

Media Acceleration SDK License Agreement

This Media Acceleration SDK License Agreement (the “Agreement”) is for certain code (the “Software”) owned by Akamai Technologies, Inc. (“Akamai”) that is useful in connection with Akamai’s Media Acceleration offerings.

1. ACCEPTATION AND NATURE OF THIS AGREEMENT

- 1.1. By using the Software, or any modified version of the Software customized by Akamai for you (the “Licensee”), Licensee agrees to these terms. If Licensee does not agree to the terms of this Agreement, Licensee cannot use the Software for any purpose.
- 1.2. If Licensee is a customer using one or more Akamai products incorporating Media Acceleration, Customer’s use of the Media Acceleration SDK constitutes Customer’s acceptance of the terms of Media Acceleration outlined in Appendix A, subject to updates on <https://www.akamai.com/us/en/multimedia/documents/akamai/akamai-services.pdf>
- 1.3. This Agreement may also be part of a binding contract between the Licensee and Akamai as an integrated appendix to an order form or other type of service agreement between the Licensee and Akamai.
- 1.4. If the Licensee cannot accept to be bound by the stipulations of this Agreement, the Licensee shall immediately discontinue any use of the Media Acceleration SDK and Licensee shall immediately delete any copies of the Media Acceleration SDK in his possession.

2. DEFINITIONS.

For the specific purpose of this Agreement, the following terms shall have the following meaning:

- 2.1. “**Integrated App**” or the “**App**” shall mean Licensee’s application which has been integrated with Media Acceleration SDK to enable Akamai’s Media Acceleration technology for installation on end user devices (including but not limited to iOS and Android).
- 2.2. “**Integrated Website**” shall mean Licensee’s website which has been integrated with Media Acceleration SDK to enable Akamai’s Media Acceleration technology for delivery of Licensee’s website.
- 2.3. “**Media Acceleration SDK**” or “**Software**” shall mean the Akamai API in clear text, including a reference implementation and all related documentation for Licensee to enable his application or website with Media Acceleration
- 2.4. “**Media Acceleration**” is an Akamai product designed to help accelerate and improve the quality of streaming media and employs the use of multicast technology and technology to facilitate media distribution directly between end-users, using the end-users’ IP addresses, for the purposes of improving video quality for end-users and reducing network traffic.
- 2.5. “**Media Acceleration Global Infrastructure**” shall mean a cloud-based global content delivery network designated for Media Acceleration products.
- 2.6. “**Intellectual Property Rights**” shall mean any and all rights under patent law, copyright law, trade secret law, trademark law, and any and all other proprietary rights.

3. USE OF THE MEDIA ACCELERATION SDK

Subject to the terms and conditions of this Agreement, Akamai grants the Licensee a limited, worldwide, royalty-free, non-assignable and non-exclusive license to use the Media Acceleration

SDK solely to integrate Licensee's application(s) and website(s) to interact and exchange data with Media Acceleration Global Infrastructure and Akamai servers.

- 3.1. Except to the extent required by applicable third party licenses, or otherwise expressly permitted by this Agreement, the Licensee may not copy (except for backup purposes), modify, adapt, redistribute, decompile, reverse engineer, disassemble, or create derivative works of the Media Acceleration SDK or any part of the Media Acceleration SDK.
- 3.2. However, within the use permitted in this section, the Licensee may modify and create derivative works of the reference implementation that is part of the Media Acceleration SDK.
- 3.3. The Licensee agrees to use the Media Acceleration SDK only for purposes that are permitted by (a) this Agreement and (b) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions.
- 3.4. The Licensee agrees only to use the Media Acceleration SDK in full compliance with any terms and conditions applicable for the development, marketing and distribution of the Media Acceleration SDK as part of Licensee's applications or solutions on third party platforms.
- 3.5. The Licensee agrees that if he uses the Media Acceleration SDK to develop applications or integrate into solutions for general public users, he will protect the privacy and legal rights of those users according to all rules of relevant jurisdictions.
- 3.6. The Licensee agrees that he will not engage in any activity with the Media Acceleration SDK, including the development or distribution of an application or solution that interferes with, disrupts, damages, or accesses in an unauthorized manner the servers, networks, or other properties or services of any third party including, but not limited to, Akamai (among these Akamai servers) or any mobile communications carrier.
- 3.7. The Licensee agrees that he is solely responsible and liable for (and that Akamai has no responsibility to or liability towards the Licensee or to any third party, including the Licensee's end-users or Licensee's partners' end-users) any data, content, or resources that he may create, transmit or display through the Media Acceleration Global Infrastructure by the use of Akamai servers, and that the Licensee is solely responsible and liable for the consequences of his actions (including any loss or damage which Akamai may suffer) by doing so.
- 3.8. The Licensee agrees that he is solely responsible for (and that Akamai has no responsibility to the Licensee or to any third party, including the Licensee's end-users) and liable for any breach of his obligations under this Agreement, any applicable third party contract or Terms of Use, or any applicable law or regulation, and for the consequences (including any loss or damage which Akamai or any third party may suffer) of any such breach.

The Licensee's use of Media Acceleration SDK and any other Akamai Intellectual Property Rights is subjected to the terms and conditions of this Agreement. Only expressly permitted use according to this Agreement is allowed. All use outside the Agreement is prohibited unless Akamai grants permission in writing on a case by case basis.

4. NOTICE TO ENDUSERS

Subject to the terms and conditions of this Agreement, Akamai grants the Licensee a limited, worldwide, royalty-free, non-assignable and non-exclusive license to (1) distribute components of Media Acceleration SDK to end-users via Licensee's Integrated App for installation on end-users' devices and (2) use Media Acceleration SDK in its websites.

- 4.1. Licensee expressly acknowledge and agrees that his use of the Media Acceleration SDK for Licensee's Integrated App and website and distribution of components of the Media Acceleration SDK via Licensee's Integrated App to enable Media Acceleration are expressly conditioned upon his obtaining from his end users consent related to Media Acceleration set forth below. Licensee may obtain such consent by incorporating the terms comparable to following into the end user terms and conditions of the Integrated App:

This application or website uses Akamai's Media Acceleration technology. By accessing this application or website, you understand and agree that Akamai may employ the use of multicast technology and technology to facilitate media distribution directly between end-users, using the end-users' IP addresses, for the purposes of improving video quality for end-users and reducing network traffic. Akamai's Media Acceleration may use end-users' device resources, such as CPU, storage and bandwidth, and may increase network and data usage on end-users' network service plans. Additionally, if use of the Media Acceleration technology is dependent upon the use of a CPU, storage, bandwidth and data plan owned or controlled by a third party, you acknowledge and agree that your license to use the Media Acceleration technology is subject to you obtaining consent from the relevant third party for such use. You represent and warrant that by accepting these terms, you have obtained such consent.

The language above is not a legal advice to the Licensee. The Licensee is advised to consult with his own legal counsel in connection with the inclusion of such language. Licensee hereby indemnifies Akamai for any claims arising out of Licensee's failure to obtain necessary consent from Licensee's end users and viewers and/or inform them of available removal options.

- 4.2. Except to the extent required by applicable third party licenses, or otherwise expressly permitted by the Agreement, the Licensee may not copy (except for backup purposes), modify, adapt, redistribute, decompile, reverse engineer, disassemble, or create derivative works of the Media Acceleration SDK.

5. FUTURE VERSIONS

- 5.1. The Licensee agrees that the form and nature of the Media Acceleration SDK that Akamai provides may be updated, upgraded and changed. Akamai will use reasonable commercial efforts to notify Licensee in advance and to make future versions of the Media Acceleration SDK compatible with applications developed on previous versions of the Media Acceleration SDK, save for issues that are not controlled by Akamai.
- 5.2. Akamai will use reasonable commercial efforts to continue providing the Media Acceleration SDK (and any features within the Media Acceleration SDK) to Licensee, save for issues that are not controlled by Akamai.
- 5.3. The Licensee will use all reasonable commercial efforts to integrate the most recent versions the Media Acceleration SDK in his applications and solutions to enable interaction and exchange of data between his applications and solutions and Akamai servers on Media Acceleration Global Infrastructure, either directly or by partners. Accordingly, the Licensee warrants to implement, deploy, and distribute new versions such integrated applications and solutions as soon as reasonably possible, in agreement with Akamai.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1. The Licensee agrees that Akamai or third parties own all Intellectual Property Rights, title and interest in and to the Media Acceleration SDK. Akamai reserves all rights not expressly granted to the Licensee.
- 6.2. Nothing in this Agreement gives the Licensee a right to use any of Akamai's trade names, trademarks, service marks, logos, domain names, or other distinctive brand features for its Media Acceleration products.
- 6.3. The Licensee agrees that he will not remove, obscure, or alter any proprietary rights notices (including copyright and trademark notices) that may be affixed to or contained within the Media Acceleration SDK.

7. THIRD PARTY AND OPEN SOURCE SOFTWARE

Akamai may distribute third party software programs, including open source software, with the Software. These third party software programs are subject to their own license terms. Any use, reproduction and distribution of components of the Media Acceleration SDK licensed under a third party software license will be governed solely by the terms of that third party software license and not by this Agreement. The "Media Acceleration Third Party Software Addendum" listing the associated third party software programs that may be required or utilized by the Software can be found at (www.akamai.com/product/licenses). Licensee hereby agrees to properly install and abide by the terms and conditions thereof. If Licensee does not agree to abide by the applicable license terms for such third party software programs, then Licensee must not install them.

8. AKAMAI API

- 8.1. In the case that Akamai's API are used to retrieve data through Media Acceleration Global Infrastructure by Akamai servers, the Licensee acknowledges that the data may be protected by Intellectual property rights which are owned by Akamai or those parties that provide the data (or by other persons or companies on their behalf).
- 8.2. In the case that Akamai's API are used to retrieve personal data from Media Acceleration Global Infrastructure or Akamai servers, the Licensee acknowledges and agrees that he shall retrieve data only in full compliance with applicable law on protection of personal data.

9. TERMINATION OF THE AGREEMENT

- 9.1. If this Agreement is related to a service order form or other service agreement between the parties, this Agreement is automatically terminated if the related service agreements are terminated.
- 9.2. Akamai may at any time, terminate the Agreement with the Licensee if:
 - A. The Licensee has breached any provision of the Agreement, or
 - B. Akamai is required to do so by law.

10. DISCLAIMER OF WARRANTIES

THE LICENSEE EXPRESSLY UNDERSTANDS AND AGREES THAT HIS USE OF THE Media Acceleration SDK IS AT HIS SOLE RISK AND THAT THE Media Acceleration SDK IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND FROM AKAMAI.

THE LICENSEE'S USE OF THE Media Acceleration SDK AND ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE Media Acceleration SDK IS AT his OWN DISCRETION AND RISK AND HE IS SOLELY RESPONSIBLE FOR ANY DAMAGE TO THE LICENSEE'S COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM SUCH USE. AKAMAI FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

11. LIMITATION OF LIABILITY

THE LICENSEE EXPRESSLY UNDERSTANDS AND AGREES THAT AKAMAI, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS SHALL NOT BE LIABLE TO HIM UNDER ANY THEORY OF LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL OR EXEMPLARY DAMAGES THAT MAY BE INCURRED BY HIM, INCLUDING ANY LOSS OF DATA, WHETHER OR NOT AKAMAI OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING.

12. INDEMNIFICATION

To the maximum extent permitted by law, the Licensee agrees to defend, indemnify and hold harmless Akamai, its affiliates and their respective directors, officers, employees and agents from and against any and all claims, actions, suits or proceedings, as well as any and all losses, liabilities, damages, costs and expenses (including reasonable attorney's fees) arising out of or accruing from (a) the Licensee's use of the Media Acceleration SDK, (b) any application the Licensee develops on or with the Media Acceleration SDK that infringes any Intellectual property right of any person or defames any person or violates their rights of publicity or privacy, (c) any non-compliance by the Licensee with the Agreement, (d) the Licensee's use of Akamai products incorporating Media Acceleration on the Licensee's website.

13. CHANGES TO THE AGREEMENT

Akamai may make changes to this Agreement as it distributes new versions of the Media Acceleration SDK. When these changes are made, Akamai will make a new version of the Agreement available on www.akamai.com/product/licenses.

14. GENERAL LEGAL TERMS

- 14.1. Export Compliance: Licensee may not use or otherwise export or re-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, the Software may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Developer Tools, Licensee represents and warrants that he is not located in any such country or on any such list. Licensee also agrees that he will not use these products for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, missiles, or chemical or biological weapons. The Software and related documentation are "Commercial Items", as that term is defined at

48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

- 14.2. This Agreement constitutes the whole legal agreement between the Licensee and Akamai and governs Licensee's use of Media Acceleration SDK (excluding any services which Akamai may provide to the Licensee under a separate written agreement), and completely replaces any prior agreements between the Licensee and Akamai in relation to the Media Acceleration SDK.
- 14.3. The Licensee agrees that if Akamai does not exercise or enforce any legal right or remedy which is contained in the Agreement (or which Akamai has the benefit of under any applicable law), this will not be taken to be a formal waiver of Akamai's rights and that those rights or remedies will still be available to Akamai.
- 14.4. If any court of law, having the jurisdiction to decide on this matter, rules that any provision of the Agreement is invalid, then that provision will be removed from the Agreement without affecting the rest of the Agreement. The remaining provisions of the Agreement will continue to be valid and enforceable.
- 14.5. The Licensee acknowledges and agrees that each member of the group of companies of which Akamai is the parent shall be third party beneficiaries to the Agreement and that such other companies shall be entitled to directly enforce, and rely upon, any provision of the Agreement that confers a benefit on (or rights in favor of) them. Other than this, no other person or company shall be third party beneficiaries to the Agreement.
- 14.6. The rights granted in the Agreement may not be assigned or transferred by either the Licensee or Akamai without the prior written approval of the other party. Neither the Licensee nor Akamai shall be permitted to delegate their responsibilities or obligations under the Agreement without the prior written approval of the other party.

15. JURISDICTION

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. Notwithstanding this, The Licensee agrees that Akamai shall still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

Appendix A

Media Acceleration: Media Acceleration is designed to help accelerate and improve the quality of delivery for Live and VoD streaming media as well as downloaded media and large files. The service is designed to improve startup times, reduce buffering time and improve bitrate stability and achieve higher average bitrates. A future revision of this service will also include a suite of network technologies focused toward improving the efficiency of delivery for operators. Statistics reporting and supporting Services are included in the base product.

- Required Akamai Products: One or more of the following: Adaptive Media Delivery, Download Delivery, Object Delivery and Media Services On Demand. Supported Video and download formats are consistent with the elected required Akamai Products.
- Supported mobile device OS: iOS, Android. These OSs are supported through Media Acceleration software development kit (SDK) which is provided subject to “Media Acceleration SDK License Agreement” located at www.akamai.com/product/licenses, and Customer’s use of the Media Acceleration SDK constitutes Customer’s acceptance of the terms of such license.
- Browser Support: Media Acceleration supports Chrome Browsers.
- Additional terms for Customer’s End Users and Viewers. Any customer application incorporating Media Acceleration and any customer website accessible via Chrome Browsers must include terms describing Media Acceleration for notice to and acceptance by customer’s end users and viewers comparable the following:

This application or website uses Akamai’s Media Acceleration technology. By accessing this application or website, you understand and agree that Akamai may employ the use of multicast technology and technology to facilitate media distribution directly between end-users, using the end-users’ IP addresses, for the purposes of improving video quality for end-users and reducing network traffic. Akamai’s Media Acceleration may use end-users’ device resources, such as CPU, storage and bandwidth, and may increase network and data usage on end-users’ network service plans. Additionally, if use of the Media Acceleration technology is dependent upon the use of a CPU, storage, bandwidth and data plan owned or controlled by a third party, you acknowledge and agree that your license to use the Media Acceleration technology is subject to you obtaining consent from the relevant third party for such use. You represent and warrant that by accepting these terms, you have obtained such consent.

The language above is not a legal advice to the Customer. The Customer is advised to consult with its own legal counsel in connection with the inclusion of such language. Customer hereby indemnifies Akamai for any claims arising out of Customer’s failure to obtain necessary consent from Customer’s End Users and Viewers and/or inform them of available removal options. Customer hereby indemnifies Akamai for any claims arising out of Customer’s use of Media Acceleration on Customer’s website.