

Aura LCDN End User License and Limited Warranty Agreement

NOTICE: PLEASE CAREFULLY READ AND REVIEW THIS AURA LCDN END USER LICENSE AND LIMITED WARRANTY AGREEMENT (THIS “EULA”). THIS EULA SPECIFIES THE TERMS UNDER WHICH AN END USER (“CUSTOMER”) IS ALLOWED TO INSTALL AND USE THE SOFTWARE (AS DEFINED BELOW) SUPPLIED BY AKAMAI TECHNOLOGIES, INC. OR ANY OF ITS AFFILIATES (“AKAMAI”) AND ANY ASSOCIATED THIRD-PARTY SOFTWARE. CUSTOMER MAY ONLY LICENSE THE SOFTWARE FROM AKAMAI OR ANOTHER APPROVED SOURCE. AN “APPROVED SOURCE” MEANS (A) AKAMAI OR (B) A RESELLER, SYSTEMS INTEGRATOR, OR DISTRIBUTOR AUTHORIZED BY AKAMAI IN ACCORDANCE WITH THE TERMS OF THE RESELLER’S, SYSTEMS INTEGRATOR’S OR DISTRIBUTOR’S AGREEMENT WITH AKAMAI TO DISTRIBUTE AND/OR SUBLICENSE, AS THE CASE MAY BE, THE APPLICABLE SOFTWARE WITHIN CUSTOMER’S TERRITORY TO END USERS. SUBJECT TO AND IN ACCORDANCE WITH ITS APPLICABLE AGREEMENT WITH AKAMAI, ANY APPROVED SOURCE THAT IS NOT AKAMAI SHALL ENSURE CUSTOMER IS BOUND BY EITHER (A) THIS EULA BY EXECUTION AND DELIVERY OF THIS EULA BY CUSTOMER TO AKAMAI OR (B) AN AGREEMENT BETWEEN THE APPROVED SOURCE AND CUSTOMER THAT CONTAINS TERMS SUBSTANTIALLY SIMILAR TO, AND NO LESS RESTRICTIVE OR LIMITED THAN, THIS EULA, WHICH THE APPROVED SOURCE SHALL ENSURE IS BINDING ON, AND ENFORCEABLE AGAINST, THE CUSTOMER IN THE APPLICABLE JURISDICTION.

1. Agreement to EULA. By executing this EULA or using the Software (as defined herein), Customer is consenting to be bound hereby. If Customer does not agree to be bound by this EULA, it may not download, install or use the Software.
2. Definitions. As used in this EULA, the following capitalized terms shall have the following meanings:
 - a) “Software” shall mean solely the following Akamai-supplied software:
 - i) Aura LCDN software suite which consists of the following components: HyperCache, Intercept Service, Request Router, Aura Management Center and Basic Monitoring, a default installation of Aura Analytics Service;
 - ii) the following software optionally available to customers of Aura LCDN: (A) Aura Local DNS, (B) Aura Licensed CDN – Encryption, (C) VOD Asset Manager; (D) Aura Advanced Analytics Service; and/or (E) Licensed Multicast Solution;
 - iii) configuration and debugging scripts and files;
 - iv) all patches, error corrections, updates, revisions and customizations to, and plug-ins for, the software described in clauses 2(a)(i)-(iii) above.

The software components in clauses 2(a)(i)-(ii) are provided in machine-readable object code form only; the software components in clause 2(a)(iii) may be provided in human-readable form. Software descriptions, billing methodologies, usage requirements and similar terms applicable to the Software are located at www.akamai.com/service and incorporated herein.

- b) “Transaction Document” shall mean any individual order form or purchase order for

the license of the applicable Software that is executed by both an Approved Source and Customer or issued by Customer and accepted by an Approved Source in writing.

c) “User Documentation” shall mean the user documentation for the Software electronic access to which is provided by Akamai, including all updates and revisions thereto. The Software and the User Documentation are sometimes collectively referred to herein as the “Program.”

3. License Grant.

Conditioned on compliance with the terms and conditions of this EULA, Akamai grants to Customer, and Customer accepts, a non-exclusive, non-transferable, revocable license to use the Software and User Documentation supplied by Akamai and for which Customer has entered into a Transaction Document and paid the required license and other fees to an Approved Source during the Term (as defined below). The Software may be used by Customer solely for its own internal business purposes on a physical computing device or virtual machine environment provided or expressly qualified by Akamai for which the Software was designed, and subject to the number of entitlements and other usage limitations as may be set forth or incorporated by reference in the applicable Transaction Document for such Software. Customer and Akamai intend and agree that the Software is being licensed not sold, and that the words “purchase”, “sold” or similar or derivative words are understood and agreed to mean “license” and that the word “Customer” or similar or derivative words is understood and agreed to mean “Licensee.” Except for the components defined in clause (2)(a)(iii) herein, human-readable (or other source code) for the Software will not be provided or disclosed to Customer. Customer agrees that Customer will not pledge, lease, rent, or share Customer’s rights under this EULA, and that Customer will not, without Akamai’s prior written consent, assign or transfer Customer’s rights hereunder. Customer agrees that Customer may not decompile, disassemble, reverse engineer, modify, adapt, or otherwise translate the Software (in whole or in part) or permit a third party to do so and that Customer shall not make the Software available to any other third party, or create works derivative of the Software, without Akamai’s express written consent. All rights not expressly granted herein are hereby reserved to Akamai.

Customer may make one copy of the Software and the User Documentation for backup purposes. Any such copies of the Software or the User Documentation shall include Licensor’s copyright and other proprietary notices. Except as authorized under this paragraph, no copies of the Program or any portions thereof may be made by Customer or any person under Customer’s authority or control.

4. Proprietary Rights and Third-Party Software.

Akamai and its licensors retain all copyrights, trade secret rights, patents, trademarks, and any other proprietary rights covering or relating to the Software. Customer acknowledges that the Software is proprietary and confidential information belonging to Akamai and its licensors, and Customer will maintain the confidentiality thereof. This EULA does not convey to Customer any interest in or to the Software, but only a limited right of use revocable in accordance with the terms of this EULA. Akamai may distribute third party software programs with the Software that are not part of the Software and that Customer must install. These third-party programs are subject to their own license terms. If

Customer does not agree to abide by the applicable license terms for such third-party software programs, then Customer must not install them. A list of the associated third party software programs that may be required or utilized by the Software [can be found here](#), and Customer hereby agrees to properly install and abide by the terms and conditions thereof.

5. Fees.

The license fees paid by Customer are paid in consideration of the license granted under this EULA. Unless otherwise agreed in writing with Akamai, Customer shall reconcile its entitlements and actual usage once per calendar quarter, by comparing the actual usage for such quarter with the entitlements already purchased. In the event that actual usage during such quarter exceeds the entitlements purchased (such excess, the “Overage Usage”), Customer shall purchase the number of additional entitlements necessary to cover the Overage Usage within thirty (30) days after the end of such calendar quarter. Akamai reserves the right to audit Customer’s compliance with the foregoing on a quarterly basis. In the event such audit discloses non-compliance with this EULA, Customer shall promptly pay to Akamai the appropriate fees, plus the reasonable cost of conducting the audit.

6. Term.

This EULA is effective upon Customer's execution of this EULA and payment of the license fees for the Software to the Approved Source and shall continue until the earlier of (a) the end of the applicable length of term (if any) specified on the Transaction Document for such Software if such Transaction Document is for a term license subject to annual fees or (b) the date terminated (the “Term”). Customer may terminate this EULA for the Software at any time by returning the Software and all copies or portions thereof to Akamai. Akamai may terminate this EULA upon the breach by Customer of any term hereof. Upon such termination by Akamai, Customer shall return to Akamai the Software and all copies or portions thereof. Termination of this EULA shall not prejudice Akamai’s rights to damages or any other available remedy.

7. Limited Warranty.

Software Warranty: Akamai warrants that, with normal use and service, the Software shall materially conform to Akamai’s then-current published specifications as such published specifications exist at time of shipment for the specific most current release of such Software that is shipped to the Customer for a period of ninety (90) days from the date of shipment (the “Warranty Period”). During the Warranty Period, as Customer’s sole and exclusive remedy, Akamai will provide correction or workaround of identified problems, including patches, corrective Software releases or other means reasonably determined by Akamai to correct the particular Software’s failure to conform to the warranty, which means may include Customer being required to upgrade to a more current version of such Software, provided that the Customer has notified Akamai in writing of the nature of the non-conformity. This warranty shall not apply if any Software has been (a) modified or altered by anyone other than Akamai, (b) abused or misapplied, or (c) used in combination with hardware or software other than the software programs or products sold by Akamai or expressly qualified by Akamai for which the Software was designed. In no event does Akamai warrant that the use of Software will be error free or uninterrupted. Akamai’s sole obligation under the software warranty shall be to provide the remedies described above. This warranty does not apply to (a) Evaluation Software

(as defined below) or any other Software licensed for beta, evaluation, testing or demonstration purposes or (b) any other Akamai product or service.

Akamai provides no warranty, guarantee or other agreement, whether express, implied, or statutory, in respect of any goods, equipment, hardware, cabling, materials, services, support, products or licensed software supplied by parties other than Akamai or its Affiliates, and bears no responsibility therefor or for services in respect thereof. Third party software provided in connection with the Software hereunder is not Software for the purposes of this EULA.

Warranty Claims: Akamai shall incur no liability under this warranty if Customer fails to provide Akamai with notice of the alleged defect during the applicable Warranty Period. Akamai shall incur no liability under this warranty if Akamai's tests disclose that the alleged defect is due to causes not within Akamai's reasonable control, including alteration or abuse of the software.

Updates and upgrades are not included as part of the warranty. Updates and upgrades are available solely to the extent that Customer has entered into a fully paid up Transaction Document covering maintenance and/or support services entitling Customer to such updates and upgrades.

8. Evaluation Software License.

If the Software the Customer has received pursuant to this EULA is used for evaluation and demonstration ("Evaluation Software"), the license to the Evaluation Software is limited to use strictly by Customer's employees and contractors solely for Customer's internal, non-productive evaluation purposes and is further limited to a period not to exceed thirty (30) days from the date Customer acquires the Evaluation Software. Customer's rights under this EULA will terminate immediately upon the earlier of (a) the expiration of the evaluation period, or (b) such time that the Customer purchases a license to a commercially released, non-evaluation version of the Software pursuant to a Transaction Document. Akamai reserves the right to terminate Customer's license to Evaluation Software at any time in its sole discretion. Customer agrees to return or destroy its copy of Evaluation Software and User Documentation upon termination of this EULA for any reason. Akamai is licensing the Evaluation Software on an "as is" basis and disclaims any warranty or liability obligations of any kind with respect to Evaluation Software, whether express or implied, to Customer.

9. Disclaimers.

EXCEPT FOR THE EXPRESS WARRANTIES STATED IN SECTION 7, THE SOFTWARE IS PROVIDED "AS IS", AND AKAMAI DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY WITH RESPECT TO THE AKAMAI SOFTWARE PROVIDED UNDER THIS EULA, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTIES OF NON-INFRINGEMENT, TITLE OR SECURITY, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. AKAMAI'S EXPRESS WARRANTIES WILL NOT BE ENLARGED, DIMINISHED OR AFFECTED BY, AND NO OBLIGATION OR LIABILITY WILL ARISE OUT OF, AKAMAI

RENDERING TECHNICAL OR OTHER ADVICE OR SERVICE IN CONNECTION WITH THE SOFTWARE. CUSTOMER HEREBY ACKNOWLEDGES AND AGREES THAT IN EACH JURISDICTION IN WHICH ANY SUCH DISCLAIMER IS UNENFORCEABLE, THE DURATION OF ANY IMPLIED WARRANTY THAT IS NOT EFFECTIVELY DISCLAIMED WILL BE LIMITED TO THE WARRANTY PERIOD.

10. Limitation of Liability.

TO THE FULLEST EXTENT PERMISSIBLE BY LAW, AKAMAI'S LIABILITY FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THIS EULA, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT OF LICENSE FEES PAID OR PAYABLE BY CUSTOMER TO AKAMAI UNDER THE APPLICABLE TRANSACTION DOCUMENT FOR THE PARTICULAR SOFTWARE FROM WHICH THE CLAIM ARISES DURING THE SIX MONTHS PRECEDING THE CLAIM. IN NO EVENT SHALL AKAMAI 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.

11. Intellectual Property Indemnification.

a) 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 Software furnished hereunder directly infringes an issued patent or other intellectual property right under the laws of a country in which the Software is actually provided to Customer. If Software 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 Software; or replace same with a non-infringing software; or modify such Software so that it becomes non-infringing. If Akamai is unable to provide one of the foregoing remedies, Customer may terminate the Transaction Document for the applicable Software 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 any Customer content or applications, use of the Software other than as specified in relevant Akamai documentation, the use or combination of the Software with any hardware, software, products, applications, data or other materials not specified or provided by Akamai, Customer's continuing allegedly infringing activities after being notified thereof, or to the extent the claims arise from products or services not supplied by Akamai. This Section 11 states Customer's sole and exclusive remedy in the event that the Software infringes the intellectual property rights of any third party.

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

12. Use of Software in Connection with the Akamai Network.

When using the Software in connection with the Akamai Network (as defined in the AUP

(defined below)), Customer will comply with the [Akamai Acceptable Use Policy](#) (“AUP”), which is incorporated into this EULA by this reference.

13. Export Control; U.S. Government Customers.

Customer acknowledges the Software is subject to export controls under the laws and regulations of the United States and any other applicable countries’ laws and regulations. Customer will not export, re-export, distribute or supply the Software or the Program (including any part of the Software or Program or any direct product thereof), confidential information, or related technical data in contravention of the export control laws of any jurisdiction. If the Software is acquired under the terms of a Department of Defense or civilian agency contract, the Software is “commercial item” as that term is defined at 48 C.F.R. 2.101 (Oct. 1995), consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995) of the DoD FAR Supplement and its successors. All U.S. Government end users acquire the Software with only those rights set forth in this EULA.

14. Books and Records.

Customer will keep books and records in accordance with generally accepted accounting principles accurately showing all transactions and information relating to this EULA. Such books and records shall be preserved for at least five (5) years from the date of entry to which they pertain and be open to inspection by representatives and agents of Akamai at reasonable times upon reasonable notice. Customer hereby agrees that Akamai may provide a copy of this EULA and all information relating to this EULA to licensors of third-party software programs provided to Customer by Akamai for use with the Software.

15. Governing Law; Venue.

This EULA and any and all claims relating to the Software shall be governed by the laws of the Commonwealth of Massachusetts, without regard to or application of its choice of law of law rules or principles. Disputes will be heard in the appropriate federal or state courts located in the Commonwealth of Massachusetts. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this EULA.

16. No Liability of Suppliers and Licensors to Akamai.

Customer acknowledges that its rights under this EULA, in the nature of warranty or otherwise, are solely against Akamai. NO AKAMAI SUPPLIER OR LICENSOR MAKES ANY WARRANTY, ASSUMES ANY LIABILITY, OR UNDERTAKES TO FURNISH TO CUSTOMER ANY SUPPORT OR INFORMATION CONCERNING THE AKAMAI SOFTWARE OR PROGRAMS OR ANY PORTION THEREOF. Customer hereby releases all Akamai suppliers and licensors from any claims, damages or losses arising from the use of the Software or Program, regardless of the form of action.

17. Severability and Waiver.

If any provision of this EULA is held illegal or unenforceable under applicable law, the remaining provisions of this EULA will remain valid and fully enforceable. No delay or failure to take action under these terms and conditions will constitute a waiver by Akamai unless expressly waived in writing by a duly authorized officer of Akamai.

18. Modification. Customer may not amend terms and conditions of this EULA without the prior written consent of an authorized officer of Akamai. Akamai may modify the terms governing use of the Software at any time. Notice of such updates will be provided by posting the effective date on Akamai's Website. Customer consents to and agrees to be bound by the current terms of use if it continues to use the Software after the effective date of such modified terms of use.