

## **Version: December 9, 2009**

This is a License Agreement (the "Agreement") for certain software modules (the "Software") owned by Akamai Technologies, Inc. ("Akamai") that are useful in connection with Akamai's Media Analytics service offering.

Please read this Agreement. By enabling end users to access and integrate the Software with your branded media player, you agree to these terms. If you do not agree to the terms of this Agreement, the Software cannot be integrated with your media player or otherwise used for any purpose.

The Software consists of the following executables: (a) a loader module, (b) a logging module (either server or client side) and (c) an analytics module. These computer programs are provided to you and your end users in machine-readable (executable) form only. Akamai either owns or has the right to provide you the Software, portions of which may be copyrighted. The Software is provided at the cost set forth in the applicable Akamai services order form.

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### **Limited License**

You have a non-exclusive, personal and non-transferable right and license (a) to integrate the Software with your branded media player during runtime execution on an end user client machine, and (b) with Akamai's prior written consent, to bundle the Software with your branded media player and to distribute that bundled code to end users who will use the Software as provided in subsection 1(a). In either case, the Software shall only be used in connection with your authorized use of Akamai's Media Analytics service, and for no other purpose. For runtime execution, the Software shall be stored on Akamai servers and retrieved by the end user media player. Akamai shall have the right to modify the Software at any time within its discretion. Updated versions of the Software shall be made available as soon as reasonably practicable to ensure that end users implement such versions. You will ensure that anyone who obtains and uses the Software does so only in compliance with the terms of this Agreement. No right to sublicense is granted, and Akamai may terminate this license at any time upon notice to you. All other rights in and to the Software are hereby reserved.

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### **Restrictions**

#### **(a) Personally Identifiable Information**

The Software exposes an interface (the "Interface") through which analytics data is collected during an end user's normal runtime execution and use with your branded media player. You will ensure that your media player does not provide Akamai, through the Interface or otherwise, any personally identifiable information (PII), or any other information that can be used to uniquely identify, contact, or locate a single person or can be used with other sources to uniquely identify a single individual. Further, Akamai assumes no obligation and is not responsible to obtain end user consent or approval for integration of the Software with your branded media player, or to obtain any such end user consent or approval to collect analytics data using that Software.

#### **(b) Third Party Use, Reverse Engineering or Export**

You may not use, copy, modify or distribute the Software except as provided in this Agreement.

Except as set forth herein, the Software may not be used in association with any third party product or service including, without limitation, any third party content delivery network (CDN). Except as permitted by applicable law and this Agreement, neither you, nor your end-users, may decompile, reverse engineer, disassemble, modify, rent, lease, loan, distribute, sublicense, or create derivative works from, the Software or transmit the Software over a network. You may not use or otherwise export the Software except as authorized by United States law and the laws of the jurisdiction in which the Software was obtained. In particular, but without limitation, none of the Software may be used or otherwise exported or re-exported (a) into (or to a national or resident of) a United States embargoed country or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders. By using the Software, you represent and warrant that you are not located in, under control of, or a national or resident of any country or on any such list.

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### **No Warranty On Software**

You and your end users use the Software at your own risk. Akamai provides the Software to you "AS IS" and without warranty. You are not entitled to any hard copy documentation, maintenance, support or updates for the Software.

AKAMAI EXPRESSLY DISCLAIMS ALL WARRANTIES RELATED TO THE SOFTWARE, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. AKAMAI DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET YOUR REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. FURTHERMORE, AKAMAI DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO PORTIONS OF THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

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### **Limitation Of Liability**

In no event shall Akamai be liable to you for any damages exceeding any amount paid for the Software or the service with which the Software is used.

UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, SHALL AKAMAI BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS LICENSE, INCLUDING, BUT NOT LIMITED TO, DAMAGES RESULTING FROM ANY LOSS OF DATA CAUSED BY THE SOFTWARE. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THIS LIMITATION MAY NOT APPLY TO YOU.

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### **Government End Users**

If you are acquiring the Software on behalf of any part of the United States Government, the following provisions apply. The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR 12.212(b), as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and/or the accompanying documentation by the U.S. Government or any of its agencies shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement. Any technical data provided that is not covered by the above provisions is deemed to be "technical data-commercial items" pursuant to DFAR Section 227.7015(a). Any use, modification, reproduction, release, performance, display or disclosure of such technical data shall be governed by the terms of DFAR Section 220.7015(b).

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### **Controlling Law and Severability**

This Agreement shall be governed by the laws of the United States and those of the Commonwealth of Massachusetts. If for any reason a court of competent jurisdiction finds any provision, or portion thereof, to be unenforceable, the remainder of this Agreement shall continue in full force and effect.

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### **Complete Agreement**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous understandings regarding such subject matter. No amendment to or modification of this Agreement will be binding unless in writing.

Your rights under this Agreement will terminate automatically without notice if you fail to comply with any term(s) of this Agreement.

You may continue to license the Software under this Agreement for so long as you are using Akamai's Media Analytics service, or as Akamai shall otherwise agree in writing. Upon termination, your end users will no longer have the right to integrate and use the Software with your branded media player.