

AKAMAI TERMS & CONDITIONS

1. DEFINITIONS. “Agreement” means these Terms & Conditions, applicable Transaction Documents, the AUP and any related attachments. “Akamai” means Akamai Technologies, Inc, its Affiliates, or entities authorized by Akamai to provide a Service. “Customer” means the entity that orders the Services and is responsible for the payment of fees under, and compliance with, this Agreement. “Service” means services or products ordered by Customer in a Transaction Document; Service descriptions, billing methodologies, usage requirements and related terms are located at www.akamai.com/service and are incorporated herein. “Transaction Documents” means documents that set forth the description of the Services being purchased from Akamai and any additional terms set forth in Order Forms, Statements of Work or other documents executed by the parties. Other capitalized terms used here have the definitions set forth below or in the Transaction Document(s).

2. SCOPE. Customer and its Affiliates may order Services by executing the applicable Transaction Documents, which shall become effective when counter-signed by Akamai. “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. Transaction Documents entered into between Akamai and an Affiliate of the other party hereto shall be two-party agreements between Akamai and such Affiliate. Unless otherwise agreed by the parties, any conflict between a Transaction Document and these terms will be resolved in favor of the Transaction Document.

3. RESPONSIBILITIES

3.1 Akamai shall provide the Services as set forth in the applicable Transaction Document. All rights in the Services are reserved to Akamai.

3.2 Each party shall perform its obligations as set forth in this Agreement. Except as expressly permitted in a particular Transaction Document, Customer shall not resell the Services to a third party nor enter into any similar relationship with a third party to enable the purchase or use of the Services through Customer. For purposes of the foregoing, end-users accessing Customer’s web site are not considered to be using the Services. When using the Services, Customer shall comply with Akamai’s acceptable use policy (“AUP”) located at www.akamai.com/html/policies/index.html.

4. PAYMENT TERMS

4.1 Customer shall pay for the Services within thirty days of invoice date. All prices are in U.S. dollars, and all payments shall be in U.S. currency, unless otherwise set forth in the Transaction Document. All taxes (other than taxes assessed on the net income of Akamai) are the responsibility of Customer. There shall be no deduction in respect of any such taxes, or any offset against payment for any taxes; and all payments shall be grossed up to take account of any withholding taxes. After the initial Term of the applicable Transaction Document, Akamai may amend the fees for Services upon thirty days prior notice if such change is generally applicable to its customers, provided that if Akamai increases the fees Customer shall have the right to terminate its purchase of the applicable Service without termination charge by providing written notice to Akamai within thirty days of the effectiveness of the increased fees.

4.2 Customer shall pay a late charge of one percent per month (or part of a month), or the maximum lawful rate permitted by applicable law, whichever is less, for all amounts not paid within thirty days of invoice date, plus all costs, including reasonable attorneys’ fees, incurred to collect any unpaid amounts. Unless prohibited by applicable law or regulation, all invoiced amounts not disputed in writing within sixty days of invoice date are deemed accepted. Restrictive endorsements or other statements on checks accepted by Akamai are not enforceable. From time to time, Akamai reserves the right to reasonably require payment assurance.

5. CONFIDENTIAL INFORMATION. This section 5 shall not apply so long as Akamai and Customer are parties to an effective non-disclosure agreement that would govern the disclosure of information hereunder. Any information that a receiving party knows or has reason to know is confidential or proprietary (because such information is identified by the disclosing party orally or in writing as such or is not generally known in the relevant industry), is “Confidential Information” and shall remain the sole property of the disclosing party. The terms of any Transaction Document shall also constitute Confidential Information. Neither party shall disclose, use, modify, copy, reproduce or otherwise divulge Confidential Information of the other, except as required by law or in furtherance of the relationship between the parties. This section shall not apply to information disclosed in published materials, generally known to the public, lawfully obtained from any third party, or known to or independently developed by the receiving party. Neither party shall use the other party’s name, logo or marks without the other party’s prior written consent.

6. TERM AND TERMINATION

6.1 The “Term” is set forth in the Transaction Document and automatically renews for successive terms of equal duration unless either party notifies the other of its intent to not renew at least sixty days prior to the expiration of the applicable Term. Termination of an individual Transaction Document shall not terminate any Services under other Transaction Documents. These Terms & Conditions shall apply to, and remain effective for the Term of, any extant Transaction Document. If no Transaction Document is in effect, either party may terminate these Terms & Conditions at any time upon notice to the other party.

6.2 Either party may terminate a Transaction Document if the other materially breaches this Agreement and such breach continues unremedied for thirty days following notice or such other period designated herein. Akamai may immediately suspend all Transaction Documents for payments not received within thirty days of payment due date.

6.3 Customer acknowledges and confirms that the fees set forth in the Transaction Document are committed for the Term and will become payable regardless of actual use of Services. Except for a termination by Customer as expressly permitted hereunder, if a Transaction Document is terminated prior to end of the Term for any reason (including if Customer ceases use of the Services prior to expiration or termination of the Term), such a termination shall constitute a material breach of the Agreement. Because it is very difficult to accurately estimate the harm caused by this breach or any other material breach of the Agreement by the Customer, the parties agree that as compensation and not as a penalty Akamai shall be entitled to invoice, and Customer agrees to pay, the committed fees outstanding for the remainder of the then-current Term, in addition to all other fees outstanding at the date of termination.

7. INDEMNIFICATION

7.1 Akamai shall defend, indemnify and hold Customer harmless from and against any claim made, or any suit or proceeding brought against Customer, but only to the extent it is based on an allegation that a Service furnished hereunder directly infringes an issued patent or other intellectual property right under the laws of a country in which the Service is actually provided to Customer. If a Service is held to infringe and the use enjoined, Akamai shall have the option, at its own expense, to procure for Customer the right to continue using the Service; or replace same with a non-infringing service; or modify such Service so that it becomes non-infringing. If Akamai is unable to provide one of the foregoing remedies, Customer may terminate the applicable Service without termination charge upon written notice to Akamai. Akamai shall have no liability for any infringement of patents, copyrights, or other intellectual property rights resulting from Customer Content (as defined below), use of the Service other than as specified in relevant Akamai documentation, the use or combination of the Service with any hardware, software, products, applications, data or other materials not specified or provided by Akamai, or to the extent the claims arise from products or services not supplied by Akamai.

7.2 Customer is solely responsible for all content and applications, including any third party content or applications, provided to Akamai for delivery via the Akamai network (“Customer Content”). Customer retains all right, title and interest in its Customer Content, and Customer Content shall not be deemed part of any Service by virtue of being located on or served from Akamai servers. Customer acknowledges that Akamai does not assume and should not be exposed to the business and operational risks associated with Customer’s business or any aspects of the operation or contents of Customer’s web site(s). Customer shall defend, indemnify, and hold Akamai harmless as a result of any claim by a third party against Akamai with respect to any Customer Content, operation of Customer’s web site(s) (including without limitation any activities or aspects thereof or commerce conducted thereon), or misuse of a Service or the Akamai network.

7.3 The indemnified party shall (a) promptly notify the indemnifying party in writing of any claim, suit or proceeding for which indemnity is claimed, and (b) allow the indemnifying party solely to control the defense of any claim, suit or proceeding. The indemnifying party shall not enter into any settlement that imposes liability or obligations on the indemnified party without obtaining the indemnified party’s prior written consent.

8. DISCLAIMER AND LIMITATIONS. 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 ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR SECURITY. EXCEPT FOR EACH PARTY’S LIABILITY ARISING OUT OF ITS INDEMNIFICATION, PAYMENT AND CONFIDENTIALITY OBLIGATIONS AND TO THE FULLEST EXTENT PERMISSIBLE BY LAW, LIABILITY FOR ALL CLAIMS ARISING HEREUNDER, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER TO AKAMAI UNDER THE APPLICABLE TRANSACTION DOCUMENT DURING THE SIX MONTHS PRECEDING THE CLAIM. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOST DATA, LOST PROFITS, BUSINESS INTERRUPTION, REPLACEMENT SERVICES OR OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR INDIRECT DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY.

9. MISCELLANEOUS. Any notice required or permitted shall be in writing and shall be delivered to the contact person listed on the Transaction Documents by personal delivery, deposited with an established overnight courier, or mailed by certified or registered mail, return receipt requested. Such notice will be deemed to have been given as of the date it has been so delivered or deposited, or five days after it has been mailed. Customer may not assign this Agreement, including by operation of law, without Akamai’s prior written consent, which will not be unreasonably withheld, delayed or conditioned. The Agreement is binding upon and inures to the benefit of each party and its successors and permitted assigns. The Agreement shall be interpreted under Massachusetts law. Notwithstanding any local laws to the contrary, the parties agree that the governing language of this Agreement and any notices related hereto shall be English. Prior agreements, representations, and statements with respect to the subject matter are superseded. This Agreement may be changed only in writing signed by Akamai and Customer, and no effect shall be given to terms set forth in any Customer purchase order, confirmation or similar document. No failure or delay of either party to exercise or enforce any of its right operates as a waiver of any such right. If any provision is held unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions shall remain in effect. If either party is prevented from performing any of its obligations due to any cause beyond the party’s reasonable control, that party’s performance will be excused for the period of the delay or inability to perform due to such occurrence. The parties are independent contractors. Sections 4, 5, 6.3, 8 and 9 shall survive termination.