

AKAMAI TERMS & CONDITIONS

1. DEFINITIONS. “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. “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 Ordering Activity, an entity entitled to order under a General Services Administration (GSA) Schedule contract as defined in GSA Order Acquisition Decision Memorandum (ADM) 4800.2i and as revised from time to time, that orders the Services and is responsible for the payment of fees under, and compliance with, these Terms & Conditions. “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. 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 ordered from it as set forth in the applicable Transaction Document(s). 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”), the current version of which is attached hereto.

4. PAYMENT TERMS

Customer shall pay for the Services within thirty days of the invoice date, or as set forth in the GSA Schedule contract. All prices are in U.S. dollars, and all payments shall be in U.S. currency, unless otherwise set forth in the Transaction Document.

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. If they are not, 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. Neither party shall disclose, use, modify, copy, reproduce or otherwise divulge Confidential Information of the other, except as required by law or

court order, 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. 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.

6.2 Any alleged breach of this Agreement shall be resolved in accordance with the Contract Disputes Act, 41 U.S.C §§ 7101-7109. Akamai may terminate Transaction Documents placed hereunder if such remedy is granted to it after conclusion of the Contract Disputes Act dispute resolutions process, or if such remedy is otherwise ordered by a United States Federal Court.

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. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

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).

7.3 The Customer shall (a) promptly notify Akamai in writing of any claim, suit or proceeding for which indemnity is claimed, and (b) allow Akamai to control the defense of any claim, suit or proceeding subject to 28 U.S.C. §516. Akamai shall not enter into any settlement that imposes liability or obligations on the Customer without obtaining the Customers’s prior written consent.

8. DISCLAIMER AND LIMITATIONS. EACH PARTY EXPRESSLY

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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. NOTWITHSTANDING THE FOREGOING, FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF CUSTOMER RECEIPT, AKAMAI WARRANTS THAT IT WILL REPAIR OR REPLACE ANY PRODUCT PROVIDED HEREUNDER THAT DOES NOT PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE WRITTEN MATERIALS ACCOMPANYING IT. 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. THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. §§ 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75 – PRICE REDUCTIONS, CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT –

FAILURE TO PROVIDE ACCURATE INFORMATION).

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. Neither party may assign this Agreement, including by operation of law, without the other party'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 U.S. Federal 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, 8 and 9 shall survive termination.