

Lightstream

Standard Terms and Conditions (Hardware/Software Resale Only)

These Standard Terms and Conditions are incorporated into the Lightstream Master Services Agreement entered into by and between Lightstream and Customer. These Terms and Conditions are deemed accepted by, and binding upon, Customer upon Customer's execution of the Master Services Agreement.

1. Definitions. The capitalized terms not defined elsewhere herein have the following meanings:

- “**Affiliate**” means either Party and any other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with that Party.
- “**Agreement**” means collectively these Terms and Conditions and any Order for hardware or software products entered into by and between the Parties, and any attachments, supplements, or schedules attached to any of the foregoing.
- “**Customer**” means the customer identified on the signature page of any Order.
- “**Effective Date**” means the date Customer executes any Order.
- “**Late Payment**” means a payment not received by Lightstream by the due date specified on the invoice, or within 30 days of the date of the invoice if no due date is specified on the invoice.
- “**Lightstream**” means Lightstream Managed Services, LLC, a Utah limited liability company, or any of its Affiliates.
- “**Monthly Minimum Commitment**,” if applicable, means a minimum commitment for Products as set forth in a Order.
- “**Order**” means a Purchase Order for hardware or software.
- “**Party**” or “**Parties**” means individually or collectively, as applicable, Customer and/or Lightstream.
- “**Purchase Order**” means an order executed by Customer that sets forth Products to be provided by Lightstream to Customer.
- “**Product**” or “**Products**” means products to be provided by Lightstream to Customer, under the terms of an Order.
- “**Terms and Conditions**” means these standard terms and conditions.

2. Products. Subject to the terms hereof, Lightstream may provide, and Customer may purchase, Products set forth in one or more Orders attached hereto. Customer agrees that it will not resell Products to any third party and that its use of the Products will comply with all applicable laws and regulations. Lightstream will provide the Product if: (a) there is a valid, accurate, and complete Order form executed by Customer; and (b) Lightstream accepts the Order. Lightstream shall in each case provide a price quote for Products as requested by Customer (“**Quote**”). Customer consents to receiving electronic records for Quotes and other correspondence related to any order of Products, which records may be provided via a web browser or e-mail or as a document attached to an email. Unless otherwise specified in a Quote, quoted pricing is valid for no more than 30 days from the date of the Quote.

(a) **Title and Risk of Loss.** Title to hardware herein being purchased is retained by the Lightstream until hardware is paid for by the Customer and at that time title passes to the Customer. If loss or damage occurs during shipping from Lightstream (or from manufacturer) to Customer via a carrier selected by Lightstream, the loss or damage will be the responsibility of Lightstream. If loss or damage occurs during shipping from Customer to Lightstream or by a carrier selected by the Customer, the loss or damage will be the responsibility of the Customer. The title to software will remain with the applicable licensor(s).

(b) **Shipping Damage Policy.** If merchandise arrives damaged to Customer, it is best to refuse it back to the carrier attempting delivery. Customer must contact Lightstream within three (3) business days if an order is being refused back to the carrier due to damage. All unauthorized refusals are subject to a 15% return processing fee and no credit for the freight charges. If Customer accepts a damaged package, Customer must ensure any externally visible damage is noted on the carrier's delivery record. In the event of shipping damage, Customer must save the merchandise AND the original box and packing it arrived in. If Customer does not notify Lightstream of damaged goods within the first three (3) business days of arrival, any claim of damage will fall under all current manufacturer restrictions. Customer must call Lightstream account team to arrange for carrier inspection and a pick-up of damaged merchandise.

(c) **Export of Product Outside of U.S.** For any goods being purchased for purposes of export, Customer must obtain from the appropriate government authority any export documentation before shipping to a foreign country. Customer acknowledges that manufacturers' warranties for exported Products vary and may even be null and void if Product is exported outside the United States. Customer is solely responsible for compliance with all laws regarding export of Product.

(d) **Acceptable Use Policy and End User License Agreements; License.** The use of the Products is governed by the Acceptable Use Policy (“**AUP**”) and End User License Agreement (“**EULA**”) of the respective hardware manufacturer or software provider. Customer hereby agrees to the terms and conditions of the AUP and EULA, as applicable, of each manufacturer or provider associated with all Products purchased hereunder. To the extent allowed under the reseller

agreement between Lightstream and the software or hardware provider associated with Products provided to Customer hereunder, Lightstream hereby grants to Customer a limited, non-exclusive, non-transferable, and non-assignable license to download, install, and use each Product as specified by the provider.

(c) **Disclaimer of Warranties.** Lightstream makes no warranties, express or implied, as to any Product(s) provided hereunder. Lightstream specifically disclaims any and all implied warranties, including without limitation any implied warranties of merchantability or fitness for a particular purpose. These disclaimer in no way affect the terms of the manufacturer's warranty, if any. All products sold by Lightstream are third-party Products and are subject to the warranties and representations of the applicable manufacturers.

3. Payment Terms. Rates and charges for Services will be set forth in one or more Orders. Customer agrees to pay Lightstream for all Products or Services within thirty (30) days of receipt of an undisputed invoice ("**Due Date**"). Payments must be made by check addressed to the address designated on the invoice or other such place as Lightstream may designate or via ACH. "**Late Payments**" include any payment received after the Due Date and shall be considered past due. Customer agrees to pay a Late Payment charge equal to the lesser of: (a) one and one-half percent (1.5%) per month, compounded monthly, or (b) the maximum amount allowed by law, as applied against the undisputed past due amounts. Customer will be liable for the payment of all fees and expenses, including attorney's fees, reasonably incurred by Lightstream in collecting, or attempting to collect, any charges owed under the Agreement. Customer will not place any condition or restrictive legend, such as "paid in full," on any check or instrument used to make a payment. The Parties agree that the negotiation of any such check or instrument so inscribed will not constitute an accord and satisfaction or novation, and Customer waives its right to assert any such defense.

(a) **Credit Approval.** Approval of all Products provided under this Agreement will be contingent upon Lightstream satisfactorily completing a review of the Customer for purposes of evaluating the extension of credit. Customer hereby authorizes Lightstream to gather information to assess payment and credit history of Customer and agrees to assist Lightstream with this review by providing information that is reasonably requested and agrees to assist Lightstream with periodic updates to such review during the term of this Agreement.

(b) **Billing Disputes.** Customer must give Lightstream written notice of a dispute with respect to Lightstream charges or application of taxes within thirty (30) days (the "**Dispute Deadline**") of the date of the invoice. After the Dispute Deadline, all invoices will be deemed to be correct and binding on Customer. Notwithstanding the foregoing, amounts reasonably disputed by Customer will not be due and payable for a period of thirty (30) days following the Due Date thereof, provided Customer: (i) pays all undisputed charges on or before the respective Due Date; (ii) presents to Lightstream, prior to the Dispute Deadline, a written statement disputing (in reasonable detail) such amounts, which statement shall include sufficient documentation, including, but not limited to, documentation of any billing discrepancies; and (iii) negotiates in good faith with Lightstream for the purpose of resolving such dispute within said thirty (30) day period. Lightstream will have the right to exercise its remedies as described herein with respect to any amounts not paid or disputed as described above. Each Party agrees to negotiate in good faith for the purpose of resolving any properly raised disputes subject to the following:

- (i) In the event such dispute is mutually agreed upon and resolved in favor of Lightstream, Customer agrees to pay Lightstream the disputed amounts together with any applicable late fees within ten (10) days of resolution.
- (ii) In the event such dispute is mutually agreed upon and resolved in favor of Customer, Customer will receive a credit for the disputed charges in question and any applicable assessed late fees.

(c) **Taxes and Governmental Charges.** Lightstream may adjust its rates and charges or impose additional rates and charges in order to recover amounts, without mark-up or additional charge, that it is required by governmental or quasi-governmental authorities to collect from or pay to others in support of statutory or regulatory programs. With the exception of taxes based on Lightstream's income, Customer shall be responsible for all taxes and fees arising in any jurisdiction, including, but not limited to, consumption, sales, use, value added, gross receipts, foreign withholding, excess, bypass, access, franchise, or other taxes, fees, surcharges or duties imposed on or incident to the provision, sale or use of the Products. Customer may present to Lightstream a valid tax-exemption certificate and Lightstream will give effect thereto prospectively. If Lightstream does not collect such amounts because Customer has provided Lightstream with evidence of exemption, which is later determined to be inadequate, then, as between Lightstream and Customer, Customer shall be liable for such uncollected amounts and for all interest, penalties, and fees which are determined to be due with respect to such uncollected amounts.

4. Miscellaneous Provisions.

(a) **Assignment.** Customer may not assign its rights or obligations under the Agreement without prior written permission from Lightstream. The Agreement will inure to and apply to any permitted transferees or assignees.

(b) **Force Majeure.** If either Party's performance of the Agreement or any obligation thereunder (excluding the obligation of payment to Lightstream) is prevented, restricted or interfered with by causes beyond its reasonable control including, but not limited to, acts of God, fire, explosion, vandalism, cable cut by a third party, storm or other similar occurrence, any law, order, regulation, direction, action or request of the United States government, or state or local governments, or of any

department, agency, commission, court, bureau, corporation or other instrumentality of anyone or more such governments, or of any civil or military authority, or by national emergency, insurrection, riot, war, strike, lockout or work stoppage or other labor difficulties, or supplier failure, shortage, breach or delay, then the affected party shall be excused from such performance on a day-to-day basis to the extent of such restriction or interference. The affected Party shall use reasonable efforts under the circumstances to avoid or remove such causes of nonperformance and shall proceed to perform with reasonable dispatch whenever such causes are removed or cease.

(c) **Entire Agreement; Modification; Conflict of Terms.** The documents constituting the Agreement (and any attachments and other documents incorporated therein by reference) constitute the entire agreement between the Parties and supersede all other representations, understandings or agreements that are not expressed therein, whether oral or written. Except as otherwise provided herein, the Agreement may be modified, superseded, or voided only upon written and signed agreement of the Parties. In the event of a conflict in any term of any documents contained in the Agreement, the following order of precedence will apply in descending order of control with respect to such term: (a) any applicable Order, (b) these Terms and Conditions.

(d) **Limitation of Liability.** In no event shall Lightstream be liable to Customer for any indirect, consequential, exemplary, special, incidental or punitive damages, including without limitation loss of use or lost business, revenue, profits or goodwill, arising out of or in connection with Products agreement, under any legal theory or cause of action, including without limitation, tort, contract, indemnity, warranty, strict liability or negligence, even if the party knew or should have known of the possibility of such damages. Lightstream's total liability in connection with the Agreement, for any and all causes of actions and claims, including, without limitation, breach of contract, breach of warranty, negligence, strict liability, misrepresentation and other torts, shall not exceed the amount paid by Customer to Lightstream under the Agreement for the twelve (12) month period prior to accrual of the most recent cause of action. Customer acknowledges that these allocations of liability were an essential element in the Parties entering into the Agreement and for Lightstream to provide any Product hereunder and agree that such allocation of liability is reasonable and appropriate given the nature of the agreement.

(e) **Governing Law; Venue.** The Agreement shall be governed by the laws of the State of Utah without regard to its choice of law principles. Any action that is or may be commenced by any Party pertaining to the Agreement and the subject matter of any part of the Agreement, shall be commenced in federal or state court located in Salt Lake County, Utah. The Parties hereby consent to the exclusive jurisdiction of such courts.

(f) **Notice.** All notices, requests, or other communications (excluding invoices) hereunder shall be in writing and either transmitted via overnight courier, electronic mail, facsimile, hand delivery or certified or registered mail, postage prepaid and return receipt requested to the Parties at the following address in the case of Lightstream and at the addresses set forth at the beginning in an Order in the case of Customer. Notices will be deemed to have been given when received.

To: ATTN: Legal Department
Lightstream Managed Services, LLC
208 North 2100 West, 2nd Floor
Salt Lake City, UT 84116

(g) **Headings; Construction.** Headings used in these Terms and Conditions are for purpose of reference only and have no meaning. Each party acknowledges that it has received and has had an adequate opportunity to read and study the Agreement, to consider it, to consult with attorneys if so desired. No provision of this Agreement will be construed against any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured or drafted such provision.

(h) **Waiver.** Except for time requirements as specifically stated in a Service Exhibit or Service Order or SOW, neither party's failure to insist upon strict performance of any provision of this Agreement will be construed as a waiver of any of its rights hereunder.