

## **Reflected Networks Supplemental Terms and Conditions: Content Delivery Service**

The terms and conditions detailed herein (the "Supplement") are provided to Customers who purchase Content Delivery services delivered by RN (either directly or indirectly through a third party service provider). This Supplement is governed by, and incorporated into, the Master Products and Services Agreement (the "Agreement") between the parties.

### **1. GENERAL; DEFINITIONS**

**1.1 Service Description.** RN's Content Delivery service provides hosting for Customer Content at one or more selected Point of Presence ("POP") using proprietary routing technology.

**1.2 Use of IP Addresses.** Any IP Addresses assigned to Customer by RN shall at all times remain the sole and exclusive property of RN, and may be used only in connection with the Content Delivery Services rendered by RN and for the Term specified in any applicable Order Form. In the event, for any reason, Customer discontinues use of Services or RN suspends or terminates Customer's use of Services or the Agreement or relevant Order Form terminates, Customer's right to use the IP Addresses is immediately terminated.

**1.3 Definitions.** Unless otherwise defined herein, capitalized terms shall have the meaning attributed in the Agreement.

*"Bandwidth"* - the measured rate of bits per second transferred from RN from and to Customer's equipment.

*"Burst Bandwidth"* - the amount of Bandwidth in excess of Customer's committed level as further defined below.

*"CDN"* - the content delivery network utilized by RN which is comprised of the physical hardware and software used to provide Content Delivery Service.

*"Content Delivery"* - The delivery of Customer Content such as digital audio, video, or computer software over the Internet.

*"Downtime"* - a period of time that the CDN is not available to deliver Customer Content for 2 or more consecutive 5-minute periods based on RN's measurements.

*"IP"* - Internet Protocol, the basic rules and encoding specifications for sending data on the Internet.

*"IP Addresses"* - One or more IP address numbers.

### **2. SERVICE-SPECIFIC CHARGES AND SERVICE TYPES**

**2.1 General Connectivity.** Subject to the terms and conditions contained herein, and provided Customer is not in breach or default of the Agreement, this Supplement or

any applicable Order Form, RN will provide to Customer space to upload its content to the CDN to enable Content Delivery on terms (including commencement date) specified in an Order Form.

**2.2 95th percentile billing for Bandwidth.** If 95th percentile billing for Bandwidth usage is employed on an applicable Order Form, usage samples will be collected and sorted from highest to lowest and the top 5% discarded. The next highest sample (the 95th percentile number) will then be used as the basis in computing the charge for the month for incremental Bandwidth beyond the committed level. Overage charges for Burst Bandwidth, if not specified on an Order Form will be billed at RN's prevailing rate. Charges for Burst Bandwidth will be billed after the end of the month.

**2.3 Per-gigabyte billing for Bandwidth.** If per-gigabyte billing is employed on an applicable Order Form, then Customer will be billed a charge for each gigabyte of Customer Content transferred over the CDN. Overage charges for Burst Bandwidth, if not specified in an Order Form, will be billed at RN's prevailing rate. Bandwidth usage for per-gigabyte billing shall be based on actual Customer Content transferred, as measured by system logs from the CDN, in one gigabyte (1,073,741,824 byte) increments. Charges for Burst Bandwidth will be billed after the end of the month.

A. All Content delivered by Customer shall be delivered in the supported encoding format specified in an Order Form. Where Customer utilizes the Adobe Flash format for streaming media ("Adobe Streaming Media"), Customer agrees that RN may provide information to Adobe Systems Incorporated, including but not limited to: (1) Customer's name, city, state, zip code and country; (2) the total amount of Customer's Adobe Streaming Media transferred utilizing the Content Delivery Service; (3) the total amount of charges received by RN for Content Delivery Service resulting from Customer's Adobe Streaming Media. Notwithstanding anything contained herein or in any Order Form, Customer shall be responsible for maintaining any master and/or back-up copies of Customer Content in all situations, including but not limited to, where RN is rendering storage services for Customer; RN shall have no liability for any claims relating to the destruction, loss or corruption of Customer Content in whole or in part. To assist in delivery of Services, Customer will provide RN with a non-binding forecast setting forth Customer's estimated forecasted usage of the

Services by geographic location, which shall be updated monthly.

B. Customer's usage may be measured using either a per gigabyte billing methodology or a 95<sup>th</sup> Percentile billing methodology. The methodology shall be selected as set forth on the applicable Order Form.

C. Customer's use of Content Storage Service (if used in connection with Content Delivery Services) will be billed based on the highest capacity of storage utilized by Customer during any point in the relevant calendar month.

D. Any other Service features or functionality selected by Customer that are not described herein shall be provisioned as provided pursuant to the terms set forth in the Customer's applicable Order Form.

E. Customer is solely responsible for any equipment, facilities and/or other materials used in connection with the Services which are not provided by RN, including any related applications, systems and software.

F. While RN or its service providers may replicate Customer Content in connection with rendering certain Services, none of the Services are deemed a "vault" service and Customer understands and acknowledges that Customer should maintain one or more master and/or backup copies of all Customer Content and that RN shall have no liability for any claims relating to such Customer Content including, without limitation, the destruction, loss or corruption of such Customer Content in whole or in part.

G. Customer expressly agrees not to resell or otherwise assign or sub-license any of the Services rendered as set forth herein without prior written agreement, signed by both parties.

H. If Customer or any web property owned or controlled by Customer is hereafter purchased or otherwise acquired, merged or undergoes a change of control by any third party, Customer agrees to remain liable for all obligations pursuant to this Supplement, any applicable Order Form(s) and/or the Agreement and to obtain a written agreement from such third party obligating them to all such terms and conditions.

### 3. SERVICE LEVEL AGREEMENT

Subject to the terms and conditions contained herein, and provided Customer is not in breach or default of the Agreement, any Supplement or any Order Form:

3.1 (A) Availability. RN provides an uptime guarantee for Content Delivery Services of 99%. In the event of any Downtime, Customer will be entitled to a service credit equal to one day's worth of the committed monthly recurring charge paid by Customer, multiplied by each 24-

hour period in which Customer experiences Downtime during a particular month. Notwithstanding anything in this Supplement to the contrary, total credits issued to Customer in connection with any calendar month will not exceed the monthly recurring charges paid by Customer for relevant Services in such month.

(B) Chronic Outage. Customer may elect to terminate any applicable Order Form should the Customer experience a Chronic Outage (as defined below) prior to the end of the Service Term without termination liability if such Service is Unavailable on three (3) or more separate occasions of three (3) or more consecutive hours each through no fault (directly or indirectly) of Customer, in one calendar year (a "Chronic Outage"). Customer must exercise its right to terminate the applicable Order Form by providing RN not less than thirty (30) days notice, in writing, within ten (10) days after the event giving rise to such right of termination. Except for any service credits that have accrued, this Section sets forth Customer's sole remedy for Chronic Outages of any CDN Services. Notwithstanding the foregoing, Customer shall remain liable for any charges accrued or incurred prior to termination.

3.2 Limitations. Customer will not be entitled to receive any otherwise applicable service credit (including a termination right) if the failure to achieve the SLA results from (a) inaccessibility, erroneous measurements or non-responses of the testing agents; (b) Customer Equipment or Customer act/omission; or (c) an Excused Outage. Service Levels are not valid for customers with geographic restrictions on content delivery or in months in which a Disproportionate Peak occurs. Customer shall not be entitled to service credits under multiple SLAs for a single event but not limited to, non-recurring charges, incremental bandwidth usage, and hourly support charges, are excluded in the calculation of applicable credits.

3.3 RN's suspension or modification of Content Delivery Service in accordance with the terms of this Supplement and/or any applicable Order Form and/or the Agreement shall not be deemed to be a failure of RN to provide adequate service levels under the Agreement. In no event shall Customer be entitled to any credit on its Bandwidth charges to the extent that the latency or Downtime is caused by Customer attempting to exceed the maximum bandwidth of Customer's connection to the RN network or otherwise violating the terms of this Schedule and/or the Agreement.

3.4 Exclusions. Customer shall not receive any credits in connection with Downtime or any failure or deficiency caused by or associated, in whole or in part with any of the following:

A. Force Majeure and/or circumstances beyond RN's reasonable control, including but not limited to Denial of

Service Attack, acts of any governmental body, war, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, failure of third party software or hardware, failure or unavailability of Customer's hardware or software or code (or interactions of the foregoing), or inability to obtain raw materials, supplies or power used in or equipment needed for provision of this service level agreement.

B. Failure of local access circuits to the RN Network, unless such failure is caused solely by RN.

C. DNS issues beyond RN's direct control.

D. False SLA breaches reported as a result of outages or errors of any SLA measurement system.

E. Acts or omissions by Customer, Customer's agents, Customer's contractors, or Customer's vendors and/or Customer's customer(s) including but not limited to negligence, willful misconduct, breach of RN's Acceptable Use Guidelines or Anti-SPAM Policy, failure to provide RN

or its agents adequate access to the facilities, or otherwise causing RN to be unable to meet any of the criteria set out in this SLA.

F. Scheduled maintenance, emergency maintenance, or necessary network upgrades.

G. Failure of a service that is not covered or guaranteed by this Supplement.

H. Termination and/or Disconnection or Suspension by RN for non-payment or other Customer default or breach under the terms of the Agreement.

**4. Customer Credit Request.** Customer must notify RN within Thirty (30) days from the time Customer becomes eligible to receive a credit under this SLA to receive such credit. Failure to comply with this requirement will forfeit Customer's right to receive a credit. Credits are calculated after deduction of all discounts and other special pricing arrangements, and are not applied to governmental fees, taxes, surcharges, and similar additional charges.

#### 4. EXECUTION

This document may be executed in multiple counterparts, all of which taken together constitute one and the same instrument. This document may be executed by facsimile and/or e-mailing of executed documents. The Parties have executed this document as of the last date of execution below.

##### REFLECTED NETWORKS, INC.

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

##### CUSTOMER

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_