

# Akamai Guardicore Software License Agreement

This is a software license agreement (the "Agreement") for certain Software that is owned by Akamai and delivered to Customer by Channel Partner. By using the Software, or any modified version of the Software customized by Akamai, Customer agrees to these terms.

1. **DEFINITIONS.** The following capitalized terms have the meanings set forth below:

"**Agent**" means the Software's agent component that is installed on virtual machines, physical servers, endpoints, workstations, containers, or other equivalent or similar machines or technologies of the Customer, in each case per the Software's specification.

"**Akamai**" means: (i) Akamai Technologies, Inc. ("ATI"); or (ii) a wholly-owned subsidiary that enters into this Agreement with Customer by signing where indicated below, as applicable.

"**Channel Partner**" means a distributor, reseller, or other third party duly authorized by Akamai to distribute and/or sublicense the Software.

"**Customer**" means either: (i) an Akamai customer accessing and using the Software; or (ii) the entity that enters into this Agreement with Akamai as evidenced by signing where indicated below, as applicable.

"**Documentation**" means the Software's operational guides, specifications, or similar documentation, as specified in the Order Form. Unless the context requires otherwise, references herein to Software shall be deemed to include its Documentation.

"**License Scope**" means any Software usage or consumption limitations and parameters (for example, as to the licensed Software modules, volume of Management Server licenses, volume of Agent licenses, installation environment, features and functionalities, *etc.*) specified in the applicable Order Form.

"**Management Server**" means the Software's management and dashboard component.

"**Order Form**" means the Purchase Order submitted to Akamai by Channel Partner on behalf of Customer that incorporates an unexpired Akamai quote for the Software.

"**Software**" means the certain object code, instructions, and associated code, tools and information that is owned by ATI and delivered to Customer in accordance with the terms and conditions of this Agreement and subject to the Order Form.

"**Software Support and Maintenance**" means the Software support and maintenance terms specified in Schedule A hereto, which is expressly incorporated herein by reference and hereby made a part of this Agreement.

## 2. **LICENSE**

### 2.1. **License Grant.**

Subject to the terms and conditions of this Agreement, Akamai grants Customer a limited, worldwide, non-exclusive, non-transferable, non-sublicensable right and license, during the License Term, to do the following (collectively, the "License"):

- (i) install the Agents in such volume as authorized by the Order Form;
- (ii) unless the Management Server is being purchased on a Software as a Service ("SaaS") basis, install the Management Server in such volume as authorized by the Order Form; and
- (iii) access and use the Software for Customer's internal business purposes subject to the restrictions set forth in this Section 2, in accordance with the Documentation.

For the avoidance of doubt: (i) the License is subject to the License Scope, and Customer shall not use any technical or other means within, or external to, the Software to exceed or circumvent the License Scope, and (ii) the Software is only licensed (and not sold) hereunder. Any rights not expressly granted herein are hereby reserved by Akamai and its licensors, and, except for the License, Customer is granted no other right or license to the Software, whether by implied license, estoppel, exhaustion, operation of law, or otherwise.

**2.2. Ownership.** Akamai (and/or its licensors, as applicable) is, and shall be, the sole and exclusive owner of all right, title and interest (including without limitation all intellectual property rights) in and to the Software and all related intellectual property (such as content appearing therein), and all improvements, derivative works, and/or modifications of/to any of the foregoing, regardless of inventorship or authorship. Customer shall make, and hereby irrevocably makes, all assignments and/or waivers necessary or reasonably requested by Akamai to ensure and/or provide Akamai (and/or its designee(s)) the ownership rights set forth in this paragraph.

**2.3. Delivery.** Unless the Order Form specifies otherwise: (i) delivery of Software shall be by electronic download and will be deemed delivered once made available for electronic download; and (ii) the Software shall be deemed accepted upon delivery.

**2.4. Term and Termination.** This Agreement and the License shall automatically terminate upon expiration or termination of the applicable Order Form. The "License Term" shall be specified in the applicable Order Form. Either party may terminate this Agreement and the License if the other materially breaches this Agreement and such breach continues unremedied for thirty days following notice of termination.

**2.5. License Restrictions.** As a condition to (and except as expressly permitted by) the License, Customer shall not do (or permit or encourage to be done) any of the following (in whole or in part): (i) copy, "frame" or "mirror" the Software; (ii) sell, assign, transfer, lease, rent, sublicense, or otherwise distribute or make available the Software to any third party (such as offering it as part of a time-sharing, outsourcing or service bureau environment); (iii) publicly perform, display or communicate the Software; (iv) modify, adapt, translate, or create a derivative work of the Software; (v) decompile, disassemble, decrypt, reverse engineer, extract, or otherwise attempt to discover the source code or non-literal aspects (such as the underlying structure, sequence, organization, file formats, non-public APIs, ideas, or algorithms) of, the Software; (vi) remove, alter, or conceal any copyright, trademark, or other proprietary rights notices displayed on or in the Software; (vii) circumvent, disable or otherwise interfere with security-related or technical features or protocols of the Software; (viii) use the Software to develop any service or product that is the same as (or substantially similar to), or otherwise competitive with, either of them; (ix) store or transmit any robot, malware, Trojan horse, spyware, or similar malicious item intended (or that has the potential) to damage or disrupt the Software; (x) employ any hardware, software, device, or technique to pool connections or reduce the number of servers/machines, Agents, or users that directly access or use the Software (sometimes referred to as 'virtualization', 'multiplexing' or 'pooling') in order to exceed or circumvent the License Scope; (xi) forge or manipulate identifiers in order to disguise the origin of any data or content inputted or uploaded to, or transmitted through, the Software by or on behalf of Customer; (xii) take any action that imposes or may impose (as determined in Akamai's reasonable discretion) an unreasonable or disproportionately large load on the servers, network, bandwidth, or other cloud infrastructure which operate or support the Software, or otherwise systematically abuse or disrupt the integrity of such servers, network, bandwidth, or infrastructure; or (xiii) use the Software in connection with any internal performance testing or benchmark studies of which the results are designated or likely to be published in any form or media, or otherwise made available to the public, without Akamai's prior express written approval, or otherwise disclose or publish such results.

**2.6. Software Support and Maintenance Services.** Customer will be entitled to receive Software Support and Maintenance during the License Term. Other professional services pertaining to the Software, such as implementation, integration and training, may be purchased through Channel Partner directly, subject to a statement of work and related services agreement between Customer and Channel Partner. For the avoidance of doubt, this Agreement does not apply to such additional professional services.

**2.7. Records and Usage Audit.** Customer shall maintain records identifying the location of each copy of the Software, as well as the location, identity, and total number of virtual machines, physical servers, and workstations on which the Software is installed (collectively, "Installation Record"). Upon request by Akamai, Customer shall provide Akamai with a copy of the Installation Record. Akamai shall, from time to time, be entitled to audit Customer's deployment and use of the Software (a "Usage Audit"), and Customer shall facilitate such Usage Audit by providing

Akamai with all access (including as necessary, remote access) reasonably requested by Akamai. If a Usage Audit reveals a usage or consumption level above that permitted by the License Scope Akamai reserves the right to invoice Channel Partner and Customer hereby agrees to pay Channel Partner for the unpermitted usage of the Software.

3. Government End Users. If Customer is 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).
4. Notices. Any notice required or permitted shall be in writing and shall be delivered 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.
5. 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.
6. Successors-in-Interest. This Agreement is binding upon and inures to the benefit of each party and its successors and permitted assigns.
7. Governing Law; and Jurisdiction. If the Software is provided to a Customer located in the United States, regardless of where any action may be brought, this Agreement shall be interpreted under the laws of the State of Delaware and the parties shall be subject to the non-exclusive jurisdiction of the state and federal courts in and of the Commonwealth of Massachusetts. If the Software is provided to a Customer located exclusively outside of the United States the governing law and jurisdiction shall be the country in which the Software is provided to Customer. 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.
8. Severability. If any provision of this Agreement is unenforceable under applicable law, the validity or enforceability of the remaining provisions will not be affected. To the extent any provision of this Agreement is judicially determined to be unenforceable, a court of competent jurisdiction may reform any such provision to make it enforceable. The provisions of this Agreement will, where possible, be interpreted so as to sustain its legality and enforceability.
9. Waiver. No failure or delay of either party to exercise or enforce any of its rights hereunder operates as a waiver of any such right.
10. Independent Contractors. The parties are independent contractors.
11. Survival. Sections 2.2, 2.5, and 7 shall survive termination or expiration of this Agreement.

The parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized officers as of the last date of signature below.

**AKAMAI:**

**CUSTOMER:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **Schedule A**

### **Software Support And Maintenance**

1. **Updates and Upgrades.** During the License Term, Akamai will make available to Customer such Updates and Upgrades that Akamai generally makes available to its other supported customers. For the avoidance of doubt, Updates and Upgrades expressly exclude new Software modules, which modules Akamai may make available at its sole discretion subject to additional fees. "Updates" means modifications or revisions to the Software (such as a bug fix or patch), as typically represented by the number to the right of the decimal point (e.g. Version 1.X). "Upgrades" means new releases (each, a "Release") of the Software (such as the addition of new features or functionalities), as typically represented by the number to the left of the decimal point (e.g. Version X.0).

2. **Support.** Akamai's help desk personnel shall receive Customer support requests in connection with Errors (each, a "Support Request") on a 24/7 basis. "Error" means any verifiable and reproducible failure of the Software to materially perform the functions described in the Software's documentation. Once Akamai has determined that the Support Request is covered by a valid support contract, Akamai will:

- i. respond to such Support Request based on the Severity Levels (as defined by Akamai) set out in the table below; and
- ii. Akamai will use commercially reasonable efforts to get to Problem Resolution or to provide a workaround for the Error.

"Problem Resolution" means the use of commercially reasonable efforts to resolve the reported Error. These efforts may include (but are not limited to): configuration changes, patches that fix an issue, and reinstalling the Software.

3. **Support Requests Submission**

Support Requests to Akamai may be submitted to:

- (i) By Phone: see the Contact Us Section at <https://www.akamai.com/global-services/support>
- (ii) On the Web: <https://community.akamai.com/customers>

To be addressed by Akamai, Errors must be verifiable and reproducible. Furthermore, in order for Akamai to address a Support Request, Customer must provide Akamai with all information, documentation, assistance and access as Akamai might reasonably require, including, without limitation:

- setup information,
- application knowledge,
- listing of any output,
- detailed steps required to enable Akamai to replicate the Error,
- exact wording of Error messages, and
- any other data that Akamai may reasonably request in order to reproduce operating conditions similar to those present when the Error occurred.

Each Error for which a Support Request is received by Akamai, shall be classified by Akamai and assigned a level of severity ("Severity Level"), in accordance with the following criteria:

Severity Level Definition	Premium/Elite Support	Akamai Commitment
<p>Severity 1 - <b>CRITICAL</b></p> <p>(a) The Error causes a critical effect to Customer's production environment in a way that significantly impacts the Customer's business; or</p> <p>(b) A key capability of the Software is fully or partially inoperable, in a way that causes a major issue to the Customer's production environment; or</p> <p>(c) An Error with a direct security impact on the Software</p>	<p>First level response within 1 hour. Escalation within 6 hours.</p>	<p>Akamai and Customer will commit the necessary resources around the clock for Problem Resolution to obtain workaround or reduce the severity of the Error.</p>
<p>Severity 2 - <b>HIGH</b></p> <p>(a) The Error causes the Software to operate improperly in a manner which impacts the normal course of business for Customer; or</p> <p>(b) An Error that substantially degrades the performance of the Software in a way which impacts the normal course of business for Customer; or</p> <p>(c) An Error that prevents the Software from being installed or operated when properly configured.</p>	<p>First level response within 4 hours. Escalation within 24 hours.</p>	<p>Akamai and Customer will commit an engineer during normal Business Hours for Problem Resolution to obtain workaround or reduce the severity of the Error, and alternative resource during non- Business Hours</p>
<p>Severity 3 - <b>MEDIUM</b></p> <p>(a) The Error causes a function not to execute as described in the Software's documentation without a significant loss of utility or intended functionality; or</p> <p>(b) the Error disables one or more nonessential functions of the Software; or</p> <p>(c) The Software behavior is materially different from that described in the Software's documentation but does not rise to the level of a Severity 1 or Severity 2 Error; or</p> <p>(d) Software alerts are not functioning as expected with no impact to the Customer's production environment</p> <p>(e) All other issues, including general usage questions and cosmetic issues.</p>	<p>First level response within Business Hours.</p>	<p>Akamai and Customer will handle the case during Business Hours to obtain a resolution if applicable</p>

Note: *Severity 1 - CRITICAL* Errors require a phone call to Akamai support in order to ensure timely handling of the Support Request.

Business Hours are defined as follows:

- For incidents in North America or Latin America, Business Hours are 9AM to 5PM Eastern Standard Time, Monday-Friday.
- For incidents in Europe, the Middle East, or Africa, Business Hours are 9AM to 5PM, Central European Time, Monday-Friday.
- For incidents in the Asia Pacific region, Business Hours are 9AM to 5PM, Indochina Time, Monday-Friday.

4. Exclusions. The technical support described above will only be provided with respect to the then-current (and the two immediately preceding) Releases, and shall exclude Errors resulting from:

- i. any modifications of the Software that have not been approved by Akamai in advance and in writing;
- iii. Customer's failure to implement in a reasonably timely manner any Update or Upgrade made available by Akamai (or its representative);
- iii. Customer's written instructions to Akamai, or installation or set up adjustments made solely by Customer;
- iv. Customer's use of the Software in violation of the Agreement or of any applicable laws and/or regulations;
- v. any fault in any Customer (or third party) equipment or programs used in conjunction with the Software; and/or
- vi. Customer's negligence or willful misconduct.

## 5. Customer Responsibilities

Customer agrees to the following responsibilities to enable effective and secure delivery of Support and Maintenance Services:

### 5.1 Communication & Collaboration

- Customer agrees to receive communications from Akamai via email, telephone, or other reasonable formats.
- Customer shall cooperate with Akamai at all times during the provision of Support and Maintenance Services under this Schedule.

### 5.2 Issue Reporting & Corrective Action

- Customer shall report all material problems with the Software in a timely manner.
- Customer shall implement any reasonable corrective procedures provided by Akamai in a reasonable time after receipt.

### 5.3 Remote Access Enablement

- Where permitted by Customer's internal policies, Customer will make available to Akamai a secure remote access method ("Remote Access") that enables Vendor's Customer Support team to connect to the Software and related Customer systems for support purposes.
- Where remote access is restricted or prohibited by Customer's policies, the parties shall cooperate to define an alternative support workflows for situations where remote access would ordinarily be required.