

# AKAMAI TERMS & CONDITIONS

## **1. DEFINITIONS.**

**1.1** “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.

**1.2** “Agreement” means these Terms & Conditions, applicable Transaction Documents, the AUP and any related attachments.

**1.3** “Akamai” means: (i) Akamai Technologies, Inc. and its North American Subsidiaries (“ATI”) for any products or services provided in North America (the “North American Services”), and (ii) Akamai Technologies International AG and its Non-North American Affiliates (“Akamai Switzerland”) for any products or services provided outside North America (the “Non-North American Services”).

**1.4** “AUP” means Akamai’s acceptable use policy located at [www.akamai.com/html/policies/index.html](http://www.akamai.com/html/policies/index.html).

**1.5** “Customer” means the entity that orders the Services as specified on the Transaction Document incorporating these Terms & Conditions and is responsible for complying with this Agreement.

**1.6** “Force Majeure Event” shall mean, with respect to either party, any event or circumstance not created by it and beyond its reasonable control.

**1.7** “North America” for purposes of the Agreement means the area comprising Alaska, Canada, continental United States, and Hawaii.

**1.8** “Ordinary Access Elements” means any hardware, software, products, applications, data or other materials not provided by Akamai.

**1.9** “Services” means services or products ordered by Customer in a Transaction Document; Service descriptions, billing methodologies, usage requirements and related provisions are located at <http://www.akamai.com/service> (the “Services Page”) and are incorporated herein.

**1.10** “Technical Standard” means a technical standard that has been promulgated by a recognized third-party standards development organization.

**1.11** “Transaction Documents” means documents, including Order Forms, Statements of Work or other agreements executed by the parties, that set forth the Services being purchased from Akamai and any additional terms.

Other capitalized terms used in these Terms & Conditions and not defined in this Section 1 shall have the meanings ascribed to them below or in the Transaction Document(s).

## **2. SCOPE/RESPONSIBILITIES.**

**2.1** In consideration for payment of the fees specified in the applicable Transaction Document(s), and subject to Customer’s compliance with the terms of the Agreement, Customer has the right to access and use the Services specified in such Transaction Document.

**2.2** Customer and its Affiliates may order Services by entering into the applicable Transaction Documents. Transaction Documents entered into between Akamai and an Affiliate of the Customer shall be two-party agreements between Akamai and such Affiliate. Customer acknowledges and agrees that an Akamai Affiliate may enter into a Transaction Document with a Customer Affiliate, and “Akamai” as used herein shall mean such Akamai Affiliate with respect to such Transaction Document. Any Transaction Documents signed by ATI, Akamai Switzerland, and Customer shall be two, separate and independent, two-party agreements, one between ATI and Customer, and one between Akamai Switzerland and Customer, each with their own completely independent rights and obligations. Unless otherwise agreed by the parties, any conflict between a Transaction Document and these Terms & Conditions will be

resolved in favor of the Transaction Document.

**2.3** The parties hereby acknowledge and agree (i) ATI shall only be obligated to and shall only provide the North American Services, (ii) Akamai Switzerland shall only be obligated to and shall only provide the Non-North American Services, and (iii) in both cases the provisions of such Services and any liabilities for failure to provide such Services shall be the sole obligation of the providing Akamai party. The obligations of ATI and Akamai Switzerland under the Transaction Documents and these Terms & Conditions will be separate and not joint, and neither ATI nor Akamai Switzerland shall be responsible for the Services that the other is obligated to provide.

**2.4** When using the Services, Customer shall comply with the AUP.

**2.5** Except as expressly permitted in a particular Transaction Document, Customer shall not resell the Services to a third party (including Customer Affiliates) nor enter into any similar relationship with a third party to enable the purchase or use of the Services through Customer, except that the foregoing shall not be violated by end-users or Customer Affiliates accessing and/or using Customer’s web sites or applications.

**2.6** Akamai may modify or terminate any Service if such modification or termination is generally applicable to all customers. In the event of such a modification or termination, Customer may terminate the applicable Order Form or other Transaction Document without termination charge if Akamai fails to remedy a material decrease in the functionality of the affected Service within thirty days of written notice from such Customer.

**2.7** Customer acknowledges and agrees that Akamai is not responsible for any delays in access to the Service due to reasons that are not solely attributable to Akamai, and such delays shall not affect the Billing Effective Date specified in a Transaction Document.

**2.8** Customer further acknowledges and agrees that Akamai shall bear no liability in connection with: (i) non-Akamai products or services that Customer chooses to use in connection with the Services, or (ii) Customer-devised or Customer-implemented rules (and associated misconfigurations and outages) or actions taken by Customer that might result in denial of service, availability issues, or performance degradation.

## **3. REPRESENTATIONS AND WARRANTIES.**

**3.1** Akamai represents and warrants for the Term that it shall provide the Services substantially in accordance with the Services Page.

**3.2** Akamai represents and warrants that it will perform the Services in a competent and workmanlike manner in accordance with the level of professional care customarily observed by a skilled professional rendering similar services and that it will retain sufficient and appropriately qualified personnel to deliver the Services under this Agreement.

**3.3** Each party represents and warrants that it has the authority to enter into this Agreement and perform its obligations hereunder.

**3.4** Each party represents and warrants that it is and shall be in compliance with applicable laws and regulations.

**3.5** Customer shall ensure that its network and systems used to access and use the Services comply with any technical requirements specified by Akamai in the Agreement or any document(s) incorporated by reference therein.

**3.6** Customer shall have no claim for a breach of Akamai warranties set forth in Sections 3.1 and 3.2 if the Customer is in material breach of the Agreement (including, without limitation, payment default) or if a Service failure arises as a result of Customer’s use of the Services in a manner inconsistent with the Agreement or Akamai’s written instructions.

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### **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 any Service 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.

**4.3** ATI shall only be entitled to compensation for the provision of the North American Services and Akamai Switzerland shall only be entitled to compensation for the provision of the Non-North American Services. However, the parties acknowledge that for convenience, ATI shall serve as the billing and collections agent for both the North American Services and Non-North American Services, which will be separately identified but billed as part of the same invoice.

### **5. CONFIDENTIAL INFORMATION; AND OWNERSHIP.**

**5.1** 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 of each party. Neither party shall disclose, use, modify, copy, reproduce or otherwise divulge Confidential Information of the other, except as required by law or as necessary for Akamai to provide the Services in accordance with or as otherwise permitted by the Agreement. This Section 5 shall not apply to information disclosed in published materials, generally known to the public, lawfully obtained from any third party, or previously 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.

**5.2** Akamai reserves all rights, title, and interest in the Services, and Akamai or its licensors retains all ownership in all intellectual property rights related to the Services.

**5.3** Customer reserves all rights, title, and interest in Customer Content (within the meaning of Section 7.2 hereof), and Customer or its licensors shall retain all ownership in all intellectual property rights related to Customer Content. Customer hereby consents to Akamai's use of Customer Content to provide the Services to Customer as specified herein.

### **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 or terminate all Transaction Documents and Services for undisputed 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. Upon termination of a Transaction Document by Akamai as permitted under Section 6.2 hereof, all fees for Services specified in the applicable Transaction Document, either outstanding or due during the remainder of the Term, shall automatically accelerate and be immediately due and payable in full.

### **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 that 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. Notwithstanding the foregoing, Akamai will have no defense or indemnity obligation for any intellectual property claim to the extent it is based on: (i) the Customer Content; (ii) Customer's modification of the Services in a manner not approved or instructed by Akamai; (iii) use or combination of the Services with any Ordinary Access Elements and the Services are incidental to the infringement allegations; or (iv) Akamai's implementation of a Technical Standard that any similarly-situated provider would necessarily be required to implement in a like manner to provide services similar to the Services.

**7.2** Customer is solely responsible for all content and applications, including any third-party content or applications, provided to Akamai in connection with Customer's access to or use of the Services (collectively, "Customer Content"). 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) and/or applications(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) and/or application(s) (including without limitation any activities or aspects thereof or commerce conducted thereon), or misuse of a Service or the Akamai network.

**7.3** A party eligible for indemnification in this Section 7 shall (a) promptly notify the indemnifying party in writing of any claim, suit

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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; LIMITATION OF LIABILITY; AND EXCLUSION OF CONSEQUENTIAL DAMAGES.**

**8.1** WITH THE EXCEPTION OF THE WARRANTIES PROVIDED FOR UNDER SECTION 3 OF THESE TERMS & CONDITIONS, 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.

**8.2** EXCEPT FOR EACH PARTY'S LIABILITY ARISING OUT OF ITS INDEMNIFICATION, PAYMENT AND CONFIDENTIALITY OBLIGATIONS TO THE OTHER PARTY SET FORTH HEREIN 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 TWELVE MONTHS PRECEDING THE CLAIM.

**8.3** EXCEPT FOR A PARTY'S LIABILITY ARISING OUT OF ITS INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS TO THE OTHER PARTY SET FORTH HEREIN AND TO THE FULLEST EXTENT PERMISSIBLE BY LAW, 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, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**8.4** THE LIMITATIONS AND EXCLUSIONS SET FORTH IN THIS SECTION 8 SHALL NOT APPLY TO DAMAGES ARISING OUT OF A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

**9. EXPORT CONTROL.** Customer acknowledges and agrees that any products, materials, software and/or technology provided by Akamai under this Agreement are subject to the export control laws and regulations of the United States. Customer agrees that its use of any of the foregoing under this Agreement shall be in compliance with such laws and regulations.

**10. NOTICE.** Any notice required or permitted shall be in writing and shall be delivered to the contact person listed on the Transaction Documents by an established overnight commercial carrier. Such

notice will be deemed to have been given five days after it has been deposited with such carrier.

**11. FORCE MAJEURE.** Neither party shall be liable for any failure to perform its obligations under this Agreement as a result of a Force Majeure Event. The party prevented from performing its obligations as a result of the Force Majeure Event shall promptly notify the other party of the same and use commercially reasonable endeavors to mitigate any damages suffered by the other party as a result of such non-performance and resume performance as soon as possible.

**12. NO ASSIGNMENT.** 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.

**13. SUCCESSORS IN INTEREST.** This Agreement is binding upon and inures to the benefit of each party and its successors and permitted assigns.

**14. GOVERNING LAW AND JURISDICTION.** Regardless of where any action may be brought, this Agreement shall be interpreted under the laws of the State of Delaware. 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. The parties exclude application to this Agreement of the United Nations Convention on Contracts for the International Sale of Goods. Customer hereby agrees to submit to the non-exclusive jurisdiction of the state and federal courts in and of the Commonwealth of Massachusetts.

**15. INTEGRATION.** Prior agreements, representations, and statements with respect to the subject matter of this Agreement are superseded by this Agreement. This Agreement may be changed only in a written document signed by Akamai and Customer, and no effect shall be given to terms set forth in any Customer purchase order, confirmation or similar document.

**16. WAIVER AND SEVERABILITY.** No failure or delay of either party to exercise or enforce any of its rights hereunder operates as a waiver of any such right. If any provision of this Agreement is held unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions shall remain in effect.

**17. INDEPENDENT CONTRACTORS.** The parties are independent contractors.

**18. SURVIVAL.** Sections 3.6, 4, 5, 6.3, 7, 8, 9, 10, 14 and 16 of these Terms & Conditions shall survive termination or expiration of the Agreement.