

Akamai Cloud Marketplace Provider Agreement

This Akamai Cloud Marketplace Agreement for Providers (“MAP”) is entered into by Akamai and the entity agreeing to these terms (“Provider”) and governs Provider’s participation in the Akamai Cloud Marketplace (“Marketplace”) as a service provider under one or more Marketplace programs (each a “Program”). Capitalized terms used in this MAP shall have the meanings set forth in section 16 of this MAP or as otherwise expressly defined in an applicable provision.

The MAP takes effect on the date (“Effective Date”) when you click the “Accept” button or check box presented with the MAP or, if earlier, upon Provider’s participation in any Marketplace provider program. By entering into this Agreement, you represent and warrant that (i) you have full legal authority to bind Provider to this Agreement; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of Provider, to this Agreement without reservation or modification.

Akamai and Provider may individually be referred to as a “Party” and collectively as the “Parties”.

1. **Applicability.** This MAP may be supplemented by additional terms, requirements, policies, and guides in furtherance of specific Programs administered under this MAP by Akamai. In the event of any interpretative or constructive conflict of the Agreement, the controlling priority of the documents will be in the following order (in decreasing priority): DPA, Project Plan, this MAP, Program Requirements, Program Policy, and Program Guide. In the event that Akamai has previously entered into an agreement with Provider regarding the specific subject matter of a Project Plan (an “Existing Agreement”), such Existing Agreement shall automatically terminate without any further action by either Party on the Effective Date. If the Agreement, or any portion therein, is translated into any other language and there is a discrepancy between the English text and the translated text, the English text shall govern.
2. **Marketplace.**
 - 2.1. *Eligibility.* To join a Program, Provider must successfully:
 - a. Create and maintain a valid Akamai Cloud account for vendors;
 - b. Respond to all Akamai requests for information and ensure that such information is accurate and complete at all times; and
 - c. Obtain Akamai’s approval for Provider’s Program application.
 - 2.2. *Submission.* Provider is responsible for submitting the Provider Service it wishes to list in the Marketplace, along with the corresponding Provider EULA, Provider SLA, Provider technical support documentation that minimally conforms to the Onboarding & Qualification Guide, and Provider Engagement Guide (collectively “Listing Materials”) to Akamai via the Marketplace Provider Portal or as otherwise instructed by Akamai. Provider shall be responsible for ensuring all Listing Materials used by Akamai are current. Submission of Listing Materials does not guarantee Akamai approval for Provider participation in the Marketplace.
 - 2.3. *Review.* Akamai will review the Listing Materials in accordance with Akamai’s standard service onboarding process. Provider is required to notify Akamai and submit updated Listing Materials within thirty (30) days if Provider modifies (i) the Provider Service in such a way to be inconsistent with Provider’s obligations under the DPA, Onboarding & Qualification Guide, and/or an applicable Project Plan; or (ii) Provider’s support of Customers using the Provider Services.

- 2.4. *Approval.* Akamai will provide you with a Project Plan if Akamai, at Akamai's sole and absolute discretion, approves the Listing Materials for inclusion to the Marketplace. Any changes to the Provider Service described in the corresponding approved Listing Materials shall be subject to the review and approval process described in this MAP.
- 2.5. *Support.* Unless otherwise expressly deemed otherwise in a Project Plan, Provider is solely responsible for providing Customers with all customer and technical support for Provider Services. The Provider's response quality and timing, as well as Provider SLA, must be, at minimum, equal to or better than the Provider's support motions offered through other sales channels.
- 2.6. *Collaboration.* Provider grants to Akamai worldwide, royalty-free, non-exclusive, non-sublicensable, and non-transferrable license to use, reproduce, display, distribute, and translate all or any part of Provider content supplied by Provider to Akamai.
- 2.7. *Removal.* Except where prohibited by applicable law, each Provider Service removed from the Marketplace due to termination of this MAP or corresponding Project Plan shall be subject to (i) the corresponding Wind Down Period or (ii) immediate removal by Akamai where Akamai determines the Provider Service is in violation of any Export Control Law, Data Privacy Law, Akamai compliance verification process, or Akamai technology security requirement.

Each of Akamai and Provider shall be required to satisfy their respective financial and Customer support obligations, in accordance with the Agreement, for the duration of all Wind Down Periods, provided that each Provider Service designated for removal shall be labeled on the Marketplace as in an end-of-service state and new Customers will not be permitted to procure new orders for the corresponding Provider Service through the Marketplace.

In the event Akamai exercises its authority to immediately remove a Provider Service from the Marketplace, Provider agrees to (i) Akamai offsetting any Fees owed to Provider under the applicable Project Plan and/or (ii) requiring Provider to reimburse Akamai for any amounts refunded by Akamai to Customers as a result of the Provider Service's Marketplace removal.

3. **Intellectual Property.**

- 3.1. **General.** Each Party retains ownership of its Intellectual Property, neither Party grants the other any Intellectual Property Rights not expressly set forth in the Agreement, and the Parties jointly and severally disclaim any Intellectual Property Rights by implication, reliance, estoppel, waiver, or otherwise. As between the Parties, (i) Provider retains all ownership and rights to the Listing Materials and (ii) Akamai solely retains all ownership and rights to the Marketplace, Marketplace content, and development and implementation of all integrations with Akamai Services arising from or related to a Project Plan.
- 3.2. **License to Akamai.** Solely in connection to Provider's participation in the Marketplace, Provider grants to Akamai a worldwide, royalty-free, non-exclusive, non-sublicensable, and non-transferrable license to:
 - a. use, configure, host, install, distribute, offer, sell, reproduce, display, and perform Provider Services and content described in the corresponding Listing Materials; and

- b. use, distribute, reproduce, display, and publicly perform any Provider content supplied by Provider to Akamai, including without limitation, the materials and feedback described in the Marketplace Brand & Collateral Guide or in connection with a Program Benefits Guide.
- 3.3. **License to Customers.** For each Provider Service listed in the Marketplace, Provider shall provide to Akamai a corresponding Provider EULA to govern Customer use of the applicable Provider Service, provided that as between Akamai and Provider, the Agreement shall be deemed to control all interpretive or constructive conflicts with the Provider EULA.
- 3.4. **License to Provider.** Solely in connection to Provider's participation in the Marketplace and/or a Program, Akamai grants to Provider a worldwide, royalty-free, non-exclusive, non-sublicensable, and non-transferrable license to use, in accordance with the Marketplace Brand & Collateral Guide, Akamai brand features displayed in the Marketplace.
- 3.5. **Modification.** The Parties acknowledge that either of them may modify their own Intellectual Property in order to improve the interoperability with the Provider Service. Any Intellectual Property generated via modification of Akamai Intellectual Property, including but not limited to Akamai Service, shall remain the property of Akamai and Akamai shall retain all Intellectual Property Rights thereto. Any modifications made to the Provider Intellectual Property, including without limitation Provider Service, shall remain the property of Provider, provided that Provider expressly grants Akamai an irrevocable, universal, royalty-free, and affiliate sublicensable license to continue the use of such Provider Intellectual Property for the corresponding Project Plan.
- 3.6. **Restrictions.** Unless otherwise agreed by the Parties in the Agreement:
 - (a) Neither Party shall have an obligation to license any of its Intellectual Property to the other Party;
 - (b) Neither Party will (or will allow Customers or any third party to): (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the other Party's software, technology, services, or documentation; (ii) modify, translate, or create derivative works based on the other Party's software, technology services, or documentation; (iii) offer, rent, lease, distribute, sublicense, resell, pledge, assign, or otherwise transfer or encumber rights to the other Party's software, technology, services, or documentation; or (iv) remove or otherwise alter any proprietary notices or labels from the Provider Service or any portion thereof. Akamai will use the Provider Service solely in compliance with all applicable requirements of laws;
 - (c) Any and all rights of a Party in and to any software or technology, or any Intellectual Property Rights therein directly responsible for the creation of the Party are hereby reserved by such Party.

4. **Independent Contractor.**

- 4.1. **Status.** The Parties are independent contractors and nothing contained in the Agreement shall be construed to create an association, trust, partnership, agency, or joint venture between the parties. The Agreement does not and is not intended to confer any rights or remedies, express or implied, upon any person other than the Parties hereto. Nothing in

the Agreement shall be interpreted or construed as creating or establishing an employment relationship between Akamai and Provider and/or any employee or agent thereof. Each Party shall be free to exercise discretion and independent judgment as to the method and means of performance of any Project Plan.

- 4.2. **Non-Exclusivity.** Except under the specific terms separately agreed between the Parties in writing, the Agreement shall be non-exclusive and any Representor may, subject to the applicable provisions of the Agreement, contract with any other person, entity, or party for the engagement, procurement, provision of any and all products, services, projects, or otherwise arrangements, including the provision of products or services or engagement of projects and arrangements described in this MAP or the applicable Project Plan. Representor expressly and irrevocably agrees that Representee, except as, and/or subject to the applicable provisions herein, shall be permitted to, at any time during the Term and thereafter, to engage in any transaction or business it desires.

5. **Data.** Provider acknowledges, understands and agrees that:

- (i) Provider Services and Project Plan Technology shall require Provider to Process Confidential Information and Covered Data of Akamai and Customers;
- (ii) Provider currently, and shall for the duration of the Agreement, comply and operate within all data privacy, processing, security, and protection laws and regulations of all applicable jurisdictions in which the Provider Services and Project Plan Technology are offered (collectively, “Data Privacy Laws”);
- (iii) Provider’s data privacy, processing, security, and protection practices are, at a minimum, as protective and prescriptive as Akamai’s privacy statement found here: <https://www.akamai.com/legal/privacy-statement>;
- (iv) Provider shall only Process Confidential Information and Covered Data arising from or related to the Agreement solely for purposes of fulfilling Provider’s obligations under the Agreement; and
- (v) Provider shall not Process, transfer, or disclose Confidential Information and Covered Data across jurisdictional borders except as specifically authorized by the Agreement or as authorized by the data subject or in accordance with applicable law.

At all times, Provider shall comply with the DPA.

6. **Regulatory Compliance.**

- 6.1. **Anti-Bribery and Anti-Corruption.** Provider shall, in connection with the Agreement, comply with all applicable laws related to anti-bribery and anti-corruption (“ABAC Laws”), including without limitation, U.S. Foreign Corrupt Practices Act (“FCPA”) and the UK Bribery Act. Provider understands and agrees that the ABAC Laws prohibit Provider from, directly or indirectly, giving, offering, or promising anything of value to a third party as an improper inducement for such third party’s action or inaction or otherwise improper commercial advantage. Provider acknowledges that Provider has implemented good faith procedures and controls to ensure compliance with ABAC Laws.
- 6.2. **Trade Restrictions.** Each Party shall, in connection with the Agreement, comply with all applicable laws related to import, re-import, sanctions, anti-boycott, export, and re-export controls (“Export Control Laws”), including without limitation, the U.S. Export Administration Regulations, the U.S. International Traffic in Arms Regulations, and embargo and sanctions programs implemented by the U.S. Office of Foreign Asset Control.

- 6.3. **Verification.** Each Party acknowledges that it has implemented good faith procedures and controls to ensure compliance with ABAC Laws and Export Control Laws. Provider shall be responsible for fully and accurately supplying Akamai with all information needed to comply with ABAC Laws and Export Control Laws as they relate to the distribution of Provider Services on the Marketplace. Provider agrees that for purposes of Akamai's operation of the Marketplace, (i) Provider shall be required, upon request by Akamai, to provide certain data related to compliance verification, including without limitation, identity of Provider's end users and Provider's sources of revenue ("Compliance Data") and that Akamai's use of Compliance Data may involve checks against regulatory, financial, and other third party services and sources of data.

7. **Fees.**

- 7.1. **Invoicing.** Except as otherwise specified in a separate writing, including where Representee will remit revenue share payments to Representor without any invoice, Representor shall transmit invoices to Representee upon completion of the applicable Project Plan. Invoices shall be paid by Representee in United States Dollars within forty-five (45) days of receipt. Representee agrees that the Fees for any follow-on or additional work not covered in the scope of work described in the applicable Project Plan shall be performed at the rates applicable to the scope of work fixed by the Agreement.
- 7.2. **Allocation.** Specific pricing and revenue share, if any, for services shall be determined by the applicable Project Plan. Without limiting the foregoing, the Parties shall endeavor to specify and implement such procedures as they may mutually determine to be necessary or desirable to achieve accounting for all commissions and cost of goods sold, including without limitation the: (i) establishment of any necessary reserves for commissions otherwise to be paid in the future; (ii) frequency and manner of calculation and true-up of payments to be made on the basis of estimates, if any; and (iii) audit rights relating to sales and other similar matters arising from or related to the applicable Project Plan, if any.
- 7.3. **Expenses.** Except as may be expressly provided otherwise in this MAP or an applicable Project Plan, each Representor shall bear all of its own costs and expenses incurred in connection with the performance of its obligations under, or the conduct of its activities permitted by, the Agreement.

8. **Provider Service Deficiencies or Defects.**

- 8.1. Provider shall, at its own expense, use commercially reasonable efforts to patch, mitigate, or correct, to Akamai's reasonable satisfaction, any reproducible bug, error, defect, or omission identified by Akamai to Provider within sixty (60) days of written notice from Akamai, provided that (i) this section shall exclude new feature or functionality requests and (ii) Akamai shall cooperate with all reasonably necessary Provider requests in furtherance of this requirement.
- 8.2. Solely with respect to Provider's participation in an Akamai reseller program, if Provider fails to patch, mitigate, or correct the applicable bug, error, defect, or omission to Akamai's reasonable satisfaction during the sixty (60) day cure period, Akamai may terminate the corresponding Project Plan and Provider shall distribute to Akamai: (i) an amount equal to the half the total contract value of the applicable Project Plan; or (ii) (a) an amount equal to the total amount of refunds and credits issued by Akamai to

Customers arising from or related to the bug, error, defect, or omission; and (b) any amounts, or any other remedies or relief, available to Akamai under the Agreement.

- 8.3. Failure or delay of Provider in meeting its obligations under this section shall be waived if such failure or delay is caused by: (i) Akamai's failure or delay to perform any related function as required by the Agreement; (ii) Provider's dependence on incorrect or erroneous information or instruction provided by Akamai; or (iii) Akamai's omission of material information from Provider.

9. **Confidentiality.**

- 9.1. **Duty.** Each Receiving Party shall only use the Disclosing Party's Confidential Information only in connection with Provider's participation in the Marketplace, and shall not disclose such Confidential Information except to a Representative with a need to know and who is legally obligated in writing by confidentiality and use restrictions substantially similar to those required hereunder or otherwise commercially reasonable and sufficient to obtain a substantially similar level of protection. For clarity, Listing Materials provided by Provider may be made available or displayed to prospective customers of the Marketplace. The terms of a Project Plan is deemed to be Confidential Information.
- 9.2. **Required Disclosure.** The limitations on disclosure or use of Confidential Information shall not apply to information which: (i) is rightfully obtained by the recipient without breach of any confidentiality obligation; (ii) is or becomes known to the public through no act or omission of the recipient; (iii) the recipient obtains independently without using Confidential Information of the other Party; or (iv) is disclosed in response to a valid court or governmental order (such as a subpoena).

10. **Representation and Warranties.**

- 10.1. **General.** Representor represents and warrants that: (i) Representor has all requisite power and authority to enter into this MAP and perform the obligations set forth herein; (ii) Representor's execution of this MAP and the performance of its obligations and duties hereunder does not and shall not violate any agreement, obligation, or duty to which Representor is a party or by which Representor is bound; and (iii) that Representor shall comply with all applicable laws.
- 10.2. **Intellectual Property.** Representor represents and warrants that: (i) Representor is and shall continue to be the sole and exclusive owner of Representor Services, including without limitation any updates, modifications, and enhancements to Representor Services; (ii) Representor has and shall continue to have full and sufficient right, title, and authority to grant the consideration given to Representee under the Agreement; and (iii) to the best of Representor's knowledge, no allegation, conflict, claim, controversy, and other cause of action, whether alleged or not alleged, known or unknown, vested or contingent and/or asserted or not asserted, arising from or related to (a) Representor's infringement of any Intellectual Property Rights relevant to the Agreement and (b) infringement of any Intellectual Property Rights relevant to the Agreement against any individual or entity from which Representor has obtained such rights.
- 10.3. **Technology.** Representor represents and warrants that the Representor Services will: (i) perform as per the service level arrangement of each applicable Project Plan; (ii) perform the functions described in, and comply in all material respects with, each applicable

Project Plan; (iii) comply with all applicable laws; and (iv) use commercially reasonable efforts to mitigate or avoid, as the case may be, (a) computer code or instructions that may disrupt, damage or interfere with the use of the Representor Services or related computer facilities, including without limitation malicious code, viruses, or Trojan horses which may replicate, transmit or activate Representor Services, (b) mechanisms or devices capable of the transmission or disclosure of data in a manner inconsistent or unauthorized by the Agreement, (c) computer code or instructions which alters, damages, or erases any data, content, or information stored in or processed by the Representor Services manner inconsistent or unauthorized by the Agreement, and (d) any “back doors” or “trap doors” which allow for code access through the bypassing of any security features.

- 10.4. **Operations.** Representor acknowledges and agrees that Representor shall not be deemed to be an employee of the Representee for any purpose, including without limitation: (i) local, state, federal or international taxes; (ii) workers’ compensation, social security, group insurance, retirement, or other contributing benefits; and (iii) sick leave or vacation pay customarily provided by an employer with respect to an employee (collectively “Taxes and Benefits”). Each Representor shall bear sole responsibility for payment of compensation to Representor’s personnel. Representor shall bear full and sole responsibility for its own expenses, liabilities, and costs of Representor’s operation. Neither Representor shall have the authority to, and will not purport to, enter into any contract on behalf of the Representee, or commit Representee to any obligation. Each Representor agrees to defend, indemnify, and hold harmless the Representee from any Disputes arising from or related to Taxes and Benefits.
- 10.5. **Project Plan Services.** Representor represents and warrants that all services performed by Representor in furtherance of a Project Plan, including without limitation, Representor’s support obligations therein, shall be in a good and workmanlike manner and in accordance with generally accepted industry standards and in accordance with the terms of the applicable Project Plan.
- 10.6. **Privacy.** Provider represents and warrants that Provider shall (i) comply with all Data Privacy Laws applicable to Provider Services and Project Plan Technology, (ii) Process, transfer, and disclose Covered Data solely for purposes of fulfilling Provider’s obligations under the Agreement; and (iii) implement, maintain, and update reasonable data protection measures to protect Covered Data that are minimally as protective and prescriptive as the Akamai Privacy Statement.
- 10.7. **Exclusions.** The warranties set forth in this section shall not apply to: (i) any Representor Services not expressly made available to Representee by Representor in furtherance of the Agreement; (ii) use of Representor Services in a manner or environment that is inconsistent with its intended purpose; (iii) use of Representor Services with any hardware, software, tangible item, or intangible item in connection to an applicable Project Plan that is (a) not used in the ordinary course of business by Representee; or (b) advised against in writing by Representor
- 10.8. **Disclaimer.** EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION, EACH REPRESENTOR EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

11. **Term and Termination.** This MAP shall commence on the Effective Date and continue until terminated in accordance with the provisions herein. Except upon the occurrence of an uncured Default, neither Party may terminate this MAP so long as any Project Plan hereunder is effective. In the event no Project Plan hereunder is effective, then a Party may terminate this MAP upon six (6) months prior written notice to the Party. Upon termination of this MAP, all rights and obligations under the Agreement shall automatically terminate except as otherwise provided in the Agreement.
12. **Remedies.**
 - 12.1. **Breach.** If a Party fails or is otherwise unable or unwilling to perform any of its obligations under the Agreement, violates any of the terms of the Agreement or otherwise causes an Event of Breach, the non-Breaching Party shall provide the Breaching Party written Notice of their Breach. Unless otherwise mutually agreed on a different timing, the Breaching Party shall have thirty (30) Business Days (the “Breach Cure Period”) after receipt of such Notice to cure the Event of Breach.
 - 12.2. **Default.** In addition to all other relief afforded under the Agreement, if a Breaching Party fails or is otherwise unable or unwilling to cure their Breach within the applicable Breach Cure Period, the non-Defaulting Party may pursue one or more of the following actions, concurrently, cumulatively or at different times, against the Defaulting Party:
 - (a) Commence an action for specific performance, injunctive, or any other equitable relief. It is hereby acknowledged by each of the Parties that a Default may cause the non-Defaulting Party irreparable harm, that damages at law may be an inadequate remedy for a Default, and that the Defaulting Party, at the non-Defaulting Party’s sole and absolute discretion, may be compelled to cure such Default;
 - (b) Unless expressly excluded in a Project Plan, solely if a Breach or Default by Provider after Provider experiences a Change in Control Event, or if Akamai terminates the Agreement due to Provider experiencing a Change in Control Event, then Provider shall be deemed to (i) immediately grant Akamai an irrevocable, royalty free, and universal license to continue using any and all Provider Service until the natural expiration of all Akamai Customer order forms which contain resold Provider Service or have access to Provider Service pursuant to the Agreement, and (ii) in motions where Akamai is reselling Provider Services or acting as a transaction agent for Provider, pay to Akamai within sixty (60) days of the applicable Breach or Default, as a migration reimbursement and not as damages or penalties, the total amount of Fees paid or distributed to Provider by Akamai during the two (2) year period immediately prior to the date of the corresponding Breach or Default;
 - (c) Commence an action at law in order to recover damages.
 - 12.3. **Professional Costs.** Reasonable attorneys’ fees and costs shall be awarded to the prevailing party in any action.
13. **Indemnification.**
 - 13.1. **Obligations.** Provider shall Indemnify Akamai for any Indemnifiable Loss in any third party Dispute arising from or related to (i) any allegation that any Listing Materials infringe, misappropriate, or violate a third party’s Intellectual Property Rights, applicable law, or does not comply with any licences governing third party materials included in any Listing Materials; (ii) any customer or end user use of Provider Services, including

without limitation, Disputes arising from or related to consumer fraud, product liability, or otherwise damage or loss caused by use of a Provider Service; (iii) any Disputes arising under a Provider EULA; (iv) any deficient or delinquent collection or payment of any applicable sales, use, goods and services, value-added, withholding, or other similar tax, including any associated penalties and interest, arising from Provider Services (except where (a) caused by Akamai and (b) not attributable to Provider's supply of inaccurate tax information in connection to the Marketplace); (v) any allegation that Provider is in violation of ABAC Laws or Export Control Laws; and (vi) Provider's use of Marketplace Data.

13.2. **Exclusions.** Provider's obligations in this section does not extend to third party Disputes to the extent that the underlying allegation arises solely from (i) Breach by Akamai of its material obligations in this MAP; (ii) Akamai Services used to provide the Marketplace; and (iii) Akamai's brand features in the Marketplace.

13.3. **Procedure.** As a condition to your obligations in this section, Akamai is responsible for (i) providing Notice to Provider for any Dispute arising out of or relating to an Indemnifiable Loss; (ii) reasonably cooperate in the defense and/or settlement of any Dispute; and (iii) upon request by Akamai, grant the Akamai full control of the defense of any applicable Dispute if such dispute requires Akamai to admit liability or otherwise requires Akamai's consent. Provider shall not be permitted to consent to any judgment, settlement, or adverse action relating to the Marketplace without the consent of Akamai, whose consent shall not be unreasonably withheld.

13.4. **Dispute Resolution.** In the event of a Dispute arising from or related to Provider's infringement of third party Intellectual Property, Provider shall have the option, without limiting any other obligation of Provider hereunder, at its own expense to (i) modify the Provider Service to be non-infringing while retaining full functionality and equivalent performance; (ii) obtain for Akamai, at no additional cost to Akamai, the right to continue using the Provider Services; or (iii) remove the Provider Service from the Marketplace

14. **Limitation of Liability.** To the fullest extent permitted by applicable law:

(a) NEITHER PARTY SHALL BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THE AGREEMENT UNDER ANY CONTRACT, STRICT LIABILITY, NEGLIGENCE OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES OR LOST PROFITS, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, OR SERVICES;

(b) THE AGGREGATE LIABILITY OF AKAMAI IN CONNECTION WITH THE AGREEMENT AND THE MARKETPLACE SHALL BE LIMITED TO THE TOTAL REVENUE EARNED FROM SOLUTIONS IN PROJECTS HERETO DURING THE 12 MONTH-PERIOD PRIOR TO THE EVENT GIVING RISE TO THE CLAIM; AND

(c) THERE SHALL BE NO EXCLUSION OR LIMITATION OF EITHER PARTY'S LIABILITY FOR SUCH PARTY'S FRAUD OR BREACH OF ITS CONFIDENTIALITY, INDEMNIFICATION, INTELLECTUAL PROPERTY, OR PAYMENT OBLIGATIONS UNDER THE AGREEMENT.

15. **Miscellaneous.**

15.1. **Updates.** Except for Project Plans, the Agreement may be partially or wholly updated by Akamai at any time. Provider should check back frequently for any such updates. All

updates to the Agreement shall be effective within thirty (30) days of being posted by Akamai or by your continued status as a participant of a Program, whichever later. For avoidance of doubt, a Project Plan may only be updated by mutual written consent.

- 15.2. **Insurance.** Representor shall have, and maintain at its own expense throughout the Term of the Agreement, insurance coverage which is ordinarily maintained by service providers in the cloud computing industry best practices, including without limitation: (i) commercial general liability insurance; (ii) directors and officers liability insurance; (iii) umbrella and/or excess liability insurance on an occurrence basis; (iv) technology errors and omissions insurance; and (v) workers' compensation, complying with all statutory minimums for those jurisdictions in which Representor performs any of its obligations hereunder.
- 15.3. **Force Majeure.** Representor shall not be liable to the other for delays or failures in performance resulting from causes beyond the reasonable control of Representor, including, but not limited to, acts of God, labor disputes or disturbances, material shortages or rationing, riots, acts of war, governmental regulations, communication or utility failures, or casualties.
- 15.4. **No Third Party Beneficiaries.** The Agreement does not confer any benefits or rights to any individual or entity that is not a Party to this MAP.
- 15.5. **Assignment.** Neither Party may assign its rights or delegate its obligations hereunder, either in whole or in part, without the prior written consent of the other Party, which will not be unreasonably withheld or delayed; except that a Party may assign the Agreement without consent by operation of law or otherwise to any successor to its business or assets to which the Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise, subject to any of Akamai or Provider's rights described in the section entitled "Remedies" of this MAP. Any actual or attempted assignment or delegation inconsistent with this section shall be deemed null, void, and have no effect.
- 15.6. **Waiver and Modification.** Failure by either Party to enforce any provision of the Agreement shall not be deemed a waiver of future enforcement of that or any other provision. Any waiver, amendment, or other modification of any provision of the Agreement by Customer shall only be valid and effective upon completion of a change order form mutually executed by each of the applicable Akamai Project Manager and applicable Provider Project Manager or otherwise authorized Representative.
- 15.7. **Severability.** Each provision of the Agreement shall be considered separable; and if, for any reason, any provision of the Agreement is determined by a court of competent jurisdiction to be in violation of any statute, regulation, rule, order, or decree of any governmental authority, such determination shall not affect the enforceability of the remainder of the Agreement or the validity, lawfulness, or enforceability of such provision in any other jurisdiction. If any court of competent jurisdiction shall deem any provision of the Agreement too restrictive, the other provisions of the Agreement shall stand, and the court shall modify the provisions at issue to the point of greatest restriction permissible by applicable law.
- 15.8. **Governing Law and Dispute Resolution.** The Agreement shall be unconditionally and singularly governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to any (i) choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction and (ii) the

public policy or policies, if any, of any jurisdiction other than the Commonwealth of Massachusetts. Any and all disputes or claims arising out of or in relation to the Agreement, or the interpretation, making, performance, breach, or termination thereof, shall be finally and exclusively settled by the courts of Suffolk County, Massachusetts.

15.9. **Construction.** The Parties have participated jointly in the negotiation and drafting of the Agreement. If an ambiguity or question of intent or interpretation arises, the Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of its authorship of any of the provisions of the Agreement. Words used in the Agreement in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular in the Agreement shall apply to such words when used in the plural where the context so permits and vice versa.

15.10. **Entire Agreement.** This MAP, DPA, and all Project Plans, Program Guides, Program Policies, and Program Requirements effectuated pursuant to the MAP represents the entire agreement between the Parties with respect to the subject matter herein and supersedes all prior oral and written understandings, communications, or agreements between Akamai and Provider regarding the subject matter herein. After the Effective Date, Akamai may modify or replace any Program Guide, Program Policy, or Program Requirement updating the corresponding document URL in the Marketplace. No amendment to or modification of the Agreement by Customer shall be valid or binding unless it is in writing and executed by the Parties. After the Effective Date, Akamai may provide an updated URL in place of any URL in the Agreement. For clarity, the Agreement does not modify or supersede any Provider agreement for Provider's use of Akamai Services.

16. **Definitions.** For purposes the Agreement, terms, acronyms, and phrases used in the cloud computing, database management, professional services, or other pertinent industries that are not defined below shall be interpreted in accordance with their then generally understood meaning. Unless otherwise specified, section references in this Schedule 1 shall refer to sections of the MAP.

"Akamai" collectively means Akamai Technologies, Inc. and its Representatives.

"Akamai Services" means the cloud services described at www.akamai.com, www.linode.com, or other such link as determined by Akamai.

"Agreement" collectively means the MAP, DPA, and all applicable Project Plans, Program Guides, Program Policies, and Program Requirements effectuated pursuant to the MAP.

"Breach" means any inability, unwillingness, or otherwise failure to perform the duties, obligations, or responsibilities as required by the Agreement prior to the expiration of the cure period prescribed in the MAP.

"Breaching Party" includes any Party whose action(s) or inaction(s) cause a Breach.

"Change in Control Event" means any actual or expected (i) merger, acquisition, corporate reorganization, or sale of all or substantially all of a Party's assets or a controlling interest in a Party's ownership or (ii) dissolution, winding down, or commencement of bankruptcy proceedings by a Party.

“Confidential Information” means non-public information disclosed in connection to the Agreement by a Party and/or its Representatives (a “Disclosing Party”) to the other Party and/or its Representatives (a “Receiving Party”) and which is either designated as confidential or of a type which should be recognized by a commercially reasonable party as confidential, including without limitation, non-public information relating to Representor’s technology, products, services, processes, data, customers, business plans and methods, promotional and marketing activities, finances and other business affairs, (ii) third party information that the Representee is obligated to keep confidential, and (iii) the nature, content and existence of discussions or negotiations between the Parties. Confidential Information does not include any information that: (i) is or becomes publicly available without breach of the Agreement; (ii) can be shown by documentation to have been known to the Representee at the time of the Representor’s disclosure; (iii) received from a third party who did not acquire or disclose the same by a wrongful or tortious act; or (iv) can be shown by documentation to have been independently developed by the Receiving Party without reference to the Disclosing Party’s Confidential Information. For clarity, Listing Materials are not Confidential Information.

“Customer” means any person or entity who purchases, procures, deploys, uses, or is referred any service arising from or related to the Marketplace.

“Covered Data” collectively means any and all (i) Akamai Data Processed by Provider with respect to Provider and (ii) Provider Data Processed by Akamai with respect to Akamai.

“Data” means any individual or collection of text, number, symbol, audio, software, file, information, or content that is capable of being used or Processed.

“Data Processing Agreement” or “DPA” means the Akamai Data Processing Agreement for Partners found here: <https://www.akamai.com/legal/compliance/privacy-trust-center>.

“Default” means any Breach that is not cured within the Breach Cure Period.

“Defaulting Party” means any Party whose action(s) or inaction(s) cause a Default.

“Dispute” includes any allegation, conflict, claim, controversy, and other cause of action, whether alleged or not alleged, known or unknown, vested or contingent, and/or asserted or not asserted, arising or occurring as between the Parties or any third party arising from or related to the Agreement or the performance of a Party’s obligations required by or pursuant to the Agreement.

“Fee” includes any charge, cost, expense, and otherwise amount payable to (i) Provider by Akamai or (ii) Akamai by Provider arising from or related to the Agreement.

“Indemnify” includes a Representor’s obligation to defend, indemnify, and hold harmless Representee from and against Indemnifiable Losses as required by and pursuant to the terms of the Agreement.

“Indemnifiable Loss” includes any loss, lawsuit, liability, damage, cost, and expense, including without limitation reasonable attorneys’ fees and professional fees arising from or related to a Dispute subject to the section entitled “Indemnification” of the MAP.

“Intellectual Property” means any and all tangible or intangible property, including, without limitation, devices, machines, components, parts, methods, procedures, data, information, inventions, discoveries, works of authorship, designs, and derivative works.

“Intellectual Property Right” means any and all of the universal legal rights afforded to the Intellectual Property based on statute or common law and includes, without limitation, patents, copyrights, trade secrets, and/or licenses thereto.

“Listing Materials”

“Notice” means any document, request, demand, and otherwise communication required by the MAP, each of which shall be in writing and delivered: (i) in person or by courier; (ii) first-class registered mail or certified mail; or (iii) electronically by email to the (a) address and applicable Project Manager and (b) such other address as a Party may designate to the other Party in writing. Each Notice shall be deemed to be delivered on the date on which the non-delivering Party receives such Notice.

“Program Guide” means any document designated as a Program Guide subject to this MAP, including without limitation, the Onboarding & Qualification Guide, Marketplace Engagement Guide, and ISV Catalyst Program Benefits Guide.

“Program Policy” means any document designated as a Program Policy subject to this MAP.

“Program Requirement” means any document designated as Program Requirement, including without limitation, the Akamai Supplier & Partner Guiding Principles (<https://www.akamai.com/site/en/documents/akamai/akamai-guiding-principles-for-suppliers-and-partners.pdf>).

“Project Plan” means any document, arising from or related to this MAP, setting forth the performance of specific services or exchange of products and mutually executed by the Parties. Each Project Plan shall, at minimum, include the following:

- (a) a description of the applicable services and/or products;
- (b) each Party’s designated Project Manager, provided that either Party may change its Project Manager and appoint a substitute Project Manager as convenient;
- (c) cost and expense allocations;
- (d) supplemental termination rights of the Parties relating to the Project Plan, if any;
- (e) supplemental obligations of the Parties to market, sell and/or support the Project Plan deliverables, if any;
- (f) supplemental Intellectual Property terms specific to the applicable Project Plan, if any; and
- (g) supplemental limitations of liability or indemnification specific to the applicable Project Plan, if any.

“Process” and “Processed” and “Processing” collectively means any (i) direct or indirect and (ii) manual or automated access, acquisition, collected, development, implementation, maintenance, transmission, use, and otherwise performance of any operation or set of operations upon Data.

“Project Manager” means the person identified as a Party’s Project Manager in the applicable Project Plan.

“Provider” collectively means the entity indicated in the introduction section of the MAP and its Representatives.

“Provider EULA” collectively means Provider’s end user license agreement, terms of service, and/or similar agreement, applicable to the corresponding Provider Service.

“Provider Service” has the meaning described in the applicable Project Plan, including without limitation, the goods, services, and/or personnel supplied by Provider to Akamai.

“Provider SLA” means the Provider’s service level agreement, or other similar agreement, relating to the availability, performance, and reliability of the corresponding Provider Service.

“Representative” includes any parent company, subsidiary, affiliate, owner, director, manager, employee, contractor, subcontractor, processor, subprocessor, service provider, professional advisor, director, officer, trustee, successor, assign, or agent of a Party.

“Representee” refers to each of Akamai or Provider, as applicable, who requests or receives the Representor’s representations, warranties, covenants, or otherwise agreement to be bound by the provisions of the Agreement, including without limitation, Representor’s agreement to: (i) satisfy or supply services, products, and other deliverables described in a Project Plan; (ii) satisfy its technical, financial, marketing, and otherwise legal obligations; (iii) cooperate with the other Party’s reasonable requests in furtherance of the Agreement; (iv) indemnify, hold harmless, release, waive, settle and give up certain rights arising from or related to applicable Disputes against the Representee; and (v) maintaining the confidentiality of the Agreement.

“Representor” refers to each of Akamai or Provider, as applicable, who represents, warrants, covenants, or otherwise agrees to be bound by the provisions of the Agreement, including without limitation, such Representor’s agreement to: (i) satisfy or supply services, products, and other deliverables described in a Project Plan; (ii) satisfy its technical, financial, marketing, and otherwise legal obligations; (iii) cooperate with the other Party’s reasonable requests in furtherance of the Agreement; (iv) indemnify, hold harmless, release, waive, settle, and give up certain rights arising from or related to applicable Disputes against Representee; and (v) maintaining the confidentiality of the Agreement.

“Representor Services” means the goods, services, and/or personnel supplied by Representor to Representee.

“Termination Date” refers to the date of termination in accordance with the provisions of the MAP or an applicable Project Plan.

“Wind Down Period” for each Provider Service, commences on the date the corresponding Provider Service is designated by either Party for removal and ends three (3) months after the date the last Customer order regarding the Provider Service terminates or naturally expires.