

# Lithium Hosting, llc

## CUSTOMER MASTER AGREEMENT

This Customer Master Agreement (hereinafter referred to as the "Agreement" and/or "Terms of Service") is made, entered into and executed on 26 May, 2018 (hereinafter referred to as the "Effective Date")

BETWEEN:-

**Lithium Hosting, llc** (hereinafter referred to as "Company")

AND

**You the Customer** (hereinafter referred to as "Customer")

If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these terms and conditions, in which case the term "Customer" shall refer to such entity.

(The Company and the Customer may be referred to individually as a "Party" and collectively as the "Parties").

HAVE

entered into a Customer Master Agreement ("Agreement" and/or "Terms of Service") effective from 26 May, 2018.

**WHEREAS**, Company is authorized to provide online services including but not limited to Web Hosting, Virtual Private Servers, Dedicated Servers, SSL Certificates and Domain Registrations;

**WHEREAS**, Customer requires the types of services which can be provided by Company, and;

**WHEREAS**, Company and Customer wish to enter into this Agreement to establish the terms and conditions which Company may be available to provide services to Customer as an Online Service Provider (OSP).

**NOW, THEREFORE**, in consideration of the above recitals and for other good and valuable consideration the sufficiency of which is hereby acknowledged, Company and the Customer, intending to be legally bound, hereby agree as follows:

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The use of services from Lithium Hosting, llc constitutes agreement to these terms and the terms set forth in all referenced documents and policies.

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## 1. **OTHER POLICIES AND AGREEMENTS**

Use of the Services is also governed by the following policies, which are incorporated by reference. By using the Services, you also agree to the terms of the following policies.

1. [Acceptable Use Policy](#)
2. [Domain Registration Product Agreement](#)
3. [Domain Name Dispute Resolution Policy](#)

Additional terms may also apply to certain Services, and are incorporated by reference herein as applicable. For example, if you register a domain name with us, then the Domain Registration Agreement will also apply to you and would be incorporated herein.

## 2. **IDENTITY INFORMATION**

You agree that as a client of Lithium Hosting, llc you are legally responsible for all usage of your account, and are at least 18 years of age. If you are under 18 years of age, you must have parental consent in order to sign up, and your account must be ordered by a parent or guardian, in his or her own name. You agree to supply Lithium Hosting, llc with a current and truthful name, postal address telephone number and email address for our records, and you have a continued obligation to keep this information current. You also agree that you are an authorized user of any payment method that you supply to us or to our payment processor, and you understand and agree that we have an obligation to fully investigate any possible fraudulent credit card or payment account use.

## 3. **PROHIBITED PERSONS (COUNTRIES, ENTITIES, AND INDIVIDUALS)**

The U.S. Department of the Treasury, through the Office of Foreign Assets Control ("OFAC"), prohibits U.S. companies from engaging in all or certain commercial activities with certain sanctioned countries (each a "Sanctioned Country") and certain individuals, organizations or entities, including without limitation, certain "Specially Designated Nationals" ("SDN") listed by OFAC. If you are located in a Sanctioned Country or are listed as an SDN, you are prohibited from registering or signing up with, subscribing to, or using the Services. Unless otherwise provided with explicit permission, Lithium Hosting, llc also does not register, and prohibits the use of any of our Services in connection with, any Country-Code Top Level Domain Name ("ccTLD") for any Sanctioned Country.

#### 4. SERVICE ACTIVATION

**For new customers** - the services are activated immediately after successful processing of payment and our fraud detection software approves the order. The payment verification procedure is obligatory and if we fail to approve a transaction within 48 hours of the payment submission, the funds will be credited back to the payer and the order will be cancelled.

**Free Trials** - All free trial orders are manually processed. If we deem your order to be suspicious or high risk, we will notify you and request additional information before process the order. Failure to comply with our request for more information will result in cancellation of the order.

**For existing customers** - the services for existing customers, including upgrade services and renewals, are activated immediately after our Sales Department receives the according service payment.

#### 5. CONTENT

You agree that all services provided by Lithium Hosting, llc will be used for lawful purposes only. Transmission, storage, linking to, or presentation of any information, data or material in violation of any United States Federal, State, City or International law is prohibited. This includes, but is not limited to: material of any unlawful, obscene, indecent, profane, libelous, offensive, pornographic, threatening, abusive, defamatory, or otherwise objectionable nature, copyrighted material, material that is threatening or obscene, or material protected by trade secrets and other statute.

Examples of non-acceptable content include (but are not limited to):

- BitTorrent Trackers / Seedboxes
- IRC (Internet Relay Chat) Services, including but not limited to IRCd, XDCC Bots, or FServs
- Tor exit nodes or other forms of anonymous proxies or VPN services, due to the type of traffic that flows through them violating other parts of our terms of service
- Pirated software
- Hacker utilities or archives
- Forums and/or websites that distribute or link to warez/pirated/illegal content
- Installation or distribution of a software product that is not appropriately licensed for use by you
- Data not intended for you by any method
- Spamming Software
- Bitcoin Miners
- Automated or manual routines which consume excessive network bandwidth or computer resources
- software that circumvents user authentication or security of any host, network or account
- Trademarked or copyrighted material which you are not licensed to distribute
- Sale of any controlled substance without prior proof of appropriate permit(s)

- Broadcast or Streaming of Live Sporting Events (UFC, NASCAR, FIFA, NFL, MLB, NBA, WWE, etc)

You agree not to publish content that may violate the rights of third parties or otherwise violate the law. The placement of erotic, pornographic, extremist material or material not deemed in good taste is not permitted. We are entitled to block access to the account of any customer who violates this.

The same applies in the event that the customer publishes content which is capable of violating the rights of individuals or groups of people, or that insults or denigrates these people. This applies even without an actual legal claim. We are not obligated to review our customers' content.

You agree not to use your hosting account as a remote storage server only or solely for the purpose of sharing (un)archived images, programs or sound files. At least 80% of all files and/or total storage space used (including but not limited to MP3, WAV, RA, GIF, JPG, ZIP, RAR file types) in each hosting account must be a part of actual, active website content, i.e. all content files must have corresponding HTML or PHP files that link to them. Furthermore, these files may amount to no more than 50% of the total monthly traffic usage. Upon request, you agree to prove that a given file is a constituent part of an actual page and not only stored on the server within 24 hours of such request.

You understand and agree that Lithium Hosting, llc will be the sole arbiter as to what constitutes a violation of this provision.

## 6. **RESOURCE LIMITS**

Lithium Hosting, llc accounts are allotted a preset amount of resources per month.

You agree that if you exceed the transfer limit for your shared hosting account, we will put up a bandwidth exceeded warning until the bandwidth usage resets at midnight on the 1st day of the following month.

You understand and agree that Transfer / Bandwidth overages on Virtual Private and Dedicated Servers are billable. Transfer overages are billed at a rate of \$0.10 USD per gigabyte on your server's renewal date.

Exceeding disk space usage on shared hosting will result in suspension of your service.

## 7. **RESOURCE USAGE**

You agree that if your web site abuses shared server resources (such as, but not limited to CPU time, disk I/O, and network resources), it can be suspended without notice, and you may be given an option of either upgrading your service level or reducing the resource used to an acceptable level.

You agree that by enabling Shell Access (SSH) on your shared hosting account you agree to the following:

- Lithium Hosting, llc may monitor all activity by logging keystrokes or mirroring SSH sessions.
- You agree not to tunnel traffic through Lithium Hosting, llc's servers and network.
- You agree not to attempt to circumvent server or network security or the security of other customer accounts.
- You will not attempt to install software or make changes to already installed software.
- You agree not to use SSH to instantiate long running processes or daemonized processes.
- Lithium Hosting, llc reserves the right to remove SSH access at any time for any reason.
- Your use of SSH access constitutes agreement to these terms.

## 8. COPYRIGHT / INTELLECTUAL PROPERTY RIGHTS / DMCA

Lithium Hosting, llc will respond to all reports of infringement that are formatted in accordance with the [Digital Millennium Copyright Act](#) and any other applicable copyright laws. Notices of infringement that do not comply with this act will not be processed. We will act in accordance with the DMCA when handling infringement reports.

Material accessible to you through Lithium Hosting, llc services may be subject to protection under the United States or other copyright laws, or laws protecting trademarks, trade secrets or proprietary information. Except when expressly permitted by the owner of such rights, you agree not to use the Lithium Hosting, llc services in a manner that would infringe, violate, dilute or misappropriate any such rights, with respect to any material, which you access or receive through Lithium Hosting, llc. If you use a domain name in connection with Lithium Hosting, llc or similar service, you agree not to use that domain name in violation of any trademark, service mark, or similar rights of any third party.

**DMCA Safe Harbor Provisions [17 U.S.C. Sec 512]** - In an effort to protect service providers on the Internet from liability for the activities of its users, Lithium Hosting, llc as an Online Service Provider (OSP), qualifies for safe harbor protection under the Digital Millenium Copyright Act (DMCA). Codified as section 512 of the Digital Millennium Copyright Act (DMCA), this new law exempts on-line service providers that meet the criteria set forth in the safe harbor provisions from claims of copyright infringement made against them that result from the conduct of their customers. These safe harbor provisions are designed to shelter service providers from the infringing activities of their customers.

In order to facilitate the notification process in cases of infringement, OSP's which allow users to store information on their networks, such as a web hosting service, must designate an agent that will receive the notices from copyright owners that its network contains material which infringes their intellectual property rights. In order to comply with this provision, contact information for Lithium Hosting, llc's agent is specified below:

If you believe that your intellectual property rights are being infringed upon, please email [abuse@lithiumhosting.com](mailto:abuse@lithiumhosting.com). For copyright infringement claims, Lithium Hosting, llc follows the Digital Millennium Copyright Act ("DMCA") notice and take down procedures. A list of the information required to submit a sufficient copyright infringement claim can be found here: [DMCA Filing Information](#).

ATTENTION: Copyright Officer  
Lithium Hosting, llc  
P.O. BOX 102  
Ankeny, Iowa 50021  
United States of America

[abuse@lithiumhosting.com](mailto:abuse@lithiumhosting.com)

## 9. HIPAA COMPLIANCE

You agree that as our customer, you are solely responsible for any applicable compliance with federal or state laws governing the privacy and security of personal data, including medical or other sensitive data. Users acknowledge that the Services may not be appropriate for the storage or control of access to sensitive data, such as information about children or medical or health information. Lithium Hosting.com does not control or monitor the information or data you store on, or transmit through, our Services. We specifically disclaim any representation or warranty that the Services, as offered, comply with the federal

Health Insurance Portability and Accountability Act ("HIPAA"). Customers requiring secure storage of "protected health information" under HIPAA are expressly prohibited from using this Service for such purposes. Storing and permitting access to "protected health information," as defined under HIPAA is a material violation of this Terms of Service, and grounds for immediate account termination. We do not sign "Business Associate Agreements" and you agree that Lithium Hosting, llc is not a Business Associate or subcontractor or agent of yours pursuant to HIPAA. If you have questions about the security of your data, you should contact [sales@lithiumhosting.com](mailto:sales@lithiumhosting.com)

## 10. **THIRD PARTY DEALINGS**

Lithium Hosting, llc may offer certain third party products and services. Such products and services may be subject to the terms and conditions of the third party provider. Discounts, promotions and special third party offers may be subject to additional restrictions and limitations by the third party provider. You should confirm the terms of any purchase and the use of goods or services with the specific third party provider with whom you are dealing.

Lithium Hosting, llc does not make any representations or warranties regarding, and is not liable for, the quality, availability, or timeliness of goods or services provided by a third party provider. You undertake all transactions with these third party providers at your own risk. We do not warrant the accuracy or completeness of any information regarding third party providers. Lithium Hosting, llc is not an agent, representative, trustee or fiduciary of you or the third party provider in any transaction.

The Services provided by Lithium Hosting, llc may contain links to other websites that are not owned or controlled by Lithium Hosting, llc ("Third Party Sites"), as well as articles, photographs, text, graphics, pictures, designs, sound, video, information, and other content or items belonging to or originating from third parties ("Third Party Content"). We are not responsible for any Third Party Sites or Third Party Content accessed through the Services. Third Party Sites and Third Party Content are not investigated, monitored or checked for accuracy, appropriateness, or completeness by us. If you decide to access Third Party Sites or to access or use any Third Party Content, you do so at your own risk and you should be aware that our terms and policies no longer govern. You should review the applicable third party's terms and policies, including privacy and data gathering practices of any website to which you navigate.

## 11. **SPAM / UNSOLICITED EMAIL**

You agree that you may not use the Lithium Hosting, llc Network, Lithium Hosting, llc equipment or any Lithium Hosting, llc email address in connection with the transmission of spam and/or unsolicited email messages. You agree that your domain may not be referenced as originator, intermediary, or reply-to address in any of the above. This prohibition extends to the sending of unsolicited mass mailings from another service that in any way implicates the use of the Lithium Hosting, llc Network, Lithium Hosting, llc equipment or any Lithium Hosting, llc email address. A message is considered unsolicited if it is posted in violation of a newsgroup charter or if it is sent to a recipient who has not requested or invited the message. You understand and agree that Lithium Hosting, llc will be the sole arbiter as to what constitutes a violation of this provision.

Our [Email Policy](#) is also governed by this agreement and referenced in the [Acceptable Use Policy](#).

## 12. **CONTINUANCE TIMESCALE**

**Hosting Accounts** - all Shared Hosting, Virtual Private Servers and Dedicated Servers automatically renew on their anniversary date until explicitly cancelled by the Customer. All account upgrades

purchased from the [Client Area](#) are valid and are to be functional until the final cancellation of the respective service.

**Domain Name Registration / Transfer** - Lithium Hosting, llc offers for registration/transfer all TLDs (Top-Level Domains) displayed in the table [on this page](#). The TLDs can be purchased either together with a shared hosting account (at regular or PROMOTIONAL price) or separately as an upgrade from the [Client Area](#) (all TLDs - at NON-PROMOTIONAL prices).

Domain names are valid for the number of years of their registration (domain names can be registered for the period of 1 to 10 years, depending on their TLD - top-level domain name - extension). After an expiration of a domain name several stages follow regarding its renewal.

- The domain name Redemption Grace Period (RGP) is a registry level period of up to 30 days after the domain name's expiration date. During this period the domain name is kept on hold by the Registrar before it gets deleted. The domain registrant is allowed to retrieve the domain name from deletion, but this process costs additional redemption fee. This extra 30-day period extends the time available for renewing domain names. However, all domains that enter a redemption period are removed from the zone files (the list of domain names currently in the global DNS), therefore any web site or e-mail services associated with the domain name will stop working.
- Extended Redemption Grace Period - the extended redemption grace period adds another 7 - 30 days to the domain name's redemption period. During this period the domain name owner is allowed to retrieve the domain name from deletion paying the redemption fee.
- After the redemption period of an expired domain name is finished, comes the Pending Delete Period - a registry level period of up to 5 days during which no one is allowed to renew the domain name and it cannot be newly registered because it's still not returned to the public pool of domain names.
- Released by Registry Period - the domain name is sent back into the public pool of domain names and is newly available for registration.

Customers are advised to renew their domain registrations before their domain names are placed into redemption. When a domain name transits into redemption period, DNS, Email, and the web site and any other associated services will cease to function.

During a domain name's redemption period, we can assist the customer in retrieving his/her domain name from deletion only if the domain name was registered with us. The customer will need to pay a REDEMPTION FEE of up to \$270.00 USD for the domain registration renewal. If the domain name was registered with another registrar, the customer needs to contact that registrar for more information regarding its redemption.

### 13. **AFFILIATE ACCOUNTS**

Lithium Hosting, llc reserves the right to disqualify an affiliate account or commission for any reason at any time.

Affiliate commissions are made on the 1st of the month. All new commissions must go through a maturation period of 3 months. Commissions made on the 1st of the month are a recurring percentage of the referral monthly rate. Payouts will be granted once a month at maximum, provided that your account's affiliate balance exceeds \$50. Smaller payouts will not be made.

Affiliate commission payouts can only be posted as an account credit to be used to purchase Lithium

Hosting, llc services or pay for existing services. We no longer issue payouts via check or PayPal.

#### 14. **BILLING, PAYMENTS AND FEES**

You agree to supply a valid payment for the services received from Lithium Hosting, llc, in advance of the time period during which such services are provided. You agree that all fees, domain fees, deposits and setup fees are non-refundable. You agree that until and unless you submit a cancellation request for your services those services will be billed on a recurring basis. You agree that payments will be billed and charged automatically, and that we may apply the amount due to the provided payment method at any time. You agree that you will keep your account information updated, so that Lithium Hosting, llc can notify you of transactions on your account.

**Non-Payment** - payment on all accounts is due by the listed due date on the applicable invoice. Any account that has an outstanding invoice for more than 7 days will be subject to a \$10 late fee and suspension. The suspension date varies by product but all accounts are subject to suspension after 7 days of non payment.

**Non-Refundable Services** - All service upgrades, addon products and plan renewals are exempt from refunds. All single-year or multi-year domain registration, transfers and renewals are also exempt from refunds.

**Payment Disputes and Chargebacks** - A chargeback is the forced reversal of a payment made to a merchant by a consumer using a credit card. Lithium Hosting, llc will consider any customer that files a chargeback to be committing fraud and will take any and all appropriate measures and/or legal actions to defend and protect against said fraud.

Chargebacks are not considered as a way of refunding. Any Customer who initiates a payment chargeback in response to a bill or order placed with Lithium Hosting, llc will be subject to full investigation. Chargeback processing costs time and money, it is much easier and cheaper to work out billing issues with our billing team.

When signing up for an account with Lithium Hosting, llc, the Customer agrees to the conditions explicated in our Acceptable Use Policy (AUP) and the Terms of Service (this document). Thus, Lithium Hosting, llc, as well as our authorized credit card processor, will resort to these documents as an evidence for the Customer's agreement, especially in the event that a Customer sends a chargeback inquiry based on points that he/or she first accepted, but is trying now to refute.

Customer acknowledges that if a chargeback is filed against a transaction that resulted in the purchase, transfer or renewal of a domain name, Customer forfeits ownership of the domain to Lithium Hosting, llc. Lithium Hosting, llc will decide whether to hold the domain name in its own portfolio or to release it for use by others.

#### 15. **FORCE MAJEURE CIRCUMSTANCES**

Lithium Hosting, llc CANNOT and WILL NOT be liable for any failure or delay in doing its professional duties resulting from circumstances beyond its physical control. Such circumstances may represent acts of any governmental body, war, rebellion, sabotage, embargo, fire, flood or other natural disaster, strike or other labor disturbances, interruption of or delay in transportation, unavailability of, interruption or delay in telecommunications or third party services (including DNS propagation), failure of third party software or hardware, or inability to obtain raw materials, supplies or power used in or equipment needed for



provisioning of the Services.

## 16. **FREE TRIAL**

Lithium Hosting, llc offers a no money down 30-day Free Trial of our Shared Hosting.

The Free Trial expires exactly 30 days after sign-up if it is not upgraded to a paid hosting plan.

To complete the process of ordering the Free Trial, customers must complete the SMS verification process on the "Checkout Completion" page. Failure to complete this process will leave your order incomplete and the Free Trial will be automatically cancelled. If there were other services ordered alongside the Free Trial and a payment was made to complete your order, those additional services will remain valid and will be provisioned as expected.

If your Free Trial order is not completed properly, you will need to place an order for a Paid hosting plan. Additional orders for a Free Trial are not allowed.

Each customer is allowed one Free Trial even if a customer has multiple accounts, i.e, personal and business.

## 17. **45-DAY MONEY BACK GUARANTEE**

Lithium Hosting, llc offers a 45-day money back guarantee on Shared Hosting. If, for any reason, you are dissatisfied with our hosting services, we will refund your hosting fees.

To claim your refund, you must submit a cancellation request within 45 days of your sign-up date. You must also submit a support ticket requesting your refund. Refunds are not automatically issued.

Reseller Hosting, Virtual Private Servers, Dedicated Servers, SSL Certificates and Domain Registrations / Transfers do not qualify for refunds under this policy.

Each customer is entitled to one refund under this policy even if a customer has multiple accounts, i.e, personal and business.

## 18. **NEWS RELEASES**

Certain sections of Lithium Hosting, llc news releases may contain forward-looking statements projecting future events, such as new software installations, updates, promotions, hosting introductions, etc. It is possible that these statements may deviate from the actual circumstances, since they are treated as intentions and express expectations and approximate plans of action regarding the relevant forthcoming events.

Forward Looking Statements can be recognized by the availability of indicative words such as "believes", "anticipates", "plans", "may", "hopes", "can", "will", "expects", "is designed to", "with the intent", "potential", etc. However, their availability is not a prerequisite for a forward-looking statement to be treated as such.

## 19. **SERVER / NETWORK SECURITY**

You agree that you may not use the Lithium Hosting, llc Network or Servers in an attempt to circumvent user authentication or security of any host, network, or account. This includes, but is not limited to,

accessing data not intended for the customer, logging into a server or account the customer is not expressly authorized to access, password cracking, probing the security of other networks in search of weakness, or violation of any other organization's security policy. You also agree that you may not attempt to interfere or deny service to any user, host, or network. This includes, but is not limited to, flooding, mail bombing, or other deliberate attempts to overload or crash a host or network.

## **20. SUPPORT TICKET USAGE**

You agree to submit support requests via the Client Area only. Support requests by email, the "Contact Us" form on the website, twitter, facebook or any other means will not be considered as valid request for support.

You also agree to submit your ticket with the appropriate priority level. Submitting a ticket with a priority level of High is reserved for currently occurring unscheduled service outages affecting your account. Submitting a High priority ticket for any other reason is not acceptable and may result in a service fee of \$20 being assessed to your account for misuse of Lithium Hosting, llc staff and resources.

## **21. VIOLATIONS AND ABUSE**

If any of the following events occur, you agree to the provisions stated along with the occurring event:

Attempts to undermine, slander, libel, threaten, swear at, or cause harm to a Lithium Hosting, llc server, customer, employee, or the company directly are strictly prohibited and grounds for immediate termination without refund. Spamming, or sending unsolicited mass email is strictly prohibited and grounds for the disabling or termination of your account. In addition, a penalty up to \$250 for each spam policy violation may be imposed. Violation of system or network security, attempted or otherwise is strictly prohibited and grounds for immediate termination without refund. This may also incur criminal or civil liability. Abuse of the system via ANY script/program/code will result in a penalty up to \$250, and possible termination of service. You also understand and agree that violation of any of Lithium Hosting, llc Rules and Regulations can result in a warning, suspension, or account termination. Accounts terminated due to policy violations will not be refunded.

Lithium Hosting, llc will cooperate fully with investigations of violations of systems or network security at other sites, including cooperating with law enforcement authorities in the investigation of suspected criminal violations. In the event of illegal actions taken against Lithium Hosting, llc or related property, Lithium Hosting, llc will prosecute to the fullest extent of the law.

Lithium Hosting, llc reserves the right to monitor the service electronically and to disclose any information as necessary to satisfy the law, or to protect itself or its clients/subscribers.

## **22. REFUSAL OF SERVICE**

Lithium Hosting, llc reserves the right at its sole discretion to refuse or cancel service without refund. Lithium Hosting, llc also reserves the right to refuse and remove any information or materials, in whole or in part, that, in its sole discretion, are unacceptable, undesirable, or in violation of this agreement.

## **23. SERVICE DISCONTINUANCE / TERMINATION / CANCELLATION**

Lithium Hosting, llc reserves the right to discontinue the delivery of services and terminate this agreement for a certain period of time or indefinitely with a prior notice. If the reason for this is Customer's failure to

observe these Terms of Service and/or our Acceptable Use Policy, no refund will be issued to the customer for the unused period of his/her subscription with Lithium Hosting, llc. If the Customer has not violated any part of these Terms of Service, the Acceptable Use Policy and/or any other related documents (Customer agreements) mentioned hereby - the Customer will receive partial refund covering the period of his/her web hosting subscription with Lithium Hosting, llc that has not been used.

**Customer Cancellation** - To cancel an account, the Customer must login to the [Client Area](#) and submit a cancellation request by following [these procedures](#). Other forms of cancellation requests will not be accepted. Any incentives (free bonuses, etc.) offered to the Customer upon sign-up will be also cancelled.

Cancellation requests for Shared Hosting, Reseller Hosting and Virtual Private Servers may be made at anytime. Cancellation requests for Dedicated Servers must be made at least 7 days prior to the server's renewal date or the service will be billed for an additional term.

**UPON TERMINATION OF THE SERVICES FOR ANY REASON, USER CONTENT, USER WEBSITES, AND OTHER DATA WILL BE PERMANENTLY DELETED.**

#### 24. CONSTRUCTION AND EFFECT

**Presumption Arising from Authorship.** Parties have each had the opportunity to review this agreement in its entirety and to present it to counsel, and they agree to waive any presumption against the authoring Party in the event of an ambiguity.

**Severability.** In the event that any of the provisions of this agreement are deemed void, unenforceable, or otherwise invalid, the offending portion shall be severed and shall have no effect on the validity or execution of the remainder of the agreement. In the event that giving full and complete effect to of any of the portions or provisions of this agreement renders the entire portion or provision void, unenforceable, or otherwise invalid, that portion or provision shall be interpreted to be reduced in scope or effect to operate only to the fullest extent allowable by law, severing only the offensive extent of the operation that is offensive, keeping the remainder of the portion or provision and its effect intact.

#### 25. INDEMNIFICATION

You agree that you shall defend, indemnify, save and hold Lithium Hosting, llc harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorney's fees asserted against Lithium Hosting, llc its agents, its customers, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by you, your agents, employees or assigns. You agree to defend, indemnify and hold harmless Lithium Hosting, llc against liabilities arising out of; (1) any injury to person or property caused by any products sold or otherwise distributed in connection with Lithium Hosting, llc server; (2) any material supplied by customer infringing or allegedly infringing on the proprietary rights of a third party and (3) copyright infringement. You agree to limit the liability of Lithium Hosting, llc to the amount paid for service.

#### 26. DISCLAIMER

Lithium Hosting, llc will not be responsible for any damages your business may suffer. Lithium Hosting, llc makes no warranties of any kind, expressed or implied for services we provide. Lithium Hosting, llc disclaims any warranty or merchantability or fitness for a particular purpose. This includes loss of data resulting from delays, non-deliveries, wrong delivery, and any and all service interruptions caused by Lithium Hosting, llc and its employees.

In no event shall Lithium Hosting, llc be liable to you or any other person, firm or entity in any respect, including, without limitation, for any damages, either direct, indirect, consequential, special, incidental, actual, punitive, or for any other damages, or for any lost profits of any kind or nature whatsoever, arising out of mistakes, accidents, errors, omissions, negligence, interruptions or defect in transmission, or delays, including, but not limited to, those which may be caused by regulatory or judicial authorities arising out of or relating to this agreement or the obligations of Lithium Hosting, llc pursuant to this agreement.

Any failure or delay in the enforcement of these policies shall not constitute a waiver of the policy or of any other right or remedy. If any provision of this agreement is determined to be invalid or unenforceable, all other provisions shall remain in full force and effect and said provision shall be reformed only to the extent necessary to make it enforceable.

Lithium Hosting, llc furthermore expects that its customers who provide Internet services to others will fully comply with all applicable laws concerning the privacy of online communications. A customer's failure to comply with those laws will violate this policy. Finally, Lithium Hosting, llc wishes to emphasize that in accepting services, customers indemnify Lithium Hosting, llc for the violation of any law or Lithium Hosting, llc policy, that results in loss to Lithium Hosting, llc or the bringing of any claim against Lithium Hosting, llc. This means that if Lithium Hosting, llc. is sued because of activities of the customer that violate any law, or this policy, the customer will pay any damages awarded against Lithium Hosting, llc, plus costs and reasonable attorneys' fees.

Your use of Lithium Hosting, llc services is at your sole risk. Lithium Hosting, llc is not responsible for files and data residing on your account. It is solely your responsibility to evaluate the accuracy, completeness, and usefulness of all opinions, advice, services and other information, and the quality and merchantability of all merchandise provided through Lithium Hosting, llc or on the Internet generally. You agree to take full responsibility for files and data transferred and to maintain all appropriate backup of files and data stored on Lithium Hosting, llc servers. You understand that by placing information on our servers that such information may become available to all Internet users and that Lithium Hosting, llc has no way of limiting or restricting access to such information or protecting such information from copyright infringement. You assume total responsibility and risk for your use of our services and the Internet. Lithium Hosting, llc makes no warranty, whether express, implied or statutory, as to the description, quality, merchantability, completeness or fitness for any purpose for the service or product, or as to any other matter, all of which warranties by Lithium Hosting, llc are hereby excluded and disclaimed.

## **27. SERVICE CREDITS**

Lithium Hosting, llc guarantees 99.7% network availability. If a customer experiences network unavailability for more than 130 consecutive minutes (2 hours and 10 minutes) during a calendar month due to a fault of Lithium Hosting, llc's network, the customer is eligible for a service credit, up to a maximum of the customer's monthly run-rate.

Lithium Hosting, llc guarantees 99.7% infrastructure availability. If a customer experiences infrastructure unavailability for more than 130 consecutive minutes (2 hours and 10 minutes) during a calendar month due to a fault of Lithium Hosting, llc's infrastructure, the customer is eligible for a service credit, up to a maximum of the customer's monthly run-rate. Infrastructure includes power delivery, cooling systems, and facilities.

This uptime guarantee does not apply to planned maintenance. Approval of any credit is at the sole

discretion of Lithium Hosting, llc and may be dependent upon the justification provided. Third party monitoring service reports may not be used for justification due to a variety of factors including the monitor's network capacity/transit availability. The uptime of the server is defined as the reported uptime from the operating system and the Apache Web Server which may differ from the uptime reported by other individual services.

All service availability credits must be requested by the customer in the calendar month following the service outage. Credits may only be requested during the one month following the service outage, any requests for credit more than one month after the service outage will not be honored.

Example: If a service outage occurs during the month of November, all requests for credit must be made in December. Any requests after December will be invalid.

## 28. CHOICE OF LAW AND FORUM

This agreement shall be governed by, construed, and enforced in accordance with the laws of Iowa. The Parties elect Polk County as the forum court.

## 29. ACKNOWLEDGEMENT

**Revisions** - Lithium Hosting, llc reserves the right to modify this agreement at any time, effective immediately upon posting of the modification. Under the terms of this agreement, your use or continued use of our products and services is an acknowledgement that you have read, understand, and agree to be bound by terms and conditions in effect at the time of your use.

**Assignment** - You may not assign or transfer this Agreement or any of your rights or obligations hereunder, without the prior written consent of Lithium Hosting, llc. Any attempted assignment in violation of this Agreement shall be null and void and of no force or effect whatsoever. Lithium Hosting, llc may assign our rights and obligations under this Agreement, and may engage subcontractors or agents in performing our duties and exercising our rights hereunder, without the consent of the Customer. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.