DSL and any revised version thereof that you choose to use, you must provide all equipment, devices and software necessary to receive the Service. Due to the infinite number of possible combinations of hardware and software, you are responsible for the compatibility of your system with the Service.

8. Payment

a. Inclusion of credit card number on this agreement or provided for payment at any time on a given account hereby authorizes LB DSL to charge all setup, service, and monthly charges (including any renewal of this Service) to Customer's Credit Card, without further notice to the Customer. Inclusion of Customer's tax identification number or social security number authorizes LB DSL, Inc. to access your personal credit report to make judgment on credit worthiness before services are extended. A minimum of \$100.00 disconnect/reconnect fees will be assessed on all balances exceeding 45 days past due, plus applicable finance charges. LB DSL reserves the right to terminate service without warning to any customer with an outstanding balance exceeding 45 days past due. Any account sent to a collection agency will have an additional 18 percent collection fee added to the total outstanding balance.

b. All accounts are due on the last day of each month. Invoices are sent out on the 1st of each month, and due in our office on the last day of that month. Any payments received after the due date are considered late and will be charged a late fee. The total outstanding balance will determine the late fee. Accounts with a balance of up to \$100, will carry a \$5 late fee. Any outstanding balance over \$100 will be charged 7.5% of the outstanding fee. Your account may also be temporarily suspended, until your account is brought current. It is your responsibility for making payments on time. LB DSL is not responsible for non-delivered or received invoices; this is why we offer online billing. Late fees will **NOT** be waived for any reason.

9. Limitations of Liability

a. LB DSL shall not be liable to the Customer for any loss, damage, liability, claim or expense ("Claim") rising out of or in relation to this Agreement, the Services, or LB DSL' equipment, except for a Claim arising out of LB DSL's gross negligence or willful misconduct.

b. LB DSL does not guarantee service speeds on DSL services. Any service speeds quoted in this agreement are to be interpreted as estimates only, and do not guarantee the receipt of such speeds upon service delivery. LB DSL currently guarantees a connection speed of 64kbps for all DSL connections, including (but not limited to) IDSL, SDSL, ADSL, RADSL, and HDSL. Speeds listed are considered "Up to" speeds, and again are NOT guaranteed.

c. LB DSL does not guarantee actual dates of installation, or dates of service delivery. Any dates quoted by a LB DSL representative are meant as estimates only. LB DSL shall not be liable for any loss, damage, claim, or expense rising out of or in relation to installation dates, times, or any other scheduling factors.

d. LB DSL shall not be liable for any inside wiring issues. Including, but not limited to loss of voice service, loss of a home alarm system access, etc.

10. Self Installation Waiver

a. Customer agrees that LB DSL, its officers, employees, and channel partners are authorized to order a "self install" on the customer's behalf whenever available, and releases them of responsibility for such tasks. "Self Install" shall be defined as a line, which may require the Customer to perform tasks including, but not limited to, inside wiring, hardware installation, and other equipment configuration as necessary.

b. In consideration of LB DSL furnishing services and/or equipment to enable the Customer to participate in the self-installation of a DSL line, the Customer agrees as follows:

I, on behalf of myself, my personal representatives and my heirs, hereby voluntarily agree to release, waive, discharge, hold harmless, defend and indemnify and it's owners, agents, officers and employees from any and all claims, actions or losses for bodily injury, property damage, wrongful death, loss of services or otherwise which may arise out of my attempt for self installation, I specifically understand that I am releasing, discharging, and waiving any claims or actions that I may have presently of in the future for the negligent acts or other conduct by the owners, agents, officers or employees of LB DSL. I hereby acknowledge that an unsuccessful installation attempt could result in additional costs.

c. Notwithstanding this Section 10, if the Customer explicitly contracts for a premium installation by written agreement, a self-install will not be authorized.

d. If a self-install is not possible, such as you have an alarm system on the line, or other device hard wired to your line, a pro-install would be required

11. Customer Premises Equipment Return Policy

a. Equipment purchased from LB DSL and returned within fourteen (14) days from the date of purchase with the original shipping invoice are eligible for refund or exchange. No refunds or exchanges are allowed after fourteen (14) days from the date of purchase. All items must be in new condition, including the original box, packaging, manuals and accessories. Products deemed defective after the 14-day period outlined above may be under Manufacturer's warranty, consult your owner's manual for details.

b. LB DSL will not accept the return or exchange of any item if the UPC code has been removed from the packaging.

c. Refunds on hardware will be issued in form of in-house account credit, unless otherwise requested and agreed to by LB DSL. Refunds on purchases made with a credit card will only be made as in-house account credit, or as a credit to the same card.

12. Notices

All notices given by any party or required under this agreement shall be in writing and addressed to:

Lightning Bolt DSL
PO Box 82121
Rochester, MI 48308

and will be effective upon receipt when delivered by fax, mail, overnight courier or hand delivery.

13. Acceptable Use Policy

a. You the Customer agree that you will NOT use the Service to:

1. Upload, download, post, email, transmit or otherwise make available any Content (as defined below) that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable;
2. Harm minors in any way;
3. Forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Service;
4. Upload, download, post, email, transmit or otherwise make available any Content that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
5. Upload, download, post, email, transmit or otherwise make available any Content that infringes any patent, trademark, trade secret, copyright or other proprietary rights ("Rights") of any party;
6. Upload, post, email, transmit or otherwise make available any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation, except in those areas (such as shopping rooms) that are designated for such purpose;
7. Upload, post, email, transmit or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
8. Disrupt the normal flow of dialogue, cause a screen to "scroll" faster than other users of the Service are able to type, or otherwise act in a manner that negatively affects other users' ability to engage in real time exchanges;
9. Interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service;
10. Intentionally or unintentionally violate any applicable local, state, national or international law, including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including, without limitation, the New York Stock Exchange, the American Stock Exchange or the NASDAQ, and any regulations having the force of law;
11. "Stalk" or otherwise harass another; or
12. Collect or store personal data about other users.

b. You understand and agree that any attempt to break security, or to access an account which does not belong to you, will be considered a material breach of these Terms and Conditions, and such breach may result in suspension or termination of the Service, and possibly referral to law enforcement authorities. Unauthorized access to the Service, to restricted portions of the Service, or to the telecommunications or computer facilities used to deliver the Service, is a breach of these Terms and Conditions whether or not such activities are a violation of law. Further, you are required to take adequate security measures to prohibit others from unauthorized access or use of the Service, and you must take prompt remedial measures upon notice of breaches, or potential breaches, of security.

c. Violations of LB DSL' Acceptable Use Policy may also be considered a material breach of these Terms and Conditions and may also result in immediate suspension or termination of the Service.

d. LB DSL reserves the right to suspend or terminate the Service to you, or to suspend or terminate any electronic mail address, IP address, Universal Resource Locator or domain name used by you, in the event it is used in a manner which (i) constitutes violation of any law, regulation or tariff (including, without limitation, copyright and intellectual property laws); (ii) is defamatory, fraudulent, obscene or deceptive; (iii) is intended to threaten, harass or intimidate; (iv) tends to damage the name or reputation of LB DSL.

e. Under no circumstances will LB DSL be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content posted, emailed, transmitted or otherwise made available via the Service.

f. Any form of a server will only be allowed on "business lines". This includes Web servers, mail servers, File servers, etc. NO servers are allowed on a residential line. If you are found running a server of any kind on a residential line, you will be notified and moved to a business line. You will be billed for such service, and any additional fees, such as CPE fees.

g. Residential packages are for use at residential locations. Residential locations are defined by a building/location, which is a residence, and at least 1 person resides at. Any user found to be using a residential package at a commercial location, will be moved to a business package, and will be billed for the difference dating back to the installation date. Failure to pay the difference will result in suspension, and/or cancellation of your account per section 8 of this agreement.

h. We may interrupt or terminate your service without notice for any conduct that we believe violates this Agreement or any terms and conditions, or if you behave in an abusive, derogatory, or similarly unreasonable manner with any of our representatives.

14. Indemnity

You agree to indemnify and hold LB DSL and its subsidiaries, affiliates, officers, agents, co-branders or other partners, and employees, harmless from any cost, liability or damage to LB DSL arising out of any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of Content you submit, post, transmit or make available through the Service, your use of the Service, your connection to the Service, your violation of this Service Agreement, your violation of the Acceptable Use Policy, or your violation of any rights of another.

15. Termination For Cause

LB DSL may immediately terminate all or a portion of your service, or suspend any or all access to all or a portion of the service, without notice, for conduct that LB DSL believes is: (a) illegal, fraudulent, harassing or abusive; (b) a violation of these Terms and Conditions, any policies or guidelines posted by LB DSL on the service; or (c) harmful to other users, third parties, the service, or the business interests of LB DSL. If LB DSL has terminated a portion, but not all, of your access to the service for the foregoing reasons, you will nevertheless be responsible for the all charges for the service. Use of a service for illegal, fraudulent or abusive purposes may be referred to law enforcement authorities without notice to the Customer. If you file a claim against LB DSL, or a claim that in any way involves LB DSL, then LB DSL may terminate your service. Upon termination of your service, LB DSL will have no obligation to notify any third parties nor will LB DSL be responsible for any damages that may result or arise out of termination of your service. Termination or suspension by LB DSL of service to a Customer also constitutes termination or suspension (as applicable) of that Customer's license to use the Software.

16. Modifications To Service

LB DSL reserves the right to modify or discontinue, temporarily or permanently, at any time and from time to time, the Service (or any function or feature of the Service or any part thereof) with or without notice. You agree that LB DSL will not be liable to you or to any third party for any such modification, suspension or discontinuance of the Service.

17. Additional Agreements

- a. If any provision of this agreement is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this agreement will remain in full force and effect.
- b. The Customer may not sell, transfer, or assign this agreement without the prior written consent of LB DSL
- c. Any alterations made to this Agreement by the Customer are null and void without the signature of an authorized LB DSL employee. Furthermore, the signed contract will remain in force (less the Customer alterations) according to the terms of LB DSL contract version "6.0", available by written request.
- d. Customer agrees that by signing an agreement referencing these terms, customer is bound to all terms and conditions as outlined in this agreement.
- e. The section titles and paragraph headings in these Terms and Conditions are for convenience only and have no legal or contractual effect.

18. Disclaimer Of Warranties

You expressly understand and agree that:

- a. Your use of the service and/or software is at your sole risk. The service and/or software are provided on an "as is" and "as available" basis. LB DSL expressly disclaim all warranties of any kind, whether express or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement.
- b. LB DSL makes no warranty that (i) the service and/or software will meet your requirements, (ii) the service will and/or software be uninterrupted, timely, secure, or error-free (for example, but without limitation, LB DSL does not warrant that you will always receive emails addressed to you), (iii) the results that may be obtained from the use of the service and/or software will be accurate or reliable, (iv) the quality of any products, services, information, or other material purchased or obtained by you through the service and/or software will meet your expectations, and any errors in the service and/or software will be corrected.
- c. Any material downloaded or otherwise obtained through the use of the service/and or software is done at your own discretion and risk and that you will be solely responsible for any damage to your computer system or loss of data that results from the download of any such material.
- d. No advice or information, whether oral or written, obtained by you from LB DSL or through or from the service and/or software will create any warranty not expressly stated in these terms and conditions.

19. Applicable Law, Etc.

This agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity, and construction, without regard to any conflict of law provisions.

The parties submit to the jurisdiction and venue of the Circuit Court for the County of Oakland, State of Michigan or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan with respect to any action arising, directly or indirectly, out of this agreement or the performance or breach of this agreement. The parties stipulate that the venues referenced in this agreement are convenient. The parties further agree that the mailing by certified or registered mail, return receipt requested, of any process required by any such court will constitute valid and lawful service of process against them, without the necessity for service by any other means provided by statute or rule of court, but without invalidating service performed in accordance with such other provisions.

20. Nothing contained in this policy shall be construed to limit LB DSL's actions or remedies in any way with respect to any of the foregoing activities, and LB DSL reserves the right to take any additional actions it may deem appropriate with respect to such activities, including without limitation taking action to recover the costs and expenses of identifying offenders and removing them from LB DSL's service, and levying cancellation charges to cover LB DSL's costs in the event of disconnection of dedicated access for the causes outlined above.

THE CUSTOMER:

Date: _____