

# Terms of Service

Updated August 28, 2014

These Terms of Service apply to the Services provided by Limelight Networks, Inc (its affiliates and/or subsidiaries) and the company named on the applicable Service Order Form ("Customer").

## 1. Definitions.

When used in this agreement, the following definitions apply.

**"Content"** means all data, regardless of format or owner, provided or identified to Limelight to be sent or received using Limelight's Services, and/or content hosted, stored or cached by Limelight at the direction of Customer or its agents, customers or end users.

Customers may download applicable Customer Content from Limelight's Network and or Platforms within 30 days after termination of any applicable Service Order Form by using file transfer methods available for the Service(s) that have been terminated. 30 days after termination of any applicable Service Order Form Customer Content will be purged / removed by Limelight.

**"Service Order Form"** (SOF) means a Limelight order form by which Services are ordered by Customer.

**"Services"** means the particular services to be provided to Customer by Limelight as specified on a SOF.

**"Traffic"** means all data sent or received by or on behalf of Customer using Limelight Service(s).

## 2. Delivery of Services.

Subject to the terms, conditions and limitations in this agreement, Limelight will provide, and Customer will purchase, the Services set forth on applicable SOFs.

## 3. Term.

These Terms of Service (TOS) apply until the expiration of all SOFs executed hereunder. The Initial Term of each SOF will be specified on that document. Upon expiration of the Initial Term, SOFs automatically renew for additional terms of equal length to the Initial Term (each a "Renewal Term") unless either party notifies the other in writing no less than 30 days prior to the end of the Initial Term, or Renewal Term, as applicable, that it will not renew the Service.

## 4. Payment.

Limelight will invoice Customer the fees set forth on the SOF. Payment is due within 30 days of the date of invoice. Limelight may terminate or suspend Service should payment become past due, and Customer does not bring its account current within 5 days of its receipt of a written notice from Limelight. Limelight may assess interest at the lower of 1 1/2% per month or the highest rate allowed by law on any past due balances. The parties agree that no endorsement or statement to the contrary on any check or payment, or on any letter accompanying any check or payment, or elsewhere will be construed as an accord or satisfaction. Should Limelight bring an action to recover any past due balance, it shall be entitled to recover reasonable costs and attorneys' fees, in addition to all other legal and equitable remedies.

## 5. Taxes.

The prices included on any SOF do not include taxes. Customer is responsible for payment of all taxes, levies, and similar governmental charges, however designated, that may be imposed by any jurisdiction, except for taxes based solely on Limelight's net income. If special withholding taxes are required to be withheld on payments to Limelight, Customer shall promptly deliver to Limelight an official receipt along with an English translation (if applicable) of any taxes withheld or other documents necessary to enable Limelight to claim a foreign tax credit.

## 6. Limelight Disclaimer of Warranties.

**DISCLAIMER OF IMPLIED AND EXPRESS WARRANTIES.** Except as expressly provided herein or in any written Service Level Agreement (SLA) applicable to the Service, the Services are provided "AS IS" and Customer's use of the Services is at Customer's sole risk. LIMELIGHT DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT

LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. LIMELIGHT DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR FREE OR UNINTERRUPTED.

7. Ownership and Licenses.

Except for the limited rights expressly granted herein, neither party transfers to the other party any technology, software or other intellectual property rights, and all right, title and interest in and to such technology, software, or other intellectual property rights remains the sole property of the respective owner. To the extent necessary to provide the Service, Limelight is hereby granted a limited, nonexclusive, personal, royalty-free, fully paid-up license, during the Term, to use the Customer equipment, software, technology and/or intellectual property solely for the purposes of delivering the Services to Customer.

8. Marketing.

Neither party may use the other party's name, logo, trade name, trademarks and icons (collectively, the "Brands") without prior written agreement. Notwithstanding the foregoing, each party may use the other party's name, trade name, trademarks and logos to refer publicly to the other, orally and in writing, as a customer/vendor of the other solely in connection with the Services provided hereunder and only for so long as this agreement remains in effect.

9. Confidentiality.

Confidential Information of a party includes prices, business plans, customer data, financial data and any other information, in any form or medium, that the party designates as confidential or which a reasonable party would understand to be confidential under the circumstances. Confidential Information does not include information that: (i) is known to the receiving party prior to its receipt from the disclosing party by means that are not in violation hereof; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes known and generally available to the public or otherwise ceases to be confidential, except through a breach of this agreement by the receiving party; (iv) is independently developed by the receiving party without use of or reference to the Confidential Information of the disclosing party; (v) is required to be disclosed by subpoena, law, regulation, or court order; or (vi) is Content. 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, or to the limited extent required to achieve the purposes of, this agreement, nor disclose to any third party (except as required by law or to such party's attorneys, accountants and other advisors as reasonably necessary), any Confidential Information of the other party. Each party will take reasonable precautions to protect the confidentiality of the Confidential Information of the other party that are at least as stringent as it takes to protect its own Confidential Information.

10. Customer Representations, Warranties, Covenants and Indemnification.

Customer will comply with Limelight's Acceptable Use Policy, located at <http://www.limelight.com/company/acceptable-use-policy/>. Customer is solely responsible for its Content and Traffic, including maintaining backups thereof. Customer covenants, represents and warrants that it owns all right, title and interest in the Traffic and Content or possesses the necessary rights to permit the Traffic and/or Content to be stored, sent or received using the Services. Customer warrants that its use of the Services will not violate any applicable law, rule or regulation, breach an agreement with, or infringe the copyright or other intellectual property rights of, a third party. Customer will be solely responsible for the security and maintenance of its Traffic, Content, web sites, and for determining the appropriate Services and safeguards to employ in transmission and storage, based on the nature and sensitivity of the Content. When Customer chooses to send or receive Content using the Services, Customer is solely responsible for modifying its Content identifiers consistent with instructions provided by Limelight in order to enable Limelight to deliver Customer's chosen Content. If Customer breaches the foregoing covenants, representations or warranties, then Limelight, in addition to any other remedies available at law or in equity, may, in its sole discretion, suspend any of the Services. Customer agrees to indemnify and defend Limelight against any and all claims (including third-party discovery actions), liabilities, costs, damages, reasonable costs and expenses, including reasonable attorneys' fees, relating to or arising from breach by Customer of the above representations, warranties and covenants.

11. Limitation of Liability.

In no event is either party liable or responsible to the other for any special, incidental, punitive, indirect, exemplary, or consequential damages, including, but not limited to, lost revenue, lost profits, replacement goods, loss of technology, rights or services, loss of data, content or business information, or interruption or loss of use of service or equipment, even if advised of the possibility of such damages, whether arising under contract, tort (including negligence), strict liability or otherwise, provided that nothing herein constitutes a waiver of any unpaid or past due amounts owed by Customer for purchase commitments and/or Services rendered. Without limiting the foregoing, Limelight's liability to Customer for any

breach of this agreement shall be limited to the direct damages arising from such breach and shall not exceed an amount equal to payments made by Customer to Limelight during the six (6) months prior to the claim, or if the breach is claimed before the sixth (6th) month of the SOF, an amount equal to 6 times the monthly payment by Customer for the month prior to the breach.

12. Force Majeure.

Neither party will be liable for any failure or delay due to any cause beyond its reasonable control, including but not limited to acts of war, acts of God, terrorism, earthquake, flood, riot, sabotage, labor shortage or dispute, utility outage, governmental act or failure of the Internet (not resulting from the actions or omissions of Limelight or Customer), provided that the delayed party: (a) gives prompt notice of such cause, and (b) uses its commercially reasonable efforts to promptly correct such failure or delay.

13. Termination.

Either party may terminate this agreement due to the material breach of the other party upon 30 days written notice and failure of the other party to cure the breach within that time. Upon termination by Limelight for cause, or termination by Customer in breach/violation of these terms, all payment obligations of Customer will immediately become due and payable. Notices provided hereunder are not effective until actually received by the receiving party at the address listed on the SOF. Without limiting the foregoing, submission by Customer of a service ticket (or "trouble ticket") does not constitute Customer "notice" for purposes of this Agreement.

14. General Provisions.

The laws of the State of Arizona applicable to contracts will govern the construction and operation of this agreement without regard to any conflict of laws provisions. Any action brought in connection with this agreement against Limelight will be brought in a court sitting in Arizona. Limelight and Customer are independent contractors and this agreement does not establish any relationship of partnership, joint venture, or agency between Limelight and Customer. These TOS, along with the applicable SOF, SLA (if applicable) and other attachments specifically referencing these TOS constitute the complete agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. Should there be any conflict between the TOS and the provisions of any SOF, the SOF shall prevail. These TOS may be changed by Limelight in its sole discretion and the changes will become effective upon posting, provided that amended TOS shall only apply to SOFs that are executed after the effective date of the changes. The provisions intended to survive (including but not limited to the provisions regarding Intellectual Property, Limitation of Liability and Confidentiality) will survive any expiration or termination of this agreement.