

Terms of Service

These Terms of Service are between Limelight Networks, Inc., its Affiliates and subsidiaries, (together, “**Limelight**”) and the other signatory to the applicable Order Form (“**Customer**”). The parties agree as follows:

1. Certain Definitions.

“**Acceptable Use Policy**” means Limelight’s Acceptable Use Policy, located at www.limelight.com/acceptable-use-policy.

“**Affiliate**” means any entity controlling or controlled by or under common control with a party, where “control” is defined as the ownership of more than 50% of the equity or other voting interests of such entity.

“**Content**” means all data, regardless of format or owner (including, but not limited to, content, websites, applications and the like), provided or identified to Limelight to be sent or received using the Services, and content hosted, stored, or cached by Limelight at the direction of Customer or its Affiliates, agents, customers, or end-users.

“**Order Form**” means an order form, fully executed by the parties and accepted by Limelight, evidencing, by service identification code, the Services ordered by Customer.

“**Operative Documents**” means the Order Form(s), the Service Level Agreement(s), the Partner Document and the Acceptable Use Policy.

“**Partner Document**” means Limelight’s Partner Document, located at www.limelight.com/partner-document, which contains descriptions of all services offered by Limelight, including usage requirements, calculation methodologies for billing, and other terms.

“**Service Level Agreement**” means the service level agreement attached to, or otherwise incorporated by reference into, a particular Order Form that defines the service levels for the Services ordered by Customer.

“**Services**” means the particular Limelight services ordered by Customer and identified by a service identification code on an Order Form.

2. Order Form and Access to Services. A Customer may order Services from Limelight pursuant to an Order Form for itself and on behalf of one or more of its Affiliates, subject to these terms and conditions. A particular Order Form will become binding on the parties on the later date that such Order Form is signed by Customer and Limelight (such date, with respect to a particular Order Form, the “**Effective Date**”). Limelight may, in its sole discretion, utilize third parties in providing Services. A description of the Services, including usage requirements, can be found in the Partner Document. Notwithstanding the foregoing, Limelight solely warrants that the Services will be provided at the levels specified in the Service Level Agreement, if any. Customer’s sole and exclusive remedy with respect to such warranty, as well as any interruption, suspension, failure, defect, impairment or inadequacy of the Service, is specified in the Service Level Agreement.

3. Use of Services. When accessing the Services, Customer will comply with Limelight’s then-current Acceptable Use Policy, which may be amended from time to time in Limelight’s sole discretion. Unless expressly permitted in writing by Limelight, Customer will neither resell the Services (whether for a fee or gratis), in whole or in part, to any third party. The immediately preceding sentence does not prevent Customer from providing public or private access to end-users to its website. Neither the Terms of Service nor any of the Operative Documents establish any third party beneficiaries or third party rights.

4. Fees and Payments. Customer will pay all fees and charges for Services as specified the Order Form. Regardless of the actual use of Services, all payment obligations are committed for the Term (as defined below) and non-cancelable, and all amounts paid are nonrefundable. Payment terms are net 30 days from the invoice date, without offsets or deductions of any kind, and payment is due in US dollars. If Customer believes, in good faith, that Customer’s invoice is incorrect, Customer must give Limelight written notice within 30 days of the date of the invoice containing the amount in question to be eligible to receive an adjustment or credit for the disputed amount. Such notice must contain a detailed description of the fees and charges in question and the good faith basis for disputing such amounts. Customer agrees to promptly remit payment for all other amounts and irrevocably waives its right to challenge any amount not disputed during such 30-day period. Nothing in this section will be deemed to limit Limelight’s right to seek judicial intervention at any time regarding any such disputed amount.

5. Non-Payment. Limelight may assess interest on any past due balances at the rate of 1 1/2% per month, or the maximum rate allowed by law, whichever is less. In addition to any other rights granted to Limelight herein, Limelight reserves the right to suspend or terminate Customer’s access to the Services if Customer’s account becomes delinquent. Customer agrees to pay all reasonable costs and attorneys’ fees incurred by Limelight with respect to collecting any past due balance. Any amount disputed by Customer pursuant to Section 4 (Fees and Payments) that is deemed by a judge or arbitrator to be due and payable to Limelight will be deemed to be past due as of the original due date for purposes of the calculation of interest and eligibility for attorneys’ fees and costs. 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. Limelight reserves the right to require payment assurance at any time.

6. Taxes. Limelight’s fees and charges are exclusive of all taxes, levies, or duties imposed by taxing authorities. Customer is responsible for payment of all such taxes, levies, or duties, except for taxes based solely on Limelight’s income. If Limelight has the legal obligation to pay or collect any such amounts for which Customer is responsible, the appropriate amount will be invoiced to and paid by Customer, unless Customer provides Limelight with a valid tax exemption certificate authorized by the appropriate taxing authority (along with an English translation, if applicable) covering such amount.

7. Term. The initial term of an Order Form will begin on the Effective Date and will continue for the period set forth in the Order Form (“**Initial Term**”). An Order Form will automatically renew for successive periods equal in length to the Initial Term (each, a

“Renewal Term”), unless either party notifies the other of its intent not to renew at least 30 days prior to the expiration of the then-current Initial Term or Renewal Term, as applicable. If the Initial Term or any Renewal Term would otherwise expire prior to the end of a calendar month, such term will continue, uninterrupted, until the end of that calendar month. The Initial Term and all Renewal Terms are collectively referred to as the **“Term.”**

8. Termination, Non-Renewal. A party may terminate these Terms of Service and all outstanding and effective Order Forms if the other party breaches of any material term of these Terms of Service and fails to cure such breach within the 30 days following written notice of such breach. If the non-breaching party fails to terminate within a reasonable period following such 30-day period, then it will be deemed to have waived its termination right with respect to such uncured breach. Customer will only receive one such cure period per calendar year for a breach based on past due amount, and such cure must include payment for any accrued interest. If Limelight exercises its termination right for any reason, it will immediately cease to provide Services, and all amounts outstanding under the Order Form(s), including all committed fees for the remainder of the then-current Initial Term or Renewal Term, as applicable, will become immediately due and payable as of the date of termination. Within the 30 days following termination for any reason or non-renewal by either party, Customer must, at its own expense, remove Content related to the terminated or non-renewed Order Form (**“Ineligible Content”**) from Limelight’s network, by using file transfer methods then-available to Customer for the terminated Services. AFTER SUCH 30-DAY PERIOD, LIMELIGHT WILL DELETE OR OTHERWISE REMOVE ALL INELIGIBLE CONTENT, AND CUSTOMER WILL THEREAFTER HAVE NO RIGHT OR ABILITY TO RETRIEVE SUCH CONTENT AND LIMELIGHT WILL HAVE NO RESPONSIBILITY OR LIABILITY ASSOCIATED WITH SUCH CONTENT. CUSTOMER WILL BE RESPONSIBLE FOR ANY COSTS ASSOCIATED WITH LIMELIGHT’S REMOVAL OF INELIGIBLE CONTENT.

9. Modification of Services, Calculation of Fees, Terms of Service. A **“Modification”** means a modification or change by Limelight to (i) the features, functionality and other aspects of a Service, (ii) the basis for calculating fees and other charges with respect to a particular Service, as opposed to altering the actual Usage Rate, as set forth in the Order Form for such Service. Limelight reserves the right to effect a Modification at any time. Limelight further reserves the right to amend these Terms of Service at any time. Any Modification will be as set forth in the Partner Document, and Limelight will provide Customer with prior written notice of any such Modification or amendment of these Terms of Service. Customer will receive 60 days prior written notice for a Modification or amendment of these Terms of Service. Any Modification or amendment of these Terms of Service will become effective at the commencement of the next successive Renewal Term after the expiration of the 60-day notice period. Notwithstanding anything in this section to the contrary, if Limelight modifies a Service, and, as a result of such Modification, the Service maintains at least reasonably equivalent functionality, then such Modification will not require prior written notice to Customer and will become effective immediately. In the event that Limelight terminates a Service pursuant to Section 14 (Limelight Indemnification), such termination not be considered a Modification and Customer will be responsible for all fees and charges for such Service incurred through the date of termination, without liability for further fees or charges for such Service.

10. DISCLAIMER OF WARRANTIES. TO THE EXTENT NOT PROHIBITED BY LAW AND EXCEPT AS EXPRESSLY PROVIDED IN SECTION 2 (ORDER FORM AND ACCESS TO SERVICES), THE SERVICES ARE PROVIDED **“AS IS,”** AND EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, PAST OR PRESENT, STATUTORY OR OTHERWISE, IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR SECURITY. LIMELIGHT DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR FREE, UNINTERRUPTED OR WILL MEET CUSTOMER’S REQUIREMENTS. THIS DISCLAIMER AND EXCLUSION APPLIES EVEN IF AN EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH IN SECTION 2 (ORDER FORM AND ACCESS TO SERVICES), OR ELSEWHERE, FAILS ITS ESSENTIAL PURPOSE. CUSTOMER ACKNOWLEDGES THAT NO REPRESENTATIVE OF LIMELIGHT IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY THAT IS NOT EXPLICITLY STATED IN SECTION 2 (ORDER FORM AND ACCESS TO SERVICES).

11. Ownership and Licenses. Except for the limited rights expressly granted in these Terms of Service, neither party transfers or otherwise licenses to the other party any technology, software, or other intellectual property rights. Customer retains all right, title, and interest in and to Content. Content will not be deemed part of any Services by virtue of being located on or served from Limelight servers.

12. Marketing. Each party may use the other party’s name, trade name, trademarks, icons, and logos (collectively, the **“Brands”**) to refer publicly to the other, orally and in writing, as a customer/vendor of the other solely in connection with the Services and only during the Term. Any other use of a party’s Brands requires such party’s prior written consent.

13. Confidentiality. If the parties are subject to an effective nondisclosure or confidentiality agreement with rights and obligations at least as favorable to Limelight as this section, then that agreement will be deemed to supersede in its entirety the language of this section until such time as that agreement no longer applies to the then-current exchange of information. **“Confidential Information”** is non-public information that includes, but is not limited to, the terms of these Terms of Service, any Order Form, and any Service Level Agreement; information concerning a party’s (the **“Disclosing Party”**) pricing terms, operations, methods of doing business, technologies, technical designs, research and development, know how, trade secrets, software source code, computer programs, algorithms, technical specifications and data, testing and bench-marking procedures and results, customers, personnel, financial information and other confidential or proprietary information belonging to or provided by or on behalf of the Disclosing Party, or information the party receiving such information (the **“Receiving Party”**) should reasonably know is confidential to the Disclosing Party. The term **“Confidential Information”** as used in this section does not include information that (i) was or becomes generally available to the public other than as a result of a disclosure by the Receiving Party or its directors, officers, employees, agents, contractors or advisors (**“Representatives”**); (ii) was or becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or its Representatives, provided such source is not bound by a confidentiality obligation with the Disclosing Party; (iii) was within the Receiving Party’s possession prior to it being furnished to the Receiving Party by or on behalf of the Disclosing Party,

provided the source of such information was not bound by a confidentiality obligation owed to the Disclosing Party with respect thereto; or (iv) is Content. Each party agrees that it will not use, modify, copy, or disclose to any third party Confidential Information, except in furtherance of the relationship between the parties or as required by law. The Receiving Party may disclose the Disclosing Party's Confidential Information to the Receiving Party's Representatives solely as necessary to meet their obligations under these Terms of Service. The Receiving Party will also ensure that all Representatives are aware of the confidential and/or proprietary nature of the Confidential Information and have themselves an obligation of confidentiality providing no less restrictive and substantially the same protections as are provided under these Terms of Service. The Receiving Party will take measures to protect Confidential Information at least as stringent as those measures that it takes to protect the confidentiality and security of its own confidential information of a similar nature, but in no event will the Receiving Party use less than reasonable care.

14. Limelight Indemnification. Limelight agrees to indemnify and defend Customer against any and all third-party claims, liabilities, costs and expenses, including reasonable attorneys' fees, for claims based on allegations that a Service directly infringes an issued patent or other intellectual property right under the laws of a country in which such Service is actually provided to Customer (a "**Customer Claim**"). Notwithstanding the foregoing, Limelight will have no obligation hereunder if the Customer Claim is based on: (i) use of a Service in conjunction or combination with one or more products or services not provided by Limelight to Customer; or (ii) use of a Service or software in a fashion other than as intended by Limelight.

Limelight is only liable to indemnify Customer so long as: (i) Customer gives written notice to Limelight no fewer than 20 days from the date Customer first receives notice of the Customer Claim; (ii) Limelight is allowed to control the defenses of the Customer Claim using legal counsel of its choice; (iii) Customer cooperates and assists Limelight in investigating and defending such Customer Claim when Limelight makes reasonable requests for cooperation and assistance; and (iv) Limelight is allowed to enter into an agreement to settle the Customer Claim without prior Customer consent. Notwithstanding Limelight's ability to settle the Customer Claim, Customer will have the right to approve any non-monetary settlement that involves a Customer commitment, and Customer will not unreasonably withhold, condition or delay that approval. Customer will have the right to control the defense of the Customer Claim only if Limelight does not give written notice to Customer within 30 days from the date it receives notice from Customer of the Customer Claim that it will assume that defense.

If any Service(s) becomes the subject of a Customer Claim under this section, or in Limelight's opinion is likely to become the subject of such a Customer Claim, then Limelight may, at its option, either (i) replace or modify the alleged infringing Service(s) to make it/them non-infringing, while maintaining reasonably equivalent functionality; (ii) procure for Customer the right to continue using the alleged infringing Service(s) pursuant to these Terms of Service; or (iii) at Limelight's sole option, terminate these Terms of Service and any outstanding Order Forms with respect to the allegedly infringing Service on 30 days' written notice with both parties having no further obligations to the other, other than the respective party's obligations under this section.

15. Customer Responsibilities, Customer Indemnification. Customer is responsible for its Content, including maintaining backups and providing services and maintenance. Customer represents and warrants that it owns all right, title and interest in the Content, or possesses the necessary rights to permit the 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 including without limitation any data security, data privacy or export compliance law or regulation, breach an agreement with, or infringe the copyright or other intellectual property rights of a third party. Customer assumes all responsibility for modifying (or its failure to modify) its Content identifiers consistent with instructions provided by Limelight in order to enable Limelight to deliver Customer's chosen Content. Each of the covenants, representations and warranties in this paragraph is a material term of these Terms of Service.

Customer agrees to indemnify and defend Limelight against any and all third-party claims, liabilities, costs and expenses, including reasonable attorneys' fees, based on claims relating to any Content, operation of Customer's websites (including any activities or aspect of commerce conducted thereon), breach by Customer of Section 3 (Use of Services), or breach by Customer of the representations, warranties and covenants in the immediately preceding paragraph (a "**Limelight Claim**"). Customer is only liable to indemnify Limelight so long as: (i) Limelight gives written notice to Customer no fewer than 20 days from the date Limelight first receives notice of the Limelight Claim; (ii) Customer is allowed to control the defenses of the Limelight Claim using legal counsel of its choice; (iii) Limelight cooperates and assists Customer in investigating and defending such Limelight Claim when Customer makes reasonable requests for cooperation and assistance; and (iv) Customer is allowed to enter into an agreement to settle the Limelight Claim without prior Limelight consent. Notwithstanding Customer's ability to settle the Limelight Claim, Limelight will have the right to approve any non-monetary settlement that involves a Limelight commitment, and Limelight will not unreasonably withhold, condition or delay that approval. Limelight will have the right to control the defense of the Limelight Claim only if Customer does not give written notice to Limelight within 30 days from the date it receives notice from Limelight of the Limelight Claim that it will assume that defense.

16. LIMITATION OF LIABILITY. EXCEPT FOR EACH PARTY'S OBLIGATIONS UNDER SECTION 13 (CONFIDENTIALITY) AND CUSTOMER'S OBLIGATIONS UNDER SECTION 3 (USE OF SERVICES), 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, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY.

WITHOUT LIMITING THE FOREGOING AND TO THE FULLEST EXTENT PERMISSIBLE BY LAW, LIABILITY FOR ALL CLAIMS ARISING HEREUNDER, WHETHER IN TORT, NEGLIGENCE, CONTRACT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER TO LIMELIGHT UNDER THESE TERMS OF SERVICE OR ANY OTHER OPERATIVE DOCUMENT DURING THE SIX MONTHS PRECEDING THE CLAIM. THE IMMEDIATELY PRECEDING SENTENCE DOES NOT APPLY TO EITHER PARTY'S CONFIDENTIALITY OR INDEMNITY OBLIGATIONS, OR CUSTOMER'S OBLIGATIONS UNDER SECTIONS 3 (USE OF SERVICES) THROUGH 5 (NON-PAYMENT).

17. Notice. All notices, requests, waivers and other communications made pursuant to these Terms of Service or an Order Form (each, a “**Notice**”) must be in writing and will be conclusively deemed to have been duly given (i) when hand delivered to the other party; (ii) when sent by electronic mail, if sent between 8:00 a.m. and 5:00 p.m. recipient’s local time on a business day, or on the next business day, if sent by email other than between such hours; (iii) three business days after deposit in the U.S. mail with first class or certified mail, receipt requested, and postage prepaid; (iv) the next business day after deposit with a national overnight delivery service, postage prepaid, with next-day delivery guaranteed; or (v) for international delivery, five business days after deposit with a global expedited delivery service, postage prepaid, with guaranteed delivery of no less than five business days. For each of clauses (iii) through (iv) the sending party must receive confirmation of delivery of the Notice from the delivery service provider for the delivery to be deemed valid. Business day means a weekday day in Tempe, Arizona that is not a national or local holiday when local banks are open for business. Any Notice sent to a party must be sent to the authorized person for such party listed on the Order Form using the listed physical or electronic mailing address, and Limelight legal (legal@lnw.com) must be copied on any Notice sent with respect to Sections 10 (Disclaimer of Warranties) through 16 (Limitation of Liability), 18 (Assignment, Successors), or 20 (Governing Law, Venue) through 29 (Attorneys’ Fees) for such Notice to be valid. Submission by Customer of a service ticket (or so-called “trouble ticket”) does not constitute Notice. Either party may change or supplement the address given in the prior sentence by providing Notice of the new contact person and address in the manner set forth above.

18. Assignment, Successors. Customer may not assign or delegate, in whole or in part, by operation of law or otherwise, any right, interest or obligation under these Terms of Service or the Operative Documents to any third party (including its Affiliates), without Limelight’s prior written consent. Such consent will not be unreasonably withheld, conditioned or delayed. Any purported assignment or delegation in violation of this section is null and void. Subject to the two immediately preceding sentences, these Terms of Service and the Operative Documents will be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of the parties (if applicable).

19. Amendments. Any term of these Terms of Service, Partner Document and Acceptable Use Policy may be amended, modified or waived as described in Section 9 (Modification of Services, Calculation of Fees, Terms of Service) or in a writing signed by both parties. The Order Form and Service Level Agreement may only be amended by a newly issued Order Form and Service Level Agreement.

20. Governing Law, Venue. These Terms of Service and the Operative Documents are to be construed in accordance with and governed by the internal laws of the State of Arizona, without giving effect to any choice of law rule that would cause the application of the laws of any other jurisdiction. All disputes and controversies arising out of or in connection with these Terms of Service or the Operative Documents will be resolved exclusively in the state and federal courts located in Maricopa County in the State of Arizona. Each party agrees to submit to the jurisdiction of such courts and agrees that venue will lie exclusively with such courts.

21. Severability. Whenever possible, each provision or portion of any provision of these Terms of Service will be interpreted in a manner as to be effective and valid under applicable law. If any provision or portion of any provision of these Terms of Service or the Operative Documents is held to be invalid, illegal or unenforceable in any respect under any applicable law in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or portion of any provision in such jurisdiction. In such instance, these Terms of Service or Operative Documents, as appropriate, will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained in such document.

22. Entire Agreement. These Terms of Service and the Operative Documents constitute the entire agreement among the parties with respect to the subject matter hereof and no party shall be liable or bound to any other party in any manner by any warranties, representations, covenants or otherwise, except as specifically set forth in these Terms of Service and the Operative Documents.

23. Conflicting Terms. If the terms of these Terms of Service and the Operative Documents conflict in any manner, than the controlling priority of the agreements will be in the following order: the Order Form, the Service Level Agreement, these Terms of Service, the Partner Document, and then the Acceptable Use Policy.

24. Force Majeure. Neither party is responsible for any failure to perform its obligations under these Terms of Service or the Operative Documents, if such party is actually prevented from or delayed in performing (the “**Prevented Party**”) those obligations by an event of force majeure. In any such instance, the Prevented Party must immediately notify the other party giving full particulars of the event of force majeure and the reasons that such event prevents or delays that party from performing its obligations. The Prevented Party must then use commercially reasonable efforts to mitigate the effect of the event of force majeure upon its performance of its obligations. Upon the completion or mitigation of the event of force majeure, the Prevented Party must recommence its performance as soon as reasonably practicable. As used herein, “**an event of force majeure**” means an event or circumstance that is beyond the control of either party, occurs without the fault or negligence of the Prevented Party, and, through the exercise of reasonable diligence, the Prevented Party was unable to prevent such event or circumstance, including, but not limited to: (i) riot, war (whether or not declared), rebellion, revolution, acts of terrorism, acts of piracy, military insurrection, usurpation of governmental power, or other armed conflict; (ii) contamination by radiation, nuclear fuel or waste, or other materials that create significant risk to human life; (iii) earthquake, flood, fire, tsunami, tornado or other physical natural disaster, but excluding general weather conditions, regardless of severity; (iv) strikes or industrial disputes at a national level; or (v) destruction or extensive damage of factories, colocation centers, or company headquarters.

25. Titles and Subtitles. The titles and subtitles used in these Terms of Service are used for convenience only and are not to be considered in construing or interpreting any of the provisions contained herein.

26. Counterparts. The Order Form may be executed in two or more counterparts, including counterparts by electronic mail, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument.

27. Survival. The provisions regarding preservation and ownership of intellectual property rights, confidential information, limitations of liability, indemnification, payments owed as of termination or expiration (including the accrual of interest on delinquent amounts), and Sections 18 (Assignment, Successors) through 29 (Attorneys' Fees) will survive the expiration or termination of these Terms of Service.

28. Relationship of the Parties. Nothing in these Terms of Service or the Operative Documents is intended to, nor shall it be construed to, create any agency, partnership, or joint venture relationship between the parties.

29. Attorneys' Fees. If, in any action at law or in equity (including arbitration), it is necessary to enforce or interpret any of the terms of these Terms of Service, the prevailing party will be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to any other relief that such party may be entitled.