

Cien App - Terms of Service Agreement

Last Updated October 12th 2016

This is a License Agreement ("License") between you, either an individual or an entity ("Customer" or "You"), and Cien, Inc. ("CIEN" or "We" or "Us" or "Our"). Please read this license carefully before using any CIEN services ("Cien App"). By clicking on the "Accept" button or using the Cien App, you are consenting to be bound by this license. If you do not agree to all of the terms of this license, you will not receive access to the Cien App. If you do not wish to be bound by this agreement, please contact CIEN immediately to cancel your account.

1. DEFINITIONS

App Data	Data received from a 3 rd party system or data generated within the Cien App
App Terms	This document.
Cien App	The web and/or mobile technology along with data structures and data algorithms that make up the Cien App.
Confidential Information	Means all information disclosed by You to CIEN or by CIEN to You which is in tangible form and labeled "confidential" (or with a similar legend) or which a reasonable person would understand to be confidential given the nature of the information and circumstances of disclosure, including, but not limited to information relating to CIEN's security policies and procedures. The Services Agreement as well as App Data shall be deemed Confidential Information. Notwithstanding the foregoing, Confidential Information shall not include information that (a) was already known to the receiving party at the time of disclosure by the disclosing party; (b) was or is obtained by the receiving party by a third party not known by the receiving party to be under an obligation of confidentiality with respect to such information; (c) is or becomes generally available to the public other than by violation of these Terms or another valid agreement between the Parties; or (d) was or is independently developed by the receiving party without use of the disclosing party's Confidential Information.
Customer	The contracting entity.
Order Form	The document outlining the specific business terms Customer and CIEN has agreed upon.
Services Agreement	The combination of the App Terms and the specific business terms outlined in the Order Form.
User	A user profile that can get access to the Cien App.

2. GENERAL CONDITIONS: ACCESS AND USE

The Cien App is protected by United States and international copyright laws, international treaty provisions and applicable law. CIEN hereby grants to you a non-exclusive, non-transferable license to

use the Cien App from the designated website ("Site") and related user documentation on the terms and conditions set forth herein. The Cien App is licensed only for your use. You may access and use the Cien App on any computer but you may not exceed the number of simultaneous or concurrent users permitted by the license. You may only use the Cien App as referenced by the documentation and to perform its functions for the purpose authorized by this license.

3. OWNERSHIP OF SERVICES, DATA AND CONTENT

CIEN (or its affiliates) is the exclusive owner of the Cien App and your use of the services does not provide you any right or interest in any of CIEN's intellectual property including, but not limited to, common designs, layouts, content, program code, scripts, algorithms, database structures, proprietary strategies and processes, and other intellectual property of CIEN (or its affiliates) with the exception of User uploaded content and data.

4. NO REVERSE ENGINEERING

Customer acknowledges that the Software and their structure, organization, and source code constitute valuable trade secrets of CIEN. Accordingly, Customer agrees not to (a) modify, adapt, alter, translate, or create derivative works from the Software; (b) sublicense, lease, rent, loan, or otherwise permit a third party to use the Software; (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software; or (d) otherwise use the Software except as expressly allowed in this Agreement. Customer shall cooperate and make its facilities, information, data and equipment available to CIEN in a timely manner when helpful for completion of customer specific implementation or troubleshooting.

5. TRADEMARKS

CIEN, licensors, manufacturers, dealers, advertisers, merchants or other third party materials, services or products referenced on this site are common law or registered trademarks or service marks of such parties and you agree never to use such without express written permission. Except as expressly granted via the use licenses herein, CIEN does not grant any express or implied rights under any patents, copyrights, trademarks or trade secret information. In using this site, you agree not to and you agree never to use such in any way including but not limited to, registering domain names including such, bidding on keywords using in any way including but not limited to, registering domain names including such, bidding on keywords using them or otherwise. You shall not display or disclose, anonymously or by true or fictional name, in any form or fashion including, but not limited to, publication on or via the Internet, a website, blog, email, discussion group, by means now known or hereafter devised and/or by all other means of electronic dissemination, any confidential or proprietary information, or express any negative opinion of CIEN, or this site, or anyone associated or employed therewith, or user or Customer's affiliation or experiences with CIEN; and user or Customer shall not use, copy, distribute, sell, infringe or violate any legal right of CIEN including, but not limited to, publicity rights, privacy rights, moral rights, copyright, trademark, trade secret and patent rights, without limitation, by way of example, register, purchase, apply for, license, or attempt to do so, any domain name containing, in whole or in part, or any derivation of any confidential or proprietary information; register, purchase, apply for, license, obtain a license for, or attempt to do so, any copyright registration for any creation containing, in whole or in part, or any derivation or modification of any confidential or proprietary information; register, purchase, apply for, license, obtain a license for, or attempt to do so, any trade or service, mark or name, containing, in whole or in part, or any derivation or modification of any confidential and proprietary information.

6. AUTHORSHIP MARK AND CUSTOMER REFERENCES

You agree that CIEN can place a reasonably sized and positioned logo and/or text link on website pages, reports and emails included in the services, including on publicly accessible pages of your website if applicable. You also agree that CIEN may reference its relationship with you for marketing purposes.

7. SUBSCRIPTION

The Cien App is licensed on a subscription basis pursuant to the Order Form and conditions incorporated herein. We will provide updates to the Cien App on a periodic basis, which will replace the prior version of the Cien App. Each version of the Cien App may operate differently and may have different, more, or fewer features than prior versions. You shall not permit the use of any version of the Cien App by any other person, nor use the Cien App at any time, after the license expires. Each Update will be deemed to be part of the Cien App and shall be governed by the App Terms.

8. PAYMENT

You or the person designated as the billing contact for this solution ("Billing Contact"), must provide CIEN with a valid credit card in order to activate your account. Billing Contact authorize CIEN to automatically charge a credit card for all services that you (and/or your representatives) request. Alternatively, the Billing Contact can arrange for pre-payment of at least 12-month's estimated charges and pay by check, bank wire or money order. Prepaid amounts are not refundable. Billing Contact will receive a receipt for all payments processed against the credit card or account by email and/or fax. If paying by credit card, Billing Contact agrees to keep credit card information updated, and to provide CIEN with a new valid account number if the old card is deactivated or does not have sufficient credit available to pay your fees. CIEN reserves the right to place your account on hold, suspend your services and/or terminate this agreement if you are overdue in paying us any amounts due for services you request. If you wish to dispute any fee CIEN charged to Billing Contact's credit card, you agree to discuss such dispute with CIEN and work towards a resolution. You expressly agree to not dispute fees with your issuing credit card company, which could result in a "charge back" to CIEN. Declined, refused and/or returned payments may result in a \$100.00 service charge payable immediately.

9. CUSTOMER CONTENT

CIEN has the right to store and/or transmit information you provide through the services and you agree to indemnify and hold CIEN harmless against any and all claims or causes of actions that may arise with respect to the information against CIEN (or its affiliates). You are solely responsible for obtaining any and all necessary consents and clearances required to lawfully make use of any and all intellectual property rights through the services. You agree that all information submitted to, stored or distributed by you in connection with the services (a) shall not be false, inaccurate, fraudulent or misleading; (b) shall not infringe any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (c) shall not violate any law, statute, ordinance or regulation; (d) shall not be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (e) shall not contain sexually explicit, obscene, or pornographic content; (f) shall not contain speech or images that are offensive, profane, hateful, threatening, harmful, defamatory, harassing, libelous, or discriminatory (whether based on race, creed, religion, gender, ethnicity, sexual orientation, physical disability, or otherwise); (g) shall not contain graphic violence; (h) shall not contain politically insensitive or controversial issues (e.g., euthanasia, abortion, capital punishment), or other political content (e.g., lobbyists, PAC sites, political campaigns); (i) shall not contain any viruses, worms, trojans or other computer programming routines that are intended to damage, detrimentally interfere with,

surreptitiously intercept or expropriate any Cien App, data or personal information; and (j) shall not create liability for CIEN or cause it to lose (in whole or in part) customers or the services of service providers or other suppliers. CIEN reserves the right to monitor and limit access to automated processes (bots) that harvest copyrighted Customer or CIEN online content without explicit permission from CIEN.

10. USE OF SERVICES

You hereby agree as follows: (a) you shall not use the Cien App for "spamming," as determined by CIEN in its reasonable discretion; (b) you shall keep secure any identification, password and other confidential information relating to your site and shall notify CIEN immediately of any known or suspected unauthorized use of your site or breach of security, including loss, theft or unauthorized disclosure of passwords or other security information; (c) you shall not use the services for any unlawful purpose; (d) you shall not engage in any other conduct that restricts or inhibits any other person from using or enjoying the Cien App, or which, in the judgment of CIEN, exposes CIEN or any of its customers or suppliers to any liability or detriment of any type; and (e) you shall be responsible for obtaining and maintaining all internet connectivity, computer hardware and other equipment needed for access to and use of the services, and you shall be responsible for all charges related thereto.

11. INFORMATION COLLECTION AND USE

By using the Cien App, you authorize CIEN to access and aggregate App Data stored on or transmitted through the services to conduct research, improve the services and provide anonymous reporting for internal and external Customers and partners.

12. SECURITY

You agree to use your best efforts to prevent access to this Cien App through login and password by anyone other than yourself, including but not limited to, keeping such information strictly confidential, notifying CIEN immediately if you discover loss or access to such information by another party not under your control and supervision, and by using a login and password not easily guessed by a third party. Although CIEN will not be liable for your losses caused by any unauthorized use of your account, you may be liable for the losses of others due to such unauthorized use.

13. 3RD PARTY ADVERTISERS

Certain advertising information may be displayed through the services at CIEN's sole discretion. The display of advertising information shall not entitle you to any advertising fees or revenues from such advertising unless otherwise explicitly agreed to in writing by CIEN. Your correspondence or business dealings with, or participation in promotions of, advertisers found on or through the Cien App, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such advertiser. You agree that CIEN shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such advertisers on the Cien App.

14. LINKS

The Cien App may include links to other World Wide Web sites or resources. Because CIEN has no control over such sites and resources, you acknowledge and agree that CIEN is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any Content, advertising, products, or other materials on or available from such sites or resources. You further acknowledge and agree that CIEN shall not be responsible or liable, directly or indirectly, for any

damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such Content, goods or services available on or through any such site or resource.

15. MODIFICATIONS TO THIS AGREEMENT

CIEN may modify this agreement at any time. Any modification is effective upon the posting of same by CIEN on its website. CIEN may also notify you of any modifications by email and/or faxed correspondence to you.

16. WARRANTY

THE SERVICES AND ALL INFORMATION PROVIDED BY CIEN IN CONNECTION WITH THE SERVICES IS PROVIDED TO YOU ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, OR ANY OTHER WARRANTY, CONDITION, GUARANTY, OR REPRESENTATION, WHETHER ORAL OR IN WRITING, AND YOU ACCEPT THE CIEN APP, AS CUSTOMIZED FOR YOUR CIEN APP, AT YOUR OWN RISK.

17. LIMITATION OF LIABILITY

IN NO EVENT SHALL CIEN OR ANY OF ITS AFFILIATED OR RELATED PARTIES BE LIABLE FOR ANY DAMAGES NOR SHALL ANY USER HOLD CIEN OR ANY OF ITS AFFILIATED OR RELATED PARTIES LIABLE RESULTING FROM THE USE OF OR INABILITY TO USE THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT CIEN IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE SOLE AND EXCLUSIVE REMEDY FOR DISSATISFACTION WITH THE SERVICES WILL BE TO STOP USING THE SERVICES. ANY CLAIMS ARISING IN CONNECTION WITH YOUR USE OF THE SERVICES MUST BE BROUGHT WITHIN ONE (1) YEAR OF THE DATE OF THE EVENT GIVING RISE TO SUCH ACTION OCCURRED.

18. REPRESENTATION

YOU HEREBY REPRESENT TO CIEN THAT YOU ARE AT LEAST 18 YEARS OLD AND ARE AUTHORIZED TO ENTER INTO THIS AGREEMENT. YOU ARE ALSO REPRESENTING THAT YOU ARE ENTERING INTO THIS AGREEMENT ON YOUR OWN BEHALF, HAVE INDEPENDENTLY EVALUATED THE DESIRABILITY OF ENTERING INTO THIS AGREEMENT, ARE NOT RELYING ON ANY REPRESENTATION, GUARANTEE OR STATEMENT OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT. AT ANY TIME UPON REQUEST BY CIEN, YOU AGREE TO SIGN A NON-ELECTRONIC VERSION OF THIS AGREEMENT, AND ANY OTHER AGREEMENTS OR STATEMENTS REASONABLY NECESSARY FOR CIEN TO PROVIDE AND ACCOUNT FOR THE SERVICES.

19. RELATIONSHIP

CIEN's relationship with Customer shall be that of an independent contractor and nothing in the App Terms should be construed to create a partnership, joint venture, or employer-employee relationship. Customer shall be solely responsible for all tax returns and payments required to be filed with or made to any federal, state or local tax authority with respect to CIEN's performance of services. CIEN may subcontract or otherwise delegate its obligations under this Agreement without Customer's consent in its sole discretion.

20. CONFIDENTIALITY

Subject to the express permissions of these App Terms, each Party will protect each other's Confidential Information from unauthorized use, access or disclosure in the same manner as each protects its own Confidential Information, but with no less than reasonable care. Except as otherwise expressly permitted pursuant to these App Terms, each of us may use each other's Confidential Information solely to exercise our respective rights and perform our respective obligations under these Terms and shall disclose such Confidential Information (a) solely to those of our respective employees, representatives, subcontractors and agents who have a need to know such Confidential Information for such purposes and who are bound to maintain the confidentiality of, and not misuse, such Confidential Information; (b) as necessary to comply with an order or subpoena of any administrative agency or court of competent jurisdiction; or (c) as reasonably necessary to comply with any applicable law or regulation.

To the extent App Data constitutes personal data, You and CIEN hereby agree that You shall be deemed to be the data controller and CIEN shall be deemed to be the data processor as those terms are understood under the Directive (and any applicable national legislation implementing the Directive). In delivering the Cien App, CIEN will engage entities within and other authorized service providers, to Process App Data, including and without limitation, any associated personal data pursuant to these Terms within the European Economic Area (the "EEA"), the United States and in other countries and territories. Under no circumstances will CIEN be deemed a data controller with respect to App Data. CIEN will maintain commercially reasonable administrative, physical and technical safeguards to protect the security, confidentiality and integrity of App Data. These safeguards include encryption of App Data in transmission (using TLS or similar technologies), except for certain outside services that do not support encryption. You agree that We and the service providers that We utilize to assist in providing the Cien App to You shall have the right to access Your Account and to use, modify, reproduce, distribute, display and disclose App Data to the extent necessary to provide the Cien App, including, without limitation, in response to Your support requests. Any third party service providers We utilize will only be given access to Your Account and App Data as is reasonably necessary to provide the Cien App and will be subject to (a) confidentiality obligations which are commercially reasonable and substantially consistent. In addition to App Data, We collect certain information (which may include Personal Data) about You and Users as well as Yours and their respective devices, computers and use of the Cien App. We use, disclose, and protect this information as described in our privacy policy, the then-current version of which is available at www.cien.ai/privacy and is incorporated into the App Terms. Unless otherwise specifically agreed to by CIEN, App Data may be hosted or otherwise processed by CIEN or their respective authorized service partners in the U.S., the EEA or other locations around the world.

21. CONSENT TO RECEIVE ELECTRONIC RECORDS

By using the Cien App; you signify your express consent to receive information from CIEN in electronic format. Electronic records may include terms and conditions, agreements, privacy policies, and other items that you should print and retain for your records.

22. INDEMNIFICATION

You hereby agree to indemnify and hold CIEN and its affiliates and related parties, harmless against any damages, losses, liabilities, judgments, costs or expenses (including reasonable attorneys' fees and costs) arising out of a claim by a third party relating to your use of the services or any breach or violation of this agreement.

23. ASSIGNMENT

The right to receive the services is personal to You and You may not transfer by assignment, sublicense, or any other method the service to any other person or entity. You agree that this agreement may be automatically assigned by CIEN to any third party, in CIEN's sole discretion and without notice.

24. WAIVER

CIEN's failure to act with respect to a breach by you or others of this agreement does not waive CIEN's right to act with respect to subsequent or similar breaches.

25. INTERNATIONAL CUSTOMERS

CIEN is based in Miami Dade County, Florida, in the United States of America. CIEN makes no claims that the Cien App are appropriate or may be used or downloaded outside of the United States. Access to or use of the Cien App may not be legal by certain persons or in certain countries. If you access or use the Cien App from outside the United States, you do so at your own risk and are responsible for compliance with the laws of your jurisdiction. Customers outside the U.S. are cautioned that these services are sold and performed within the United States, under U.S. law only and all disputes and claims will exclusively be resolved as set forth in this Agreement. No resident, citizen or business of North Korea, Syria, Sudan, Burma (Myanmar), the Taliban, Sierra Leone, Liberia, designated Terrorists and international Narcotics Traffickers, Foreign Terrorist Organizations, and/or designated foreign persons who have engaged in activities related to the proliferation of weapons of mass destruction or any other country with restrictions imposed by the U.S. Government, may use this site. By using the Cien App, you agree that you are not a citizen, business or a resident in any of these countries.

26. CONFLICT RESOLUTION

Our systems are controlled by CIEN from its offices within the State of Florida. It can be accessed from all 50 states as well as from other countries around the world to the extent permitted by site. As each of these places has laws that may differ from the Florida, by accessing the Cien App, both you and CIEN agree that the statutes and laws of the Florida shall apply to any actions or claims arising out of or in relation to this Agreement or your use of the Cien App, without regard to conflicts of laws principles thereof. You and CIEN also agree and hereby submit to the filing of any claim only in the exclusive personal jurisdiction and venue of the Florida and any legal proceedings shall be conducted in English. CIEN makes no representation that materials on our sites are appropriate or available for use in other locations, and accessing them from territories where their contents are illegal is prohibited. This Agreement shall not be governed by the United Nations Convention on Contracts for the Sale of Goods. You and CIEN agree to submit to arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules through a location in Miami-Dade County, FL and in English. The arbitrator(s) will have no authority to award punitive or other damages not measured by the actual damages of the prevailing party, except as may be required by statute. In no event shall an award in an arbitration initiated under this clause exceed the amount paid, or owed, to CIEN. The parties further agree that a judgment of any court having jurisdiction may be entered upon the award. In event that one party is not a resident or citizen of the United States, the American Arbitration Association shall arbitrate the matter in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution. You agree to not to engage in any class action claim against us or combine your arbitration claim with anyone else under any circumstances. This Agreement shall not be governed by the United Nations Convention on Contracts for the Sale of Goods.

27. FORCE MAJEURE

Neither party will be deemed in breach of this agreement to the extent that performance of its obligations are delayed or prevented by reasons of force majeure, such as riots, acts of terrorism, fire, flood, earthquake, acts of government and the like, provided that such party gives the other party written notice thereof promptly and uses its best efforts to continue to perform its obligations.

28. CONTACT INFORMATION

All notices to CIEN under this agreement shall be in writing and delivered via email to legal@cien.ai

You may also mail written notices to:

Cien, Inc.
1815 Purdy Ave
Miami Beach, FL 33139
USA