

# Terms and Conditions: LogMeIn® Services and Network Console™

IMPORTANT - PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY WHEN ORDERING THE LISTED SERVICES AND/OR SOFTWARE FROM LOGMEIN, INC. ("LMI"). These terms and conditions ("Terms") govern Your use and the licensing by LMI of these LogMeIn® service(s): (LogMeIn® Backup™, LogMeIn® Free™, LogMeIn® Pro™, LogMeIn® IT Reach™, LogMeIn® Rescue™) (the Service) and the Network Console™ software (the "Software" and together with the Service, "the Products") covered by an order by you (herein, "You" or "Your") referencing this form and accepted by LMI. BY SIGNING OR OTHERWISE INDICATING YOUR ACCEPTANCE OF THESE TERMS, YOU REPRESENT AND WARRANT THAT YOU: (I) ARE AUTHORIZED TO SIGN FOR AND BIND YOURSELF AND ANY OTHER PARTY ON WHOSE BEHALF YOU USE THE SERVICE AND/OR SOFTWARE (THE "CONTRACTING PARTY") AND (II) AGREE FOR YOURSELF AND THE CONTRACTING PARTY TO BE BOUND BY ALL OF THESE TERMS, INCLUDING THE DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY SECTIONS SET FORTH BELOW, TO THE EXCLUSION OF ANY OTHER RIGHTS AND OBLIGATIONS, SUCH AS THOSE LISTED ON A PURCHASER ORDER. LMI reserves the right, exercised in its sole discretion, to change, modify, add, or delete portions of these Terms at any time in accordance with the procedures set forth below in the section labeled "Modifications".

## 1. Registration

To use the Products, You and the Contracting Party may be required to submit a complete a registration form ("Registration Form"). As part of this registration process for, You and the Contracting Party agree to: (i) provide certain limited information about Yourself and the Contracting Party as prompted to do so by during the registration or thereafter by the Service (such information to be current, complete and accurate) and (ii) maintain and update this information as required to keep it current, complete and accurate. The information requested at the time of the original signup shall be referred to as registration data ("Registration Data"). You may not register if You are under 18 years of age. By registering, You and the Contracting Party represent to LMI that You are 18 years of age or older. If LMI discovers that any of Your Registration Data is inaccurate, incomplete or not current, or if LMI determines, in its sole discretion, that You or the Contracting Party are not an appropriate subscriber or user of the Service, LMI may terminate all rights to access, receive, use and license the Service and Software immediately upon notice.

## 2. Conduct

You and the Contracting Party are solely responsible for the content of Your transmissions when using the Products. LMI does, however, reserve the right to take any action with respect to the same that LMI in its sole discretion deems necessary or appropriate. The use of the Products by You and the Contracting Party is subject to the end user license agreement set forth below and all applicable local, state, national and international laws and regulations (including without limitation those governing account collection, export control, consumer protection, unfair competition, anti-discrimination or false advertising). You and the Contracting Party agree: (i) to comply with all applicable United States laws, rules and other regulations app; (ii) not to post, distribute, or otherwise make available or transmit any software or other computer files that contain a virus or other harmful component; (iii) not to use the Products for illegal purposes; (iv) not to delete from the Software, documentation or any web site used in connection with the Service any legal notices, disclaimers, or proprietary notices such as copyright or trademark symbols, or modify any logos that You do not own or have express permission to modify; (v) not to interfere or disrupt networks connected to the Service; (vi) not to use the Service or Service to infringe any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; and (vii) not to transmit any unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind or nature. You and the Contracting Party will not attempt to gain unauthorized access to other computer systems or interfere with another user's use and enjoyment of the Service.

## 3. Modifications

LMI may amend these Terms at any time by (i) posting a revised Terms document on or accessible through <https://secure.logmein.com> and/or (ii) sending information regarding the Terms amendment to the email address You provide to LMI. You and the Contracting Party manifest intent to accept these amended terms if You or the Contracting Party continues to use any of the Products after such amended terms have been posted or sent to You or the Contracting Party. If You or the Contracting Party do not agree with any such modifications You shall notify LMI during that 30 day period and at the end of the 30 day period these Terms shall be deemed terminated unless LMI agrees to waive such modifications to which You object. Otherwise, these Terms may not be amended except in writing signed by both parties. Further, LMI reserves the right to modify or discontinue the Service with or without notice to You or the Contracting Party. LMI shall not be liable to You and the Contracting Party or any third party should LMI exercise its right to modify or discontinue the Service.

## 4. Passwords and Security

4.1 As part of the registration process for the Service, You and the Contracting Party must use Your email address as Your

user name and choose a password for access to Your account and to Your designated computers. You and the Contracting Party agree to carefully safeguard all of Your passwords. You and the Contracting Party are solely responsible if You or the Contracting Party do not maintain the confidentiality of Your passwords and account information. Furthermore, You and the Contracting Party are solely responsible for any and all activity that occurs under Your account. You and the Contracting Party agree immediately to notify LMI of any unauthorized use of Your account or any other breach of security known to You or the Contracting Party, including if You or the Contracting Party believe that Your password or account information has been stolen or otherwise compromised. Access to, and use of, password-protected and/or secure aspects of the Service is restricted to authorized users only. Unauthorized individuals attempting to use the Service may be subject to prosecution. 4.2 LMI is not liable for any loss incurred by You or the Contracting Party, resulting from another's use of Your password or account, either with or without Your knowledge. However, You and the Contracting Party may be held liable for losses incurred by LMI or another party due to another's use of Your account or password. You and the Contracting Party shall not access or use someone else's account at any time, without the permission of the account holder.

**4.3 LMI does not send emails asking for a user's username and password or its Windows username and password.** To keep the Service secure, You and the Contracting Party should keep all usernames and passwords confidential.

## **5. End User License Agreement**

This end user license agreement grants a right and license allowing You and the Contracting Party to use the Software and other software associated with the Service (together, the "Licensed Programs") under certain restrictions, terms and conditions (the "License Agreement"). You and the Contracting Party are consenting to be bound by this License Agreement.

5.1 The Licensed Programs are made available for download solely for use by You and the Contracting Party according to this License Agreement. Any reproduction or redistribution of the Licensed Programs that is not in accordance with this License Agreement is expressly prohibited by law, and may result in severe civil and criminal penalties. Violators will be prosecuted to the maximum extent possible. LMI is not transferring title to the Licensed Programs to You or the Contracting Party.

5.2 You and the Contracting Party acknowledge that the Licensed Programs are proprietary to LMI or its suppliers and are protected by copyrights, trademarks, service marks, patents and/or other proprietary rights and laws. Therefore, You and the Contracting Party agree that You and the Contracting Party are only permitted to use the Licensed Programs as expressly authorized by LMI and this License Agreement. You and the Contracting Party may not remove any proprietary notices or labels from the Licensed Programs. You may copy the Licensed Programs for archival purposes only, provided any copy must contain all original proprietary notices. However, You and the Contracting Party may not alter, modify, redistribute, sell, auction, decompile, reverse engineer, disassemble or otherwise reduce the Licensed Programs to a human-readable form. You and the Contracting Party may not reproduce (except for archival purposes), distribute or create derivative works based on the Licensed Programs without expressly being authorized in writing to do so by LMI. Further, You and the Contracting Party may not rent, lease, grant a security interest in or otherwise transfer rights to the Licensed Programs. All rights not expressly granted in this License Agreement are reserved to LMI and its suppliers.

5.3 ALL CONTENT ON WEB SITES ASSOCIATED WITH THE SERVICE IS PROTECTED BY COPYRIGHT AND/OR TRADEMARK LAWS. EXCEPT AS SPECIFICALLY PERMITTED HEREIN, NO PORTION OF THE INFORMATION OR CONTENT ON SUCH SITES MAY BE REPRODUCED IN ANY FORM, OR BY ANY MEANS, WITHOUT PRIOR WRITTEN PERMISSION FROM LMI YOU, THE CONTRACTING PARTY AND ANY OTHER VISITOR OR USER ARE NOT PERMITTED TO MODIFY, DISTRIBUTE, PUBLISH, TRANSMIT OR CREATE DERIVATIVE WORKS OF ANY MATERIAL FOUND ON SUCH SITES FOR ANY PUBLIC OR COMMERCIAL PURPOSE.

## **6. Disclaimer of Warranties**

6.1 Although LMI has attempted to provide accurate information with regard to the Products, LMI assumes no responsibility for the accuracy or inaccuracy of the information. LMI may change the Products at any time without notice. Mention of non-LMI products or services is for information purposes only and constitutes neither an endorsement nor a recommendation. Use of the Products is at the Your and the Contracting Party's risk.

6.2 ALL INFORMATION, SERVICE, DOCUMENTATION AND PRODUCTS PROVIDED BY LMI PURSUANT ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

## **7. Limitations of Damages and Liability**

7.1 LMI AND ITS SUPPLIERS SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUES, COSTS OF REPLACEMENT PRODUCT OR SERVICE, LOSS OR DAMAGE TO INFORMATION OR DATA ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCTS. UNDER NO CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, SHALL LMI BE LIABLE FOR DAMAGES RESULTING FROM USE OF THE PRODUCTS, OR RELIANCE ON THE INFORMATION PRESENTED IN CONNECTION WITH THE PRODUCTS, EVEN IF LMI OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2 IN NO EVENT SHALL LMI'S TOTAL LIABILITY FROM ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER, IN CONTRACT, TORT OR OTHERWISE) EXCEED THE AMOUNT YOU PAID TO LMI, IF ANY, FOR THE PRODUCTS DURING THE 12 MONTHS IMMEDIATELY BEFORE THE CLAIM AROSE. APPLICABLE LAW MAY NOT

ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, OR THE ABOVE LIMITATIONS OF LIABILITY, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

**7.3 ALL DISCLAIMERS, LIMITATIONS OF WARRANTIES AND DAMAGES, AND CONFIDENTIAL COMMITMENTS SET FORTH IN THESE TERMS OR OTHERWISE EXISTING AT LAW (1) ARE OF THE ESSENCE OF THE AGREEMENT OF THE PARTIES, AND (2) SURVIVE ANY TERMINATION, EXPIRATION OR RESCISSION OF THESE TERMS.**

## **8. Title**

Title, ownership rights and intellectual property rights in the Products shall remain with LMI or its suppliers. The Products are protected by copyright and other intellectual property laws and by international treaties. Title and related rights in the content accessed through the Service is the property of the applicable content owner and is protected by applicable law. The License granted under these Terms gives the You and the Contracting Party no rights to such content. LogMeIn, associated logos, and other names, logos, icons and marks identifying LMI's products and services are trademarks or service marks of LMI (collectively the "Trademarks") and may not be used without the prior written permission of LMI. All other product names mentioned are used for identification purposes only and may be trademarks of their respective holders. Nothing should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any Trademark without the written permission of LMI or such third party that may own the Trademarks. Use by You and the Contracting Party of the Trademarks except as provided in these Terms is strictly prohibited.

## **9. Fees and Renewals**

9.1 Month-to-Month Subscription by Credit Card Only. In the event that Your subscription to the Service is on a monthly basis, payment of the subscription fee will be by preauthorized credit card charge and Your subscription will automatically renew each calendar month unless You or LMI give written (including email) notice of non-renewal during the prior calendar month. Your credit card will be charged for each month or partial month that Your monthly subscription is in effect.

9.2 Annual Subscription by Credit Card. In the event that Your subscription to the Service is for a year and the payment is by credit card, Your subscription will automatically renew at the beginning of each subsequent anniversary year unless You or LMI give prior written (including email) notice of non-renewal at least 30 days prior to the expiration of current year subscription. Upon any annual renewal, the payment arrangements in place for the prior subscription year shall remain in place, unless You and LMI agree otherwise.

9.3 Annual Subscription By Invoice. In the event that Your subscription to the Service is for a year and the initial payment is by check or bank draft against an invoice from LMI, Your subscription will automatically renew at the beginning of each subsequent anniversary year unless You or LMI give prior written (including email) notice of non-renewal at least thirty (30) days prior to the expiration of the current year subscription. Upon any annual renewal, the payment arrangements in place for the prior subscription year shall remain in place, unless You and LMI agree otherwise.

9.4 LogMeIn® Free™ Subscription. Notwithstanding the foregoing provisions of these Terms, Your subscription to LogMeIn® Free™ does not require the payment of a subscription fee.

## **10. Termination**

LMI may immediately terminate this subscription, license and right to use the Service and Software if (i) You or the Contracting Party breach these Terms; (ii) LMI is unable to verify or authenticate any information You provide to LMI; (iii) such information is or becomes inaccurate; or (iv) LMI decides, in its sole discretion, to discontinue offering the Service. LMI shall not be liable to You, the Contracting Party or any third party for termination of the Service. Upon expiration or termination for any reason, You and the Contracting Party are no longer authorized to use the Products. When these Terms are terminated and/or Your subscription is canceled, You will no longer have access to data and other material You or the Contracting Party have stored in connection with the Service and that material may be deleted by LMI. All disclaimers, limitations of warranties and damages, and confidential commitments set forth in these Terms or otherwise existing at law survive any termination, expiration or rescission of these Terms.

## **11. Export Law Assurances**

The Products are subject to United States Export Controls. No Products may be downloaded or exported (i) into (or to a national or resident of) Cuba, Iraq, Libya, North Korea, Iran, Syria, or any other country to which the United States has embargoed goods; or (ii) anyone on the United States Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. By subscribing to the Service or using any of the Products, You and the Contracting Party represent and warrant that You and the Contracting Party are not located in, under the control of, or a national or resident of any such country or on any such list.

## **12. High Risk Activities**

The Products are not fault-tolerant and are not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines or weapon systems in which the failure of the Service or software could lead directly to death, personal injury or severe physical or environmental damage ("High

Risk Activities"). Accordingly, LMI and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities.

### **13. Miscellaneous**

13.1 These Terms represents the complete agreement concerning the subject matter of the Terms and license granted hereunder and, except as set forth herein, may be amended only by a writing executed by both parties.

13.2 These Terms shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and the laws of the United States, without giving effect to any principles of conflict of law. You and the Contracting Party agree that any action at law or in equity arising out of or relating to these Terms shall be filed only in the state or federal courts located in Boston, Massachusetts, and You and the Contracting Party hereby consent and submit to the personal jurisdiction of such courts for the purposes of litigating any such action. The parties specifically disclaim applicability of (i) the United Nations Convention on the Sale of Goods and (ii) any Incoterms.

13.3 If any of the provisions of these Terms shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these Terms and shall not affect the validity and enforceability of any remaining provisions.

13.4 LMI shall have the right to publish the identification of You and the Contracting Party as users of the Service. You and the Contracting Party agree that LMI may use any logo and/or name associated with You or the Contracting Party on LMI's web site and other marketing materials in order to identify You and the Contracting Party as LMI's customers.

13.5 Notices by LMI to You or the Contracting Party may be sent to the email address You provide on the Registration Form. All other notices in connection with these Terms shall be in writing and sent by first class mail or certified mail (receipt being deemed 72 hours after postage and return receipt requested) or personally delivered at the address of the parties provided to the other party.

### **14. Indemnification**

You and the Contracting Party are responsible for maintaining the confidentiality of Your account and password(s). You and the Contracting Party are also responsible for all activities that occur under Your account. You and the Contracting Party hereby agree to indemnify, defend and hold LMI and its affiliates, officers, directors, owners, information providers, agents, licensees, licensors ("The Indemnified Parties") harmless from and against any and all liabilities, claims, costs, including reasonable attorneys' fees, incurred by The Indemnified Parties in connection with any demand, claims, action, suit, or loss arising as a result of any breach by You of these terms of use or claims arising from Your account. You and the Contracting Party agree to use Your best efforts to cooperate with LMI in the defense of any demand, claim, action or suit. LMI reserves the right to assume the exclusive defense of any matter subject to indemnification by You at LMI's own expense.

### **15. Confidentiality**

You and the Contracting Party shall maintain the confidentiality of information that has been, and will continue to be, provided to You by LMI in connection with the use of the Service. You and the Contracting Party specifically agree as follows:

15.1 Obligations. You and the Contracting Party shall (a) maintain in confidence all such information, including but not limited to the Products, (b) not disclose any such information to anyone except Your employees, agents, and consultants on a need-to-know basis (and who have been informed of and acknowledge their obligation to be bound by the terms of these confidentiality terms), and (c) not use LMI's confidential information for any purpose other than that for which it is disclosed. All confidential information shall remain the sole property of LMI. You and the Contracting Party shall have no right, title, or interest in or to the confidential information.

15.2 Confidential Information. Information considered confidential by LMI includes, without limitation, information of LMI relating to (a) matters of a technical nature such as trade secret processes or devices, know-how, data, formulas, inventions (whether or not patentable or copyrighted), specifications and characteristics of products or services planned or being developed, and research subjects, methods and results, (b) matters of a business nature such as information about costs, profits, pricing, policies, markets, sales, suppliers, customers, product plans, and business concepts, plans or strategies, (c) matters of a human resources nature such as employment policies and practices, personnel, compensation and employee benefits, (d) other information of a similar nature not generally disclosed by LMI to the public, (e) information concerning Your use of the Service, including without limitation, Your responses to the surveys referenced in section 2.2 above, and (f) the Products.

15.3 Exclusions. The obligations imposed by these confidentiality terms shall not apply to any information that (a) is proven by You to have been rightfully received from a third party without accompanying use or disclosure restrictions; or (b) is proven by You to have been independently developed by employees of Your organization who have not had access to such confidential information; or (c) is or becomes publicly available through no wrongful act of You; or (d) is already known to You as evidenced by documentation bearing a date prior to the date of disclosure; or (e) is approved for release in writing by an authorized representative of LMI; or (f) is required to be disclosed pursuant to court order, duly authorized subpoena, or governmental authority (but You shall immediately give LMI written notice and an opportunity to contest such required disclosure).

15.4 Remedies. The parties agree that the remedy at law for any breach of any of the covenants and agreements set forth in these confidentiality terms may be inadequate and that, in the event of any such breach or threatened breach, LMI shall, in addition to all other remedies which may be available to it at law, be entitled to equitable relief in the form of preliminary and permanent injunctions without the necessity of proving damages. You and the Contracting Party further agree that the terms

of these confidentiality terms shall in no way restrict or limit any other remedies LMI may have against You and the Contracting Party. LMI shall be entitled to recover the costs including reasonable attorney's fees, to enforce its rights under these confidentiality terms.

15.5 Return of Confidential Information. Upon the written request of LMI, You and the Contracting Party shall return, or certify that it has destroyed, all information disclosed under these confidentiality terms and any memorandum, diagrams, or any other documents containing any information disclosed under these confidentiality terms.

15.6 Enforceability. In the event any one or more of the provisions of these confidentiality terms shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

15.7 Application. This Confidentiality Agreement shall control in lieu of and notwithstanding any proprietary or restrictive legends or statements inconsistent with these confidentiality terms that may be associated with any particular information disclosed hereunder.

15.8 Surviving Obligations. The confidentiality obligations under these Terms shall survive any termination, expirations, or rescission of these Terms, as well as continue beyond any time in which You were using the Service.

## **16. Force Majeure**

No party shall be liable for any performance failure, delay in performance, or lost data under these Terms (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by (i) failures of Software or other computer programming, (ii) natural weather events, or (iii) any other causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, failure of suppliers, subcontractors, and carriers, or party to substantially meet its performance obligations under these Terms, provided that in any such event, as a condition to the claim of non-liability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon.

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