



## Terms of Service - LiteCloud

These Terms of Service – LiteCloud Cloud (the "Agreement") are entered into between LiteCloud, Inc., having a principal office at 111 Church Rd., Owings Mills, MD 21110 ("LiteCloud") and the company that has submitted a written order form for Services (the "Service Order") and has agreed to the terms of this Agreement through the acceptance signature below (the "Customer"). Customer desires to use LiteCloud's Cloud services ("Services"), and LiteCloud will permit Customer to do so subject to the terms and conditions of this Agreement.

IF CUSTOMER DOES NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, CUSTOMER MUST ABANDON THE SIGNUP PROCESS AND MAY NOT USE THE SERVICES.

### 1. SERVICES

**1.1. Agreement to Provide Services.** Subject to the terms and conditions of this Agreement, during the term of this Agreement specified in the Appendix A Service Order Form, LiteCloud will provide to Customer access to the Services described in the respective Service detail pages on the LiteCloud website. Customer understands and agrees that by using the on-line process and consenting to the terms of this Agreement, Customer has made a binding selection of the type of Services to be provided and all associated specifications, prices, policies and documentation related to the delivery of the Services.

**1.2. Service Orders.** The Service Order is hereby incorporated into this Agreement by this reference and is subject to the terms and conditions of this Agreement; provided, however, that in the event of conflict between the terms contained in the Service Order, except for the term of the Service Order, and the terms in this Agreement, the terms contained in this Agreement shall control. In the event of any conflict between the terms of this Agreement or a Service Order and any Customer-issued order form or purchase order, the terms of this Agreement and the applicable Service Order shall control.

### 2. MODIFICATIONS TO THIS AGREEMENT.

**2.1. LiteCloud Policies.** Customer agrees that LiteCloud may modify this Agreement or any policy or other terms referenced in this Agreement including but not limited to the AUP <https://www.litecloudhosting.com/legal/aup>, Privacy Policy <https://www.litecloudhosting.com/legal/privacy-policy>, Service Level Agreement <https://www.litecloudhosting.com/legal/sla>, (collectively, "Additional Policies") at any time by posting a revised version at the websites listed herein and/or of the of the Agreement at <https://www.litecloudhosting.com/legal/terms>. Unless otherwise set forth in the Agreement or



in LiteCloud's change of terms notice, the revised terms shall be effective (a) fifteen (15) days after posting and/or notifying or (b) upon Customer's acceptance if LiteCloud provides a mechanism for Customer's immediate acceptance of the revised terms, such as a click-through confirmation or acceptance button. By continuing to use or receive the Services after the effective date of any revisions to this Agreement or any Additional Policies, Customer agrees to be bound by the revised Agreement or any revised Additional Policies. It is Customer's responsibility to check the websites listed herein regularly for changes to this Agreement or the Additional Policies, as applicable. If Customer disagrees with any modifications to this Agreement, Customer's sole and exclusive remedy shall be to terminate the receipt of Services in accordance with Section 12. below.

**2.2. Third-Party Software Licensing Agreements.** Customer hereby acknowledges that use of the Services described in this Agreement includes the use of software provided by Third-Party Software Providers. Customer's use of any such Third-Party Software in connection with the Services shall be governed by the terms and conditions or end user licensing agreement (Software Terms) for the corresponding Software, a copy of which may be found listed at <https://www.litecloudhosting.com/Legal/Third-Party-Software-License>. Customer agrees that LiteCloud may update or revise this list of Software Terms from time-to-time to reflect an accurate and complete record of the Third-Party Software and the accompanying Software Terms. Any such update or revision to the listed Software Terms shall be effective immediately upon posting and/or notification. By continuing to use or receive the Services after the effective date of any such update or revision, Customer agrees to be bound by the updated or revised Software Terms. It is Customer's responsibility to check the website specified herein regularly for changes to the listed Software Terms. If Customer disagrees with any updates or revisions to the Software Terms, Customer's sole and exclusive remedy shall be to terminate the receipt of Services in accordance with Section 12. below. In the event that Customer resells or reoffers the Services to Customer's End-Users, Customer must maintain End-User Agreements, which govern the use of the Services and any such Third-Party Software, with all End-Users, the terms of which must be no less restrictive than the terms set forth in the Third-Party Software Provider's Software Terms. Customer is responsible for use of the Services, including the use of any Third-Party Software utilized in connection with the Services, by any End-Users to the same extent as if Customer was using the Service itself. Customer will indemnify, defend and hold harmless LiteCloud, its directors, officers, employees, and affiliates (collectively, the "Indemnified Parties") from and against any and all claims, actions, demands, suits, liabilities or obligations brought against any of the Indemnified Entities by a Third-Party Software Provider for any breach or misuse of the software. The indemnification obligations referenced herein shall be subject to Section 9 of these Cloud Terms of Service.

### **3. FEES AND BILLING**



**3.1. Service Fees.** In consideration for the provision of Services to Customer, Customer will pay for all Service fees ("Fees") due according to the Service Order and any overage usage fees that may apply and that are billed in accordance with this Section. Charges are exclusive of all applicable taxes, which may be billed to the Customer in addition to the Fees. LiteCloud will provide Customer fifteen (15) days advance notice for any increase in fees or addition of new fees for any existing Service. Such notice and its effective date will be sent to the Customer by Mail. Customer agrees that it is responsible for checking with LiteCloud regularly to confirm whether there are any new fees and their effective date.

**3.2. Billing, Invoicing and Payment Terms.** LiteCloud will charge Customer based on the payment options selected by Customer on the Service Order Outlined in Appendix A of this document, in advance of the provision of Services, and payment of such fees will be due immediately. Adjustments to Customer's services will require an initialed and dated Service Order Form Update which will be retained with this document. Monthly subscription fees will be billed in advance, and any overage or usage fees will be billed in arrears. Customer will make all payments by credit card or in a form agreed to by LiteCloud and in U.S. dollars. LiteCloud reserves the right to have Customer complete a credit application to determine Customer's creditworthiness as a condition of receiving further Services. If LiteCloud must initiate a collections process to recover fees due and payable hereunder, then Customer shall pay all costs associated with such collections efforts.

**3.3. Returned Checks.** A Twenty Five Dollar (\$25.00) fee will be added to the subscriber account in the event of any bank returned check. In the event that more than one check is returned, we will only accept cash, credit card or certified funds or payment on the account.

**4. Service Level Agreement.** LiteCloud will provide guaranteed levels of service with rights and remedies as described in the Service Level Agreement at <https://www.litecloudhosting.com/legal/sla> , and incorporated herein by reference. Customer acknowledges that service level credits for uptime/downtime and LiteCloud service performance standards as set forth in the SLA shall be Customer's sole and exclusive remedy under the SLA. LiteCloud has the right to amend the SLA at its sole discretion in accordance with Section 2 above.

## **5. CONFIDENTIAL INFORMATION.**

**5.1. Treatment of Confidential Information.** Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, business plans, customers, strategies, trade secrets, technology and any intellectual property related thereto, finances, assets, and products, including the terms and conditions of this Agreement ("Confidential Information"). Each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by this



Agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary to carry out the purposes of this Agreement), any of the other party's Confidential Information and will take reasonable precautions to protect the confidentiality of such information.

**5.2. Disclosures to Discussion Forum.** Customer understands and agrees that as part of the Services, Customer may voluntarily participate in one or more public discussion group with other users of LiteCloud services. Customer understands and agrees that all information supplied as part of any such discussion group shall be deemed non-confidential and not subject to the terms of this Section 5. Customer shall be solely responsible for determining whether to disclose or share any information on the foregoing forum and upon such disclosure or sharing, Customer hereby grants LiteCloud a non-exclusive, royalty-free, worldwide license to disseminate and sublicense other users of such forum to use information as part of the Service. LiteCloud hereby grants to Customer a non-exclusive, royalty-free, and worldwide license to use information supplied as part of the forum solely in connection with the use of the Services. Customer hereby releases LiteCloud from any and all liability in connection with information posted on the forum and acknowledges and agrees that all information received by Customer is provided by LiteCloud and other customers exclusively on an "AS IS" basis and without express or implied warranties or representations of any kind as to accuracy, completeness, or otherwise. All content supplied, posted or received as part of a forum shall at all times be subject to the terms of the AUP (defined in Section 10 below).

**5.3. Exclusions.** Information will not be deemed Confidential Information hereunder if such information: (i) is or becomes known without restriction to the receiving party from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes generally publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iii) is independently developed by the receiving party without reference to the Confidential Information.

## **6. OWNERSHIP.**

**6.1. LiteCloud Property.** Customer does not acquire any right, title or interest in or to any software, APIs, Confidential Information, or other intellectual property supplied by LiteCloud to enable Customer to receive, access or use the Services. Except for the limited licenses granted hereunder, LiteCloud reserves all rights not expressly granted and no such additional rights may be implied.

**6.2. Customer Property.** To the extent that Customer discloses, uses, displays, performs, copies, distributes, creates derivative works of, makes, sells, imports any Customer or third party products, data, or content together with the Services, (i) Customer makes the warranties and representations in Section 7.3 below; and (ii) LiteCloud does not acquire any right, title or



interest therein other than the limited right to operate such with the Services for Customer's benefit and to disable, remove, delete, or block the foregoing to the extent required by law or necessary in LiteCloud's sole and exclusive judgment to mitigate liability in connection with allegations of Customer's breach of the foregoing warranty.

**6.3. Feedback.** In the event Customer elects, in connection with any of the Services, to communicate to LiteCloud suggestions for improvements to the Services ("Feedback"), LiteCloud shall own all right, title, and interest in and to the same, even if Customer have designated the Feedback as confidential, and LiteCloud shall be entitled to use the Feedback without restriction. Customer hereby irrevocably assigns all right, title and interest in and to the Feedback to LiteCloud and agrees to provide LiteCloud such assistance as LiteCloud may require to document, perfect, and maintain LiteCloud's rights to the Feedback.

**6.4. Non-Assertion.** During and after the term of the Agreement, with respect to any of the Services that Customer elects to use, Customer will not assert, nor will Customer authorize, assist, or encourage any third party to assert, against LiteCloud or any of its customers, end users, vendors, business partners (including third party sellers on websites operated by or on behalf of us), licensors, sublicenses or transferees, any patent infringement or other intellectual property infringement claim with respect to such Services.

## **7. WARRANTIES, REPRESENTATIONS, AGREEMENTS.**

**7.1. Authority.** Each party represents and warrants that (i) it has the full corporate right, power and authority to enter into this Agreement, (ii) the execution of this Agreement by and the performance of its obligations and duties hereunder do not and will not violate any agreement to which it is a party or by which it is bound, and (iii) when executed and delivered, this Agreement will constitute the legal, valid and binding obligation of such party, in accordance with its terms.

**7.2. Compliance with Law.** In connection with the subject matter of this Agreement, each party agrees to comply with all applicable Federal and State laws and regulations.

**7.3. Applications and Content.** Customer represents and warrants: (i) that Customer is solely responsible for the development, operation, and maintenance of its Application and for its content, including without limitation, the accuracy, security, appropriateness and completeness of such content and all product-related materials and descriptions; (ii) that Customer has the necessary rights and licenses, consents, permissions, waivers and releases to use and display its Applications and content; (iii) that neither the Application nor the content (a) violates, misappropriates or infringes any rights of us or any third party, (b) constitutes defamation, invasion of privacy or publicity, or otherwise violates any rights of any third party, or (c) is designed for use in any illegal activity or promotes illegal activities, including, without limitation,



in a manner that might be libelous or defamatory or otherwise malicious, illegal or harmful to any person or entity, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age; (iv) that neither the Application nor content supplied by Customer distributes, shares, or facilitates the distribution of unauthorized data, malware, viruses, Trojan horses, spyware, worms, or other malicious or harmful code.

**7.4. Public Software and Feedback.** Customer represents and warrants that Customer will not use, and will not authorize any third party to use, any Open Source Software (as defined below) in connection with the Services in any manner that requires, pursuant to the license applicable to such Open Source Software, that any portion of the Services be (a) disclosed or distributed in source code form, (b) made available free of charge to recipients, or (c) modifiable without restriction by recipients. With respect to any Feedback, Customer represents and warrants that such Feedback, in whole or in part, contributed by or through Customer, (i) contains no third party software or any software that may be considered Open Source Software and (ii) does not violate, misappropriate or infringe any intellectual property rights of any third party. "Open Source Software" means any software, documentation or other material that contains, or is derived (in whole or in part) from, any software, documentation or other material that is distributed as free software, open source software (e.g., Linux) or similar licensing or distribution models, including, but not limited to software, documentation or other material licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (i) GNU's General Public License (GPL), Lesser/Library GPL (LGPL), or Free Documentation License, (ii) The Artistic License (e.g., PERL), (iii) the Mozilla Public License, (iv) the Netscape Public License, (v) the Sun Community Source License (SCSL), (vi) the Sun Industry Standards License (SISL), (vii) the BSD License and (viii) the Apache License.

**7.5. Authorization and Account Information.** Customer represents and warrants that: (i) the information Customer provides in connection with Customer's registration for the Services is accurate and complete; (ii) if Customer is registering for the Services as an individual, that Customer is at least 18 years of age and has the legal capacity to enter into this Agreement; and (iii) if registering for the Services as an entity or organization, (a) Customer is duly authorized to do business in the country or countries where it operates, (b) the individual clicking "Accept" on this Agreement and completing the registration for the Services meets the requirements of subsection (ii) above and is an authorized representative of Customer, and (c) Customer's employees, officers, representatives and other agents accessing the Services are duly authorized to access the Services and to legally bind Customer to this Agreement and all transactions conducted under Customer's account.

**7.6. Responsibility for Applications.** LiteCloud specifically disclaims all liability, and Customer shall be solely responsible for the development, operation, and maintenance of its





Application and for all materials that appear on or within Customer's Application. Customer shall, without limitation, be solely responsible for:

7.6.1. the technical operation of its Application and all related equipment;

7.6.2. the accuracy and appropriateness of any materials posted on or within its Application (including, among other things, any product-related materials);

7.6.3. ensuring that any materials posted on Customer's site or within its Application are not illegal and do not promote illegal activities, including without limitation any activities that might be libelous or defamatory or otherwise malicious, illegal or harmful to any person or entity, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age;

7.6.4. ensuring that the Application accurately and adequately discloses, either through a privacy policy or otherwise, how Customer collects, uses, stores, and discloses data collected from visitors, including, where applicable, that third parties (including advertisers) may serve content and/or advertisements and collect information directly from visitors and may place or recognize cookies on visitors' browsers;

7.6.5. any of Customer's users' or clients' claims relating to the Application or any Services utilized in connection with Customer's Application

**7.7. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, CUSTOMER'S USE OF THE SERVICES ARE AT CUSTOMER'S OWN RISK, AND LITECLOUD DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THERE IS NO WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.**

## **8. LIMITATIONS OF LIABILITY**

**8.1. Exclusions.** Except in connection with Customer's indemnification obligations to LiteCloud under Section 9.1. or 9.2 below, in no event will either party be liable for any incidental, punitive, indirect or consequential damages (including without limitation any lost revenue or lost profits) or for any loss of technology, loss of data, or interruption or loss of use of Service (except as set forth in any applicable SLA) or any other similar claims by the other party or related to the other party's business, even if such party is advised of the possibility of such damages.



**8.2. Maximum Liability.** Notwithstanding anything to the contrary in this Agreement, LiteCloud's maximum aggregate liability related to or in connection with this Agreement whether under theory of contract, tort (including negligence), strict liability or otherwise will be limited to the total amount paid or payable to LiteCloud by Customer hereunder for the first six (6) month period of the Agreement. The foregoing liability limitation shall not apply to Customer's indemnification obligations to LiteCloud under Section 2.2 above or Sections 9.1 or 9.2 below, or to unpaid Fees invoiced or due under this Agreement.

**8.3. Damage Caused by Customer.** LiteCloud shall not be responsible for any damage to Customer or Customer's systems that is caused by Customer-assigned personnel, including but not limited to its employees, officers, directors, agents, affiliates, or independent contractors. Any downtime in Customer's system that occurs as a result of Customer's actions or directives or any downtime in Customer's system that occurs while Customer is making changes to the code or the system shall render the SLA inapplicable for such downtime. In such cases where Customer damages its systems, Customer will be responsible for paying LiteCloud on a time and materials basis at LiteCloud's then-current rate for the actual work LiteCloud performs in restoring the system to an operational status.

## **9. INDEMNIFICATION**

**9.1. Covered Claims.** Each party (the "Indemnifying Party" for purposes of this Section 6) will indemnify, defend and hold harmless the other party (the "Indemnified Party"), its directors, officers, employees, and affiliates (collectively, the "Indemnified Entities") from and against any and all claims, actions, demands, suits, liabilities or obligations brought against any of the Indemnified Entities by a third party alleging: (i) infringement or misappropriation of any intellectual property rights by the Indemnifying Party except to the extent caused by the Indemnified Party; or (ii) any death or personal injury suffered by any representative, employee or agent of the Indemnified Party arising out of such individual's activities related to the Services except to the extent caused by the Indemnified Party (collectively, the "Covered Claims").

**9.2. Customer Indemnification to LiteCloud.** In addition to the obligations under Section 9.1. above, Customer agrees to indemnify, defend and hold LiteCloud, its affiliates, and all respective employees, officers, directors and representatives, harmless from and against any and all claims, losses, damages, liabilities, judgments, penalties, fines, costs and expenses (including reasonable attorneys fees), arising out of or in connection with any claim arising out of (i) Customer's use of the Services in a manner not authorized by this Agreement, and/or in violation of the applicable restrictions, AUPs, and/or applicable law, (ii) Customer's Application, content, or the combination of either with other applications, content or processes, including but not limited to any claim involving infringement or misappropriation of third-party rights, violations of the right of privacy or publicity, and/or the use, development, design, manufacture,





production, advertising, promotion and/or marketing of the Application and/or Customer's content, (iii) Customer's or Customer's employees' or personnel's negligence or willful misconduct.

**9.3. Notice.** Each party's indemnification obligations hereunder shall be subject to (i) receiving prompt written notice of the existence of any Covered Claim, (ii) receiving full cooperation from the Indemnified Party in the defense and settlement of such Covered Claim, and (iii) allowing the Indemnifying Party to assume sole control, defense, and settlement of such Covered Claim. The Indemnifying Party shall not, without the prior written consent of the Indemnified Party, settle or compromise any Covered Claim, or consent to the entry of judgment of a Covered Claim against the **Indemnified Party unless the Indemnified Party is unconditionally released.**

**10. ACCEPTABLE USE POLICY.** Customer's failure to comply with the LiteCloud's Acceptable Use Policy ("AUP"), available on line at <https://www.LiteCloudcloud.net/legal/aup> which may be modified by LiteCloud from time to time, and incorporated herein by reference shall be deemed a material breach hereunder and LiteCloud may terminate or suspend Customer access at its sole discretion.

**11. Authorization and License to Use the Services.**

Subject to Customer's acceptance of and compliance with this Agreement, LiteCloud hereby grants to Customer a limited, non-exclusive, non-transferable, non-sublicenseable right and license, to access and use the Services as set forth herein.

**11.1. Permitted Uses Generally.**

11.1.1. LiteCloud hereby grants Customer a limited, non-exclusive, non-transferable, nonsublicenseable right and license to write a software application or Web site ("Application") that interfaces with the Services. Customer acknowledge that LiteCloud may change, deprecate, or republish application programming interfaces ("APIs") for any Service or feature of a Service from time to time, and that it is the Customer's responsibility to ensure that the Application calls made to any Service are compatible with then-current APIs for the Service. Customer further acknowledges that LiteCloud may change or remove features or functionality of the Services at any time.

11.1.2. Customer may make network calls or requests to the API functions of the Services any time that the Services are available, provided that Customer does not exceed the maximum file size or maximum calls per second limit (if any) set forth in the then-current API documentation for any particular Service.

**11.2. Restricted Uses Generally.**



11.2.1. Customer may not interfere or attempt to interfere in any manner with the functionality or proper working of the Services.

11.2.2. Customer may not compile or use the LiteCloud provided materials or any other information obtained through the Services for the purpose of direct marketing, spamming, unsolicited contacting of sellers or customers, or other impermissible advertising, marketing or other activities, including, without limitation, any activities that violate anti-spamming laws and regulations.

11.2.3. Customer may not remove, obscure, or alter any notice of any trademark, trade name, service mark, logo, or other intellectual property or proprietary right designation appearing on or contained within the Services or on any LiteCloud materials.

11.2.4. Subject to the terms and conditions of this Agreement, Customer may generally publicize Customer's use of the Services; however, Customer may not issue any press release with respect to the Services or this Agreement without LiteCloud's prior written consent.

**11.3. Monitoring Use of the LiteCloud Cloud Services.** Customer agrees to provide information and/or other materials related to its Applications as reasonably requested by LiteCloud to verify Customer's compliance with this Agreement. Customer also agrees that, LiteCloud may access the Application or crawl or otherwise monitor the external interfaces of Customer's Application for the purpose of verifying Customer's compliance with this Agreement. Customer may not seek to block or otherwise interfere with such crawling or monitoring.

**12. TERM OF AGREEMENT.** This Agreement will commence on the date Customer agrees to the terms and conditions of this Agreement and will expire upon the expiration of all Service Order(s) hereunder, unless sooner terminated as provided herein. Each Service Order will have the term specified therein, and will automatically renew for like terms unless either party provides: 1) at least three (3) days written notification of termination for Customers not on a committed term Service Order or 2) ninety (90) days written notice for Customers on a committed term Service Order. Notice not to renew must be given prior to the expiration of the then-current term. Notification of termination from Customer to LiteCloud must be sent to [cloudbilling@litecloudhosting.com](mailto:cloudbilling@litecloudhosting.com) .

### **13. TERMINATION OF AGREEMENT**

**13.1. Breach.** Unless otherwise stated, either party may terminate this Agreement if the other party breaches any material term or condition of this Agreement and fails to cure such breach within ten (10) days after receipt of written notice of the same. Customer's failure to timely pay all Fees as they become due shall constitute a material breach of this Agreement. If Customer is terminated for nonpayment, all outstanding invoices as well as the remainder of all monthly



Fees for the remaining term of the Agreement will be immediately due and payable upon the termination date as and for liquidated damages, and not as a penalty.

**13.2. Nonpayment by Customer.** In addition to its rights under Section 13.1 above, LiteCloud may suspend all Services to Customer if Customer is in default of its payment obligations set forth in Section 2. LiteCloud will provide seventy-two (72) hour notice of its intent to suspend Service under this provision.

**13.3. Upon Bankruptcy.** Either party may terminate this Agreement upon written notice to the other party if such other party becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, or liquidation for the benefit of creditors

**13.4. Effect of Termination.** Upon expiration or termination of this Agreement, LiteCloud will cease providing the Services and Customer's rights and licenses granted under this Agreement shall automatically expire. Customer shall incur no further payment obligations under this Agreement other than any amounts outstanding as of the date of expiration or termination. Customer shall immediately return, or if instructed by LiteCloud, destroy all LiteCloud Confidential Information then in Customer's possession.

**13.5. Data Preservation in the Event of Suspension or Termination.** In the event of a suspension by LiteCloud of Customer's access to any Service pursuant to Section 13.2, during the period of suspension, (i) LiteCloud will not take any action to intentionally erase any of Customer's data stored on the Services and (ii) applicable Service data storage charges, if any, will continue to accrue. In the event of any termination by LiteCloud of any Service or any set of Services, or termination of this Agreement in its entirety, LiteCloud shall have no obligation to continue to store Customer's data during or following any period of termination or to permit Customer to retrieve the same.

**13.6. Post-Termination Assistance.** Following the suspension or termination of the right to use the Services for any reason other than a for cause termination under Section 13.1 or 13.2, Customer shall be entitled to take advantage of any post-termination assistance LiteCloud may generally make available with respect to the Services, such as data retrieval arrangements LiteCloud may elect to make available. LiteCloud may also endeavor to provide you unique post-suspension or post-termination assistance, but LiteCloud shall be under no obligation to do so. Customer's right to take advantage of any such assistance, whether generally made available with respect to the Services or made available uniquely to Customer, shall be conditioned upon Customer's acceptance of and compliance with any fees and terms LiteCloud may specify for such assistance.

**13.7. Termination or Suspend for Cause.** LiteCloud, at its sole discretion, may terminate or suspend this Agreement and modify or terminate the Services immediately upon notice to



Customer (a) for cause, if any act or omission by Customer results in a suspension described in Section 10 or 13.2, (b) if our relationship with a third party partner who provides software or other technology we use to provide the Service Offerings expires, terminates or requires us to change the way we provide the software or other technology as part of the Services, (c) if LiteCloud believes providing the Services could create a economic or technical burden or material security risk for LiteCloud, (d) in order to comply with the law or requests of governmental entities, or (e) if LiteCloud determines use of the Service by Customer or our provision of any of the Services to Customer has become impractical or unfeasible for any legal or regulatory reason or (f) LiteCloud may terminate individual networks, if LiteCloud determines there are no deployed servers on such networks.

#### **14. SURVIVAL.**

The parties' respective representations, warranties, and covenants, together with obligations of payment, indemnification and limitations on liability will survive the expiration, termination or rescission of this Agreement and continue in full force and effect. The parties' respective obligations of confidentiality will survive the expiration, termination or rescission of this Agreement and continue in full force and effect for one (1) year.

#### **15. DISPUTE RESOLUTION AND ARBITRATION**

**15.1. Dispute Resolution.** In the event of any dispute between the parties concerning interpretations or enforcement of this Agreement, except for requests for injunctive or other equitable relief, the parties agree to first attempt informal dispute resolution by selecting a joint resolution committee consisting of two representatives from each party to meet and attempt to resolve this dispute within thirty (30) days from the mailing or service of a notice of demand for such dispute resolution, unless extended by mutual agreement of the parties.

**15.2. Arbitration.** If the informal dispute resolution is not successful within thirty (30) days from the date notice is served, the dispute shall be settled by binding arbitration in the State of California, Santa Clara County, before a single arbitrator, and in accordance with the rules of the American Arbitration Association ("AAA Rules") then in effect. The parties agree that the expedited arbitration procedures under the AAA Rules shall apply. Any judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction over the subject matter thereof. The parties retain their right to, and shall not be prohibited, limited or in any other way restricted from, seeking or obtaining equitable relief from a court having jurisdiction over the parties. Except as specifically otherwise provided in this Agreement, arbitration will be the sole and exclusive remedy of the parties for any dispute arising out of this Agreement.



**15.3. Attorneys' Fees.** In the event that any arbitration or action for equitable relief is instituted hereunder, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of the prevailing party, including without limitation the reasonable fees and expenses of attorneys and accountants of the prevailing party.

## **16. MISCELLANEOUS PROVISIONS**

**16.1. Marketing.** Customer agrees that LiteCloud may refer to Customer by name and trademark in LiteCloud's marketing materials and web site. Customer understands and acknowledges that LiteCloud does not certify nor endorse, and has no obligation to certify or endorse, any of Customer's Applications or content.

**16.2. Staffing.** LiteCloud shall be responsible for staffing decisions with respect to its personnel and the provision of any services under this Agreement, and shall have the right to remove or replace any of its personnel assigned to perform services under this Agreement.

**16.3. Assignment.** Neither party may assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other party, except either party may assign this Agreement without consent to an affiliate or a party that acquires substantially all of the assigning party's assets or business or a majority of its stock as part of a corporate merger or acquisition. Any attempted assignment or delegation without such consent will be void. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

**16.4. Independent Contractor.** Neither party shall be deemed to be an agent of the other party and the relationship of the parties shall be that of independent contractors. Neither party shall have any right or authority to assume any obligations, or to make any representations or warranties, whether express or implied, on behalf of the other party, or to bind the other party in any matter whatsoever.

**16.5. Notices.** Any required notice hereunder may be delivered by electronic mail, personally or by courier, or mailed by registered or certified mail, return receipt requested, postage prepaid, to either party at the name and address on the signature page of this Agreement, or at such other address as such party may provide to the other by written notice. Such notice will be deemed to have been given as of the date it is delivered by electronic mail, personally, by confirmed facsimile or by courier, or five (5) days after it is sent by mail. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

**16.6. Governing Law.** This Agreement shall be governed by the laws and construed under the laws of the State of California, excluding its choice of law principles. Any dispute concerning this Agreement shall be brought exclusively in the state or federal courts located in Santa Clara



County, and the parties hereby irrevocably consent to personal jurisdiction and venue in such courts.

**16.7. Amendment of Agreement.** Except as otherwise provided for in Section 2 above, this Agreement may be amended only by written consent of both parties.

**16.8. Entire Agreement.** This Agreement, together with all Service Orders, represents the sole, exclusive and integrated mutual statement of understanding of the parties concerning the Services to be provided hereunder, and supersedes and cancels all previous and contemporaneous written and oral agreements and communications between the parties relating to the subject matter of this Agreement.

**16.9. Severability.** If any provision of this Agreement, or a portion thereof, shall be adjudged by a court of competent jurisdiction to be unenforceable or invalid, that portion shall be eliminated or limited to the minimum extent necessary so that this Agreement shall remain in full force and effect and enforceable.

**16.10. Force Majeure.** Except for performance of a payment obligation, neither party shall be liable under this Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused or occasioned by, or due to fire, earthquake, flood, water, the elements, labor disputes or shortages, utility curtailments, power failures, explosions, civil disturbances, governmental actions, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties, or any other cause beyond its reasonable control. If the force majeure continues for more than thirty (30) calendar days, then either party may terminate the Agreement for convenience upon written notice to the other party.

**16.11. Export.** Customer shall, in connection with Customer's use of the Services, comply with all applicable export and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control.

**16.12. Evaluation, Trial or Demonstration Cloud Services.** From time to time, Customer may receive LiteCloud's Services for evaluation, trial or demonstration at no-cost or special promotion ("Evaluation"). Customer agrees to use the Services in a non-production environment. By accepting LiteCloud Services on such a basis, Customer accepts the Services as is and waives all express and implied warranties and conditions and service level agreements during the Evaluation. Either Party upon written notice to the other may cancel the Evaluation with immediate effect. Upon termination or expiration of the Evaluation period, Customer shall either convert to a paid contract covering the Services or immediately terminate use of the Services.





111 Church Road  
Owings Mills, MD 21117

Acceptance of Service Agreement

IN WITNESS WHEREOF, the parties hereto have caused this Service Agreement to be signed by their duly authorized representatives as of the date set forth below.

Accepted by:

\_\_\_\_\_

Authorized Signature, LiteCloud, Inc.

\_\_\_\_\_

Date

\_\_\_\_\_

Authorized Signature, Invotex, LLC

\_\_\_\_\_

Date



111 Church Road  
Owings Mills, MD 21117

## **Appendix "A"**

### **Service and Pricing Description**

**Please initial and date the attached Service Order Form.**



111 Church Road  
Owings Mills, MD 21117

## LiteCloud Service Order Form

Customer

Date
5/22/2013

Account Manager	Service Term	Billing Term	Delivery Date
Jake Dell	1 Year	Net 30	3/31/2013

### Monthly Recurring Costs

Service/Part	Description	Quantity	Price	Total
TOTAL				

### Non-Recurring Costs

Service/Part	Description	Quantity	Price	Total
TOTAL				

Accepted By: \_\_\_\_\_ Date: \_\_\_\_\_ Revision: \_\_\_\_\_