Terms of Service

Last Updated: 10th November 2020

THESE Terms of Service (the "Terms") govern access to and/or use of LambdaTest Services as defined below.

THESE Terms constitute a binding agreement between LambdaTest, Inc., a Delaware Corporation ("LambdaTest", "we" or "us"); and Individuals or entities who purchase LambdaTest Services ("Subscription") or create an Account ("Account") for free or for trial and their authorized users (Collectively "Customers", "you" or "your"). Customers and LambdaTest are each a "Party" and collectively the "Parties".

By accessing or using LambdaTest Services, you accept and agree to be abide by these Terms. If you are accessing or using LambdaTest Services on behalf of an organization or legal entity, you are agreeing to the Terms for that organization (in which event, "you", "your" or "Customer" will refer to that organization or legal entity) and representing to LambdaTest that you have the authority to bind that organization or legal entity to the Terms unless that organization has a separate written contract in effect with us (an "Agreement"), in which event the Agreement shall govern your use of the LambdaTest Services; provided that if there is any conflict between these Terms and an Agreement, the provisions of the Agreement shall prevail. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, YOU MUST NOT ACCESS OR USE LAMBDATEST SERVICES.

We may, in our sole discretion, modify the Terms via email or by posting notice on any part of the LambdaTest Services. The "Last Updated" date at the top the Terms indicates when the latest modifications were made to the Terms. The then-current version of the Terms will supersede all earlier versions. By continuing to access and use LambdaTest Services, you agree to any such modifications.

If you have any comments or questions regarding the Terms, or wish to report any violation of the Terms, you may contact us at support@lambdatest.com .

1. Overview

1.1. Introduction

LambdaTest is a cloud hosted, platform and service that enable customers to test their websites and mobile applications across wide range of web browsers, operating systems and virtual or physical device environments. ("LambdaTest Services"). LambdaTest Services shall also include a) the service or providing any corresponding APIs, documentation or software that may be made available by LambdaTest in connection with such Service; b) any onboarding assistance provided; and c) subsequent enhancements, updates and bug fixes to the foregoing made generally available by LambdaTest to its Customers.

1.2. Definitions

"Account-Related Information" means contact information and biographical information about Customer and/or Customer's representatives used to access LambdaTest Services.

"Customer Content" means (i) data or content in the Customer Properties that Customer chooses to test; (ii) data Customer submits or creates as part of a test, including test scripts and Screenshots; and (iii) any other data Customer submits to LambdaTest in connection with the use of the Services (not including Account Related Information).

"Customer Property" means a website or mobile application submitted to the Services for testing.

"Claims" mean, collectively, claims, demands, suits, losses, damages, liabilities, costs, actions, judgments, and expenses (including reasonable attorney's fees).

"Documentation" means the technical user documentation provided on Website or within LambdaTest Services.

"European Personal Information" means Personal Information about a citizen of either a member state of the European Economic Area or of Switzerland.

"Intellectual Property Rights" means all forms of intellectual property rights and protections, now known or hereafter established, that may be obtained for, or may protect, technology or other assets, which includes, but is not limited to, all right, title, and interest in U.S. and foreign patents and patent applications; trade secret and nondisclosure rights; copyrights and authors' rights; and trademarks, service marks, trade names, product names, and brand names.

"Laws" means all applicable local, state, federal, foreign and international laws, regulations and conventions, including, without limitation, those related to data privacy and data disclosure, data security, international communications, and cross-border data transfers.

"Personal Information" means any information that identifies, relates to, describes, or is capable of being associated with, or could reasonably be linked, directly or indirectly, to an identified or identifiable living natural person, including but not limited to: (i) Identifiers such as a real name, alias, postal address, unique personal identifier, online identifier Internet Protocol address, email address, account name, social security number, driver's license number, government identification card number, passport number, or other similar identifiers; or (ii) information defined as "personal information," "personally identifiable information," "personal data," or similar expressions under applicable privacy or data security Law.

2. LambdaTest Services

2.1. Access

(a) Subject to these Terms, LambdaTest will provide the LambdaTest Services to Customers in accordance with each Customer's subscription plan. LambdaTest grants to each Customer a limited non-exclusive, non-transferrable, world-wide right and license during the Term, solely for its internal business purposes and in accordance with the Documentation, to: (a) use the LambdaTest Services; (b) implement, configure, and, through its Account Administrator(s), permit its Permitted Users to access and use the LambdaTest Services up to any applicable limits or maximums; and (c) access and use the Documentation.

(b) You represent and warrant that you are: (a) of legal age (18 years of age or older or otherwise of legal age in your resident jurisdiction) and competent to agree to these Terms; and (b) you (or your Permitted Users, as applicable) are not and will not be when using the LambdaTest Services located in, under the control of, or a national or resident of a U.S. embargoed country or territory and are not a prohibited end user under Export Control Laws (as defined in Section 11.11). You acknowledge that you are not permitted to use the LambdaTest Services if you cannot make these representations.

(c) Customer may assign and expressly authorize a Permitted User(s) as its agent to manage Customer's Account, and management of Customer's Account includes, without limitation, configuring administration settings, assigning access and use authorization, requesting different or additional services, providing usage and performance records, assisting in third-party product integrations, and accepting notices, disclosures, and terms and conditions ("Account Administrator"). Customer may appoint an employee, agent or a third-party business partner or contractor to act as its Account Administrator(s).

(d)Except as expressly specified in the Terms, you will not (and you will not permit any third party to): (i) rent, lease, provide access to, resell, or sublicense the LambdaTest Services to a third party or provide the LambdaTest Services to a third party as a managed service; (ii) use the LambdaTest Services to provide, or incorporate the LambdaTest Services into, any product or service provided to a third party; (iii) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs to the LambdaTest Services, except to the extent expressly permitted by applicable law (and then only upon advance notice to LambdaTest); (iv) copy or modify the LambdaTest Services or any Documentation, or create any derivative work from any of the foregoing; (v) remove or obscure any proprietary or other notices contained in the LambdaTest Services (including any reports or data printed from the LambdaTest Services); (vi) frame and/or utilize framing techniques to enclose any trademark, logo, and/or other portion of the LambdaTest Services (including images, texts, page layout, form); (vii) use any metatags and/or other "hidden texts" using LambdaTest's name and/or trademarks; (viii) take any action that imposes or may impose (as determined by us in our sole discretion) an unreasonable and/or disproportionately large load on our (and/or our third party providers') infrastructure and platform; (ix) use the LambdaTest Services for any unlawful purpose and/or to violate any federal, state or international law; (x) run any form of auto-responder and/or "spam" on the LambdaTest Services; and (xi) download of install software applications not intended for testing e.g. bitcoin mining, gaming servers and other illegitimate activities.

(e) If you violate the Terms, we may terminate your Account immediately. If we suspend or terminate your Account, you may not subscribe under a new Account unless specifically allowed by us. You agree that LambdaTest shall not be liable to you or to any third party for any suspension and/or termination of your Account or any refusal of access.

2.2. Target Availability

LambdaTest will use commercially reasonable efforts to make the Services available with uptime of 99.8% for each calendar month ("Target Availability"). The calculation of uptime will not include unavailability to the extent due to: (a) use of any Service by Customer in a manner not authorized in this Terms or the applicable Documentation; (b) general Internet problems, Force Majeure Events or other factors outside of LambdaTest's reasonable control; (c) Customer's equipment, software, network connections or other infrastructure; (d) third party systems, acts or omissions; or (e) LambdaTest's scheduled maintenance or reasonable emergency maintenance. "scheduled maintenance" means routine maintenance for which LambdaTest notifies Customer at least two (2) days in advance.

2.3. Support

LambdaTest provides break-fix support to its customers using automated (web+mobile) and manual tests that are done on LambdaTest Services or integrations supported on the LambdaTest Services. LambdaTest does not assist in writing tests or debugging new tests that have already been proven to work on a local Selenium or Appium server / grid. LambdaTest may require the Customer, in order to provide appropriate support, to demonstrate the same test or share sample test script.

LambdaTest provides 24x5 (from 00:00 hrs Monday through 23:59 hrs Friday PST) Support to Customers only over chat / emails with target first response within 24hours during the above Support window. LambdaTest will have no obligation to provide Support to the extent an Incident arises from (a) use of the Services by Customer in a manner not authorized in the Terms or the applicable Documentation; (b) general Internet problems, Force Majeure Events or other factors outside of LambdaTest's reasonable control; (c) Customer's equipment, software, network connections or other infrastructure; or (d) third party systems, acts or omissions.

2.4. Permitted Users

Access to and/or use of LambdaTest Services is permitted only to Customers and employees, contractors and Affiliates of the Customer ("Permitted Users"). Customer may permit individuals serving as its independent contractors and consultants who are not competitors of LambdaTest ("Contractors") and individual employees, Contractors, or consultants of Affiliates (as defined below) to serve as Permitted Users, provided Customer remains responsible for compliance by each such Contractor or Affiliate Permitted User with the Terms and any such use of the LambdaTest Services by such Contractor or Affiliate Permitted User is for the sole benefit of the Customer. "Affiliate" means any entity controlling, controlled by, or under common control with the referenced entity, where the term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

2.5. Trial Access

If Customer receives free access or a trial or evaluation subscription to paid LambdaTest Services ("Trial Access"), then Customer may use the paid LambdaTest Services in accordance with the Terms for a period of seven (7) days or such other period granted by LambdaTest (the "Trial Period"). Trial Access is permitted solely for Customer's use to determine whether to purchase a paid subscription of the LambdaTest Services. Certain Trial Access may include pre-release and beta services or components ("Beta Releases"). Trial Access may not include all functionality and features accessible as part of a full paid Subscription. If Customer does not purchase a paid subscription, the Terms and Customer's right to access and use the paid LambdaTest Services will terminate at the end of the Trial Period and customer may be moved to free LambdaTest Services. LambdaTest has the right to terminate a Trial Access at any time for any reason. AT THE END OF THE TRIAL ACCESS, ALL CUSTOMER CONTENT MAY BE PERMANENTLY LOST UNLESS THE CUSTOMER: (a) PURCHASES A PAID SUBSCRIPTION TO LAMBDATEST SERVICES THAT IS GREATER THAN OR EQUAL TO THOSE COVERED BY THE TRIAL ACCESS; OR (b) EXPORTS SUCH DATA BEFORE THE END OF THE TRIAL PERIOD. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN TERMS, LAMBDATEST WILL HAVE NO WARRANTY, INDEMNITY, SERVICE LEVEL, OR SUPPORT OBLIGATIONS WITH RESPECT TO TRIAL ACCESS, AND IF CUSTOMER HAS A TRIAL ACCESS, IT WAIVES ALL CLAIMS (defined above) AGAINST LAMBDATEST ARISING OUT OF THE TRIAL ACCESS, THE USE OF THE LAMBDATEST SERVICES, AND THE TERMS.

2.6. Privacy Practices

LambdaTest's privacy practices regarding Personal Information stored using the LambdaTest Services are governed by the then-current version of the LambdaTest Privacy Policy ("Privacy Policy") posted at [LambdaTest Privacy Policy](#), as it is amended from time to time, and which is incorporated by reference herein.

3. Customer Content & Responsibilities

3.1. Customer Content and Rights

As between the parties, Customer will retain all right, title and interest (including any and all Intellectual Property Rights) that Customer may have in and to the Customer Content as submitted to, generated by, or accessed through the LambdaTest Services. Subject to the Terms, Customer hereby grants to LambdaTest a non-exclusive, worldwide, royalty-free license to use, copy, store, transmit, modify, create derivative works of and display the

Customer Content solely to the extent necessary to provide the LambdaTest Services to Customer.

Customer will ensure that use of LambdaTest Services and Customer's collection, usage, storage, transmission, and disclosure to LambdaTest of all Customer Content are at all times in compliance with Customer's privacy policies and all applicable Laws. Customer is solely responsible for the accuracy, content and legality of all Customer Content.

Customer acknowledges that the Services are not designed for use with (and do not require) Personal Information included in the Customer Content. Customer specifically agrees not to use the Services to collect, store, process of transmit any Personal Information other than Account-Related Information, and will not submit to the Services any Customer Content containing any Personal Information. LambdaTest will have no liability under this Agreement for Personal Information included within Customer Content , or any security incident or breach regarding such Personal Information.

Customer represents and warrants to LambdaTest that Customer has all necessary rights, consents and permissions in relation to all Customer Content as contemplated in the Terms (including granting LambdaTest the rights in Section 3.1), and that no Customer Content will violate or infringe (i) any third party Intellectual Property, publicity, privacy or other rights or (ii) any Laws. Customer will not use the LambdaTest Services with any Customer Content that (i) is deceptive, fraudulent, illegal, obscene, defamatory, libelous, threatening, harmful to minors, pornographic, indecent, harassing, hateful, religiously, racially or ethnically offensive, that encourages illegal or tortious conduct or that is otherwise inappropriate; (ii) contains viruses, bots, worms, scripting exploits or other similar materials; or (iii) could otherwise cause damage to LambdaTest or any third party.

3.2. Storage & Removal

LambdaTest may delete and reset the test environment after each test. As a result, any Customer Content submitted for test may be deleted after each test. Customer specifically acknowledges that LambdaTest is not designed to or used for storage of Customer Content and that LambdaTest is not obliged to maintain a backup of any Customer Content except for Customer test execution data and related logs which are stored for a period of 60 days from the date of upload/creation. Customer further acknowledges and agrees that LambdaTest and its designees shall have the right to remove any Customer Content that violates these Terms or is otherwise objectionable.

3.3. Indemnification by Customer

Customer will indemnify, defend and hold harmless LambdaTest, its affiliates, its officers, directors and employees from and against any and all Claims arising out of or in connection with any claim arising from or relating to (a) any Customer Content or acts or omissions of

Customer that constitute a breach or alleged breach by Customer of Section 3.1 (Customer Content and Rights) or (b) any service or product offered by Customer in connection with or related to the LambdaTest Services. This indemnification obligation is subject to Customer receiving (i) prompt written notice of such claim (but in any event notice in sufficient time for Customer to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, or settlement of such claim; and (iii) at Customer's expense, all necessary reasonable cooperation of LambdaTest to defend a Claim. Notwithstanding the foregoing sentence, LambdaTest may participate in the defense of any Claim by counsel of its own choosing, at its cost and expense and Customer will not settle any Claim without LambdaTest's prior written consent, unless the settlement fully and unconditionally releases LambdaTest and does not require LambdaTest to pay any amount, take any action, or admit any liability.

4. Information Security And Personal Data

4.1. Information Security

LambdaTest will employ commercially reasonable technical and organizational measures that are designed to prevent unlawful or unauthorized access, use, alteration, or disclosure of Customer data, Customer Content and Personal Information.

4.2. Data Processing / Transfer

If Customer wishes to store, transmit, or otherwise process European Personal Information using the LambdaTest Services or by transmitting it to LambdaTest, whether that is Account-Related Information or Customer Content, the Data Protection Addendum found here shall be applicable for the processing of any Personal Information.

5. Ownership

5.1. Intellectual Property

LambdaTest Services contain materials that are proprietary and are protected by copyright laws, international treaty provisions, trademarks, service marks and other intellectual property laws and treaties. You agree to abide by all applicable copyright and other laws, as well as any additional copyright notices or restrictions contained on LambdaTest Services. You acknowledge that the LambdaTest Services contain original works that have been

developed, compiled, prepared, revised, selected, and arranged by LambdaTest and others through the application of methods and standards of judgment developed and applied through the expenditure of substantial time, effort, and money and which constitute valuable intellectual property of LambdaTest and such others. All present and future rights in and to trade secrets, patents, designs, copyrights, trademarks, database rights, service marks, know-how, and other intellectual property or other proprietary rights of any type, Documentation, any improvements, design contributions, or derivative works thereto, and any knowledge or process related thereto, including rights in and to all applications and registrations relating to the LambdaTest Services, shall, as between you and LambdaTest, at all times be and remain the sole and exclusive property of LambdaTest. You acknowledge that you are obtaining only a limited right to the LambdaTest Services and that irrespective of any use of the words "purchase", "sale" or like terms in the Terms no ownership rights are being conveyed to you. Further, you acknowledge that the LambdaTest Services are offered as an on-line, hosted solution, and that you have no right to obtain a copy of it.

5.2. Feedback

You may, from time to time, submit comments, questions, suggestions or other feedback relating to LambdaTest Services to LambdaTest ("Feedback"). LambdaTest may freely use such Feedback in connection with any of its products or services without the need to pay compensation for any use of such Feedback. We treat all Feedback as non-confidential and non-proprietary.

6. Plan & Payment Terms

6.1. Subscription Plan

The prices, features, and options of the LambdaTest Services depend on the Subscription Plan selected as well as any changes instigated by Customer ("Subscription Plan"). LambdaTest does not represent or warrant that a particular Subscription Plan will be offered indefinitely and reserves the right to change the prices for or alter the features, usage limits and options in a particular Subscription Plan without prior notice. Customer shall not, and shall not permit others, to use the LambdaTest Services or allow access to them in a manner that circumvents contractual usage restrictions or matrices set forth in these Terms, applicable Subscription Plan.

6.2. Payment Terms

(a) When you purchase a Subscription Plan, you must provide accurate and complete information for a valid payment method that you are authorized to use. Customer must promptly notify LambdaTest of any change in its invoicing address and must update its

account with any changes related to its payment method. BY COMPLETING REGISTRATION FOR A SUBSCRIPTION PLAN, CUSTOMER AUTHORIZES LAMBDATEST OR ITS AGENT TO CHARGE ITS PAYMENT METHOD ON A RECURRING (E.G. MONTHLY OR YEARLY) BASIS ("AUTHORIZATION") FOR: (a) THE APPLICABLE SUBSCRIPTION PLAN CHARGES; (b) ANY AND ALL APPLICABLE TAXES; AND (c) ANY OTHER CHARGES INCURRED IN CONNECTION WITH CUSTOMER'S USE OF THE LAMBDATEST SERVICES. The Authorization continues through the applicable Subscription Term and any Renewal Term (as defined in Section 7.1(b), below) until Customer cancels as set forth in Section 7.2.

(b) LambdaTest will provide billing and usage information in a format we choose, which may change from time to time. LambdaTest reserves the right to correct any errors or mistakes that it identifies even if it has already issued an invoice or received payment. Customer agrees to notify us about any billing problems or discrepancies within thirty (30) days after they first appear on your invoice. If Customer does not bring such problems/discrepancies to our attention within thirty (30) days, it agrees to waive its right to dispute such problems or discrepancies.

(c) Except as expressly set forth anywhere in these Terms, all fees are non-refundable. Customer is required to pay any sales, use, GST, value-added, withholding, or similar taxes or levies, whether domestic or foreign, other than taxes based on the income of LambdaTest. Customer hereby confirms that LambdaTest can rely on the name and address set forth in its registration for a Subscription Plan as being the place of supply for Tax purposes. Customer must make all payments without any setoffs, withholdings, or deduction of any kind. Any late payments will be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less. Customer will reimburse any costs or expenses (including, but not limited to, reasonable attorneys' fees) incurred by LambdaTest to collect any amount that is not paid when due. Amounts due to LambdaTest may not be withheld or offset by Customer for any reason against amounts due or asserted to be due from LambdaTest.

7. Term And Termination

7.1. Term

(a) With reference to LambdaTest Services, these Term shall begin on the date the Customer accepts it and continues until the Customer's Subscription Plan expires or its use of the LambdaTest Services ceases (including as a result of termination in accordance with the Terms), whichever is later.

(b) Subscription Plans automatically renew unless otherwise noted. If you purchase a Subscription Plan you agree to pay the then-current applicable fee associated with the Subscription Plan and further agree and acknowledge that it will automatically renew, unless, prior to the end of the current period of effectiveness of the Subscription Plan ("Subscription Term"): (a) you terminate your Account; (b) you set your Account not to auto-renew by logging in to LambdaTest Services or by contacting us at support@lambdatest.com ; (c) LambdaTest declines to renew your Subscription Plan; or (d) these Terms are otherwise properly terminated as expressly permitted herein. The Subscription Plan will automatically renew on a monthly or annual basis, depending upon the Subscription Term ("Renewal Term").

7.2. Termination by Customer

You may terminate your Account at any time upon thirty (30) days' advance written notice to LambdaTest. If you wish to terminate, you must provide notice by writing to us at support@lambdatest.com . In case of such termination, LambdaTest is under no obligation to refund any fees paid in advance for the unexpired period of the Term.

7.3. Termination by LambdaTest

LambdaTest can terminate Customer Account in case Customer is considered to be in default. A Customer will be in default of these Terms if: (a) it fails to timely pay any amount owed to us; (b) it or a Permitted User breaches any provision of these Terms or violates any published policy applicable to the LambdaTest Services; (c) if, in our sole discretion, we believe that continued use of the LambdaTest Services by the Customer (or its Permitted Users) creates legal risk for LambdaTest or presents a threat to the security of the LambdaTest Services or LambdaTest's customers. If a Customer is in default, we may, without notice: (i) suspend its use of the LambdaTest Services; (ii) terminate its account; and (iv) pursue any other remedy available to us.

7.4. Termination for Cause

Either party may terminate these Terms if the other party (a) fails to cure any material breach of the Terms (including a failure to pay fees) within thirty (30) days after written notice; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days).

7.5. Effect of Termination

Upon any expiration or termination, Customer will immediately cease any and all use of and access to all LambdaTest Services and delete (or, at LambdaTest's request, return) any and all copies of the Documentation, any LambdaTest passwords or access codes and any other

LambdaTest CI in its possession. Any Fees accrued but not paid shall become immediately due and payable upon termination.

7.6. Survival

The following Sections will survive any expiration or termination of these Terms : 2.1 (Access), 2.5 (Trial Access), 3 (Customer Content & Responsibilities), 5 (Ownership), 6.2 (Payment Terms), 7 (Term and Termination), 8 (Warranties and Disclaimers), 9 (Limitation of Remedies & Damages), 10 (Confidential Information) and 11 (General Terms).

8. Warranties And Disclaimers

LAMBDATEST SERVICES AND DOCUMENTATION ARE PROVIDED "AS IS" AND 'AS AVAILABLE". YOUR USE OF THE SAME SHALL BE AT YOUR SOLE RISK. NEITHER LAMBDATEST NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AND LICENSORS MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. LAMBDATEST DOES NOT WARRANT THAT CUSTOMER'S USE OF LAMBDATEST SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, NOR DOES LAMBDATEST WARRANT THAT IT WILL REVIEW THE CUSTOMER CONTENT FOR ACCURACY OR THAT IT WILL PRESERVE OR MAINTAIN THE CUSTOMER CONTENT OR CUSTOMER END USER DATA WITHOUT LOSS. LAMBDATEST WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF LAMBDATEST. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, WILL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW. TO THE EXTENT PERMITTED BY LAW, LAMBDATEST IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR ANY OTHER LOSS OR DAMAGE RESULTING FROM (I) THE TRANSFER OF DATA OVER PUBLIC COMMUNICATIONS NETWORKS AND FACILITIES, INCLUDING THE INTERNET; (II) PERSONAL INJURY OR PROPERTY DAMAGE OF ANY NATURE WHATSOEVER RESULTING FROM YOUR ACCESS TO AND USE OF LAMBDATEST SERVICES AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN; (III) ANY LOSS OF YOUR DATA OR CONTENT FROM THE LAMBDATEST SERVICES; OR (II) ANY DELAY OR DELIVERY FAILURE ON THE PART OF ANY OTHER SERVICE PROVIDER NOT CONTRACTED BY LAMBDATEST, AND CUSTOMER ACKNOWLEDGES THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS

INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. CUSTOMER ACKNOWLEDGES THAT LAMBDATEST CANNOT GUARANTEE THE ABSOLUTE PREVENTION OF CYBER-ATTACKS SUCH AS HACKING, SPYWARE, AND VIRUSES. ACCORDINGLY, LAMBDATEST SHALL NOT BE LIABLE FOR ANY UNAUTHORIZED DISCLOSURE, LOSS OR DESTRUCTION OF CUSTOMER CONTENT ARISING FROM SUCH RISKS. YOU WILL NOT HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF LAMBDATEST TO ANY THIRD PARTY. LAMBDATEST DOES NOT WARRANT, ENDORSE, GUARANTEE OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE OFFERED BY A THIRD PARTY THROUGH WEBSITE OR LAMBDATEST SERVICES, AND LAMBDATEST SHALL NOT BE A PARTY TO OR IN ANY WAY RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND THIRD PARTY PROVIDERS OF PRODUCT OR SERVICES.

9. Limitations Of Remedies And Damages

9.1. Consequential Damages Waiver

EXCEPT FOR THE EXCLUDED CLAIMS DEFINED BELOW, NEITHER PARTY SHALL HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, LAMBDATEST SERVICES, OR THE DOCUMENTATION FOR ANY LOSS OF USE, LOST DATA, LOST PROFITS, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. "Excluded Claims" means any claim arising (a) from Customer's breach of Section 2.1 (Access); (b) under Section 3 (Customer Content & Responsibilities); or (c) from a party's breach of its obligations in Section 10 (Confidential Information). The parties agree that the waivers and limitations specified in this Section 9.1 apply regardless of the form of action, whether in contact, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy specified in these Terms is found to have failed of its essential purpose.

9.2. Liability Cap

LAMBDATEST'S AND ITS SUPPLIERS' ENTIRE LIABILITY TO CUSTOMER ARISING OUT OF OR RELATED TO THESE TERMS, THE LAMBDATEST SERVICES OR THE DOCUMENTATION AT ANY TIME WILL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO LAMBDATEST FOR THE LAMBDATEST SERVICES GIVING RISE TO THE CLAIM UNDER THESE TERMS DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE FIRST EVENT GIVING RISE TO LIABILITY OR $100, WHICHEVER IS LOWER. THE EXISTENCE

OF MORE THAN ONE CLAIM SHALL NOT ENLARGE THIS LIMIT. SOME
JURISDICTIONS DO NOT ALLOW LIMITATION OF LIABILITY IN CERTAIN
INSTANCES, PORTIONS OF THE ABOVE LIMITATION, IN SUCH CASES, MAY NOT
APPLY TO YOU. IN THAT EVENT, SUCH EXCLUSIONS AND LIMITATIONS SHALL
APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

10. Confidential Information

(a) "Confidential Information" or "CI" shall mean non-public confidential or other
proprietary information that is disclosed by one party (the "Disclosing Party") to the other
party (the "Receiving Party") under these Terms or is obtained by the Receiving Party in
connection with its dealings with the Disclosing Party.

(b) CI includes, without limitation, hardware and software designs and code; research;
inventions; processes; schematics; drawings; product or service specifications and
documentation; technical data; business, service, and product plans; marketing plans;
forecasts; information about potential customers or vendors; customer or vendor lists;
pricing information; other financial and sales information; and other confidential business
information. CI also includes any information disclosed by a Disclosing Party to a
Receiving Party that is considered to be confidential information in a nondisclosure
agreement with a third party after the Receiving Party is notified of such non-disclosure
agreement.

(c) CI shall not include information that: (i) is in the Receiving Party's possession without
restrictions of confidentiality prior to receipt from the Disclosing Party, (ii) is or becomes
public knowledge other than due to disclosure by the Receiving Party, (iii) became known
to the Receiving Party from a source other than the Disclosing Party other than by the
breach of an obligation of confidentiality owed to the Disclosing Party; or (iv) is
independently developed by the Receiving Party, if such development was accomplished
without the use of the Disclosing Party's CI. All information provided to LambdaTest that is
not CI will be treated in accordance with the LambdaTest Privacy Policy.

(d) The Receiving Party shall (i) not disclose to any third party any portion of the CI it
receives from the Disclosing Party without the prior written consent of the Disclosing Party;
(ii) not use or exploit the CI in any way except for the purpose of internal review of the CI
to evaluate the Transaction, to perform the agreement embodying the Transaction, or as
otherwise specifically licensed by the Disclosing Party; (iii) promptly return or destroy, at
the Disclosing Party's option, all materials and documentation comprising or containing the
CI received from the Disclosing Party upon completion of the review or use, or upon request
of the Disclosing Party; (iv) take all reasonably necessary precautions to protect the

confidentiality of the CI received hereunder and exercise at least the same degree of care in safeguarding the CI as the Receiving Party would with its own confidential information, but in no event less than a reasonable degree of care; (v) disclose CI to employees or Representatives only if they have a need to know the CI; (vi) cause its employees or Representatives who receive access to CI to abide by the restrictions and terms of these Terms; and (vii) promptly advise the Disclosing Party in writing upon learning of any unauthorized use or disclosure of the CI. "Representative" means an agent, attorney, accountant, financial advisor, contractor, or other representative of the Receiving Party outside the Receiving Party's organization. The Receiving Party shall not disclose any CI of the Disclosing Party to a Representative of the Receiving Party unless the Representative is either (i) subject to a written confidentiality agreement between the Receiving Party and the Representative obligating the Representative to maintain such CI in confidence, or (ii) otherwise subject to fiduciary obligations of confidentiality under applicable law that would require the confidential treatment of the CI.

(d) The Receiving Party shall (i) not disclose to any third party any portion of the CI it receives from the Disclosing Party without the prior written consent of the Disclosing Party; (ii) not use or exploit the CI in any way except for the purpose of internal review of the CI to evaluate the Transaction, to perform the agreement embodying the Transaction, or as otherwise specifically licensed by the Disclosing Party; (iii) promptly return or destroy, at the Disclosing Party's option, all materials and documentation comprising or containing the CI received from the Disclosing Party upon completion of the review or use, or upon request of the Disclosing Party; (iv) take all reasonably necessary precautions to protect the confidentiality of the CI received hereunder and exercise at least the same degree of care in safeguarding the CI as the Receiving Party would with its own confidential information, but in no event less than a reasonable degree of care; (v) disclose CI to employees or Representatives only if they have a need to know the CI; (vi) cause its employees or Representatives who receive access to CI to abide by the restrictions and terms of these Terms; and (vii) promptly advise the Disclosing Party in writing upon learning of any unauthorized use or disclosure of the CI. "Representative" means an agent, attorney, accountant, financial advisor, contractor, or other representative of the Receiving Party outside the Receiving Party's organization. The Receiving Party shall not disclose any CI of the Disclosing Party to a Representative of the Receiving Party unless the Representative is either (i) subject to a written confidentiality agreement between the Receiving Party and the Representative obligating the Representative to maintain such CI in confidence, or (ii) otherwise subject to fiduciary obligations of confidentiality under applicable law that would require the confidential treatment of the CI.

(d) The Receiving Party shall (i) not disclose to any third party any portion of the CI it receives from the Disclosing Party without the prior written consent of the Disclosing Party; (ii) not use or exploit the CI in any way except for the purpose of internal review of the CI to evaluate the Transaction, to perform the agreement embodying the Transaction, or as otherwise specifically licensed by the Disclosing Party; (iii) promptly return or destroy, at the Disclosing Party's option, all materials and documentation comprising or containing the CI received from the Disclosing Party upon completion of the review or use, or upon request

of the Disclosing Party; (iv) take all reasonably necessary precautions to protect the confidentiality of the CI received hereunder and exercise at least the same degree of care in safeguarding the CI as the Receiving Party would with its own confidential information, but in no event less than a reasonable degree of care; (v) disclose CI to employees or Representatives only if they have a need to know the CI; (vi) cause its employees or Representatives who receive access to CI to abide by the restrictions and terms of these Terms; and (vii) promptly advise the Disclosing Party in writing upon learning of any unauthorized use or disclosure of the CI. "Representative" means an agent, attorney, accountant, financial advisor, contractor, or other representative of the Receiving Party outside the Receiving Party's organization. The Receiving Party shall not disclose any CI of the Disclosing Party to a Representative of the Receiving Party unless the Representative is either (i) subject to a written confidentiality agreement between the Receiving Party and the Representative obligating the Representative to maintain such CI in confidence, or (ii) otherwise subject to fiduciary obligations of confidentiality under applicable law that would require the confidential treatment of the CI.

(e) Notwithstanding the foregoing, Customer expressly authorizes LambdaTest to use and process Customer Content and Customer CI as described in the LambdaTest Privacy Policy.

(f) If the Receiving Party is required by a government body, court of competent jurisdiction, or judicial or administrative process to disclose any of the Disclosing Party's CI, the Receiving Party shall give the Disclosing Party reasonable advance notice so that the Disclosing Party may contest the disclosure or seek a protective order. Provided such notice is given, no such disclosure shall constitute a breach of these Terms.

(g) The Receiving Party acknowledges that breach of this Section 10 will cause irreparable harm to the Disclosing Party that is inadequately compensable in damages. Accordingly, the Receiving Party hereby acknowledges that the Disclosing Party is entitled to seek the issuance of any injunctive relief or the enforcement of other equitable remedies against it in any suit by the Disclosing Party to compel performance of any of the terms of this Section 10.

11. General Terms

11.1. Third Party Content

We may provide, or third parties may provide, links to other third-party web sites, services, or resources that are beyond our control. We make no representations as to the quality, suitability, functionality, or legality of any third-party content to which links may be provided, and you hereby waive any claim you might have against us with respect to such

services. LAMBDATEST IS NOT RESPONSIBLE FOR THE CONTENT ON THE INTERNET OR WEB PAGES THAT ARE LOCATED OUTSIDE THE LAMBDATEST SERVICES OR POSTS OF USER CONTENT.

11.2. Assignment

These Terms will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign these Terms without the advance written consent of the other party, except that either party may assign these Terms in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of such party's assets or voting securities. Any attempt to transfer or assign these Terms except as expressly authorized will be null and void.

11.3. Severability

The unenforceability of any provision or provisions of these Terms shall not render unenforceable or impair its remainder. If any provision of these Terms is deemed invalid or unenforceable in whole or in part, these Terms shall be deemed amended to delete or modify, as necessary, the offending provision to render it valid, enforceable, and, insofar as possible, consistent with the original intent of the parties.

11.4. Governing Law; Jurisdiction and Venue

These Terms will be governed by the laws of the State of California and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. All disputes relating to or arising out of these Terms shall be resolved in a state or federal court located in San Mateo County, California, USA, and the parties hereby consent to the jurisdiction of such courts.

11.5. Attorneys' Fees and Costs

The prevailing party in any action to enforce these Terms will be entitled to recover its attorneys' fees and costs incurred in connection with such action.

11.6. Notice

While the parties may communicate by any means in the performance of these Terms, any notice of termination or other legal notice to a party shall be effective only if it is in writing and sent using (a) LambdaTest Services; (b) nationally-known courier service that confirms delivery in writing or email, in which case notice will be deemed given upon receipt or (c) registered or certified mail, postage prepaid and return receipt requested, in which case notice is deemed given the third business day after such notice is deposited in the mail. Such notices can be sent at the address set forth in Customer's Account or on in case of

LambdaTest, to support@lambdatest.com . Email notices are effective only if the sender receives confirmation of receipt from the recipient.

11.7. Amendments; Waivers

No supplement, modification, or amendment of these Terms will be binding, unless executed in writing by a duly authorized representative of each party to these Terms. No waiver will be implied from conduct or failure to enforce or exercise rights under these Terms, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by Customer will supersede the terms and conditions of these Terms.

11.8. Entire Agreement

These Terms are the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of these Terms.

11.9. Force Majeure

Neither party will be liable to the other for any delay or failure to perform any obligation under these Terms (except for a failure to pay money) if the delay or failure is directly attributable to unforeseen events that occur after these Terms becoming effective and that are beyond the reasonable control of such party (each, a "Force Majeure Event"), such as a strike, blockade, war, act of terrorism, riot, pandemic, natural disaster, failure or diminishment of power or data or telecommunications networks or services.

11.10. Independent Contractors

The parties to these Terms are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf.

11.11. Export Control

In its use of the LambdaTest Services, Customer agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (i) Customer represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country, (ii) Customer will not (and will not permit

any of its users to) access or use LambdaTest Services in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer will not submit to the LambdaTest Services any information that is controlled under the U.S. International Traffic in Arms Regulations.

11.12. Government End-Users

Elements of the LambdaTest Services are commercial computer software. If the Permitted User or Customer of the LambdaTest Services is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the LambdaTest Services, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of these Terms in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. LambdaTest Services are developed fully at private expense.

11.13. Marketing

LambdaTest may use Customer's name and logo on LambdaTest's website and other marketing materials solely to identify Customer as a Customer of LambdaTest (without revealing any CI).