

# Zenlayer Customer Agreement

This Zenlayer Customer Agreement (this “Agreement”) contains the terms and conditions that govern your access to and use of the Service Offerings (as defined below) and is an agreement between the applicable Zenlayer Contracting Party specified in Section 14 below (also referred to as “Zenlayer,” “we,” “us,” or “our”) and you or the entity you represent (“you” or “your”). This Agreement takes effect when you click an “I Accept” button or check box presented with these terms or, if earlier, when you use any of the Service Offerings (the “Effective Date”). You represent to us that you are lawfully able to enter into contracts (e.g., you are not a minor). If you are entering into this Agreement for an entity, such as the company you work for, you represent to us that you have legal authority to bind that entity. Please see Section 14 for definitions of certain capitalized terms used in this Agreement.

## 1. Use of the Service Offerings.

1.1 Generally. You may access and use the Service Offerings in accordance with this Agreement. Service Level Agreements and Service Terms apply to the Service Offerings. You will comply with the terms of this Agreement and all laws, rules and regulations applicable to your use of the Service Offerings, including all local laws applicable to your service location.

1.2 Your Account. To access the Services, you must have a Zenlayer Console Site account associated with a valid email address and a valid form of payment. Unless explicitly permitted by the Service Terms, you will only create one account per email address.

## 2. Changes.

2.1 To the Services. We may change or discontinue any of the Services from time to time. We will provide you at least 3 months' prior notice if we discontinue material functionality of a Service that you are using, or materially alter a customer-facing API that you are using in a backwards-incompatible fashion, except that this notice will not be required if the 3 month notice period (a) would pose a security or intellectual property issue to us or the Services, (b) is economically or technically burdensome, or (c) would cause us to violate legal requirements.

2.2 To the Service Level Agreements. We may change, discontinue or add Service Level Agreements from time to time in accordance with Section 12.

## 3. Security and Data Privacy.

3.1 Security. Without limiting Section 10 or your obligations under Section 4.2, we will implement reasonable and appropriate measures designed to help you secure Your Content against accidental or unlawful loss, access or disclosure.

3.2 Data Privacy. We will not access or use Your Content except as necessary to maintain or provide the Service Offerings, or as necessary to comply with the law or a binding order of a governmental body. We will not disclose Your Content to any government or third party; except in each case as necessary to comply with the law or a binding order of a governmental body. Unless it would violate the law or a binding order of a governmental body, we will give you notice of any legal requirement or order referred to in this Section 3.2. We will only use your Account Information in accordance with the Privacy Policy, and you consent to such usage. The Privacy Policy does not apply to Your Content.

**3.3 Service Attributes.** To provide billing and administration services, we may process Service Attributes in the Zenlayer region(s) where you use the Service Offerings and the Zenlayer regions in the United States. To provide you with support services initiated by you and investigate fraud, abuse or violations of this Agreement, we may process Service Attributes where we maintain our support and investigation personnel.

#### **4. Your Responsibilities.**

**4.1 Your Accounts.** Except to the extent caused by our breach of this Agreement, (a) you are responsible for all activities that occur under your account, regardless of whether the activities are authorized by you or undertaken by you, your employees or a third party (including your contractors, agents or End Users), and (b) we and our affiliates are not responsible for unauthorized access to your account.

**4.2 Your Content.** You will ensure that Your Content and your and End Users' use of Your Content or the Service Offerings will not violate any of the Policies or any applicable law. You are solely responsible for the development, content, operation, maintenance, and use of Your Content.

**4.3 Your Security and Backup.** You are responsible for properly configuring and using the Service Offerings and otherwise taking appropriate action to secure, protect and backup your accounts and Your Content in a manner that will provide appropriate security and protection, which might include use of encryption to protect Your Content from unauthorized access and routinely archiving Your Content.

**4.4 Log-In Credentials and Account Keys.** Zenlayer log-in credentials and private keys generated by the Services are for your internal use only and you will not sell, transfer or sublicense them to any other entity or person, except that you may disclose your private key to your agents and subcontractors performing work on your behalf. You shall administer and be responsible for all activities conducted with your private keys and shall comply with all applicable terms and conditions governing the use of the private keys. Zenlayer will not store your log-in credentials or private keys in the Zenlayer Console Site.

**4.5 End Users.** You will be deemed to have taken any action that you permit, assist or facilitate any person or entity to take related to this Agreement, Your Content or use of the Service Offerings. You are responsible for End Users' use of Your Content and the Service Offerings. You will ensure that all End Users comply with your obligations under this Agreement and that the terms of your agreement with each End User are consistent with this Agreement. If you become aware of any violation of your obligations under this Agreement caused by an End User, you will immediately suspend access to Your Content and the Service Offerings by such End User. We do not provide any support or services to End Users unless we have a separate agreement with you or an End User obligating us to provide such support or services.

#### **5. Fees and Payment.**

**5.1 Service Fees.** We calculate and bill fees and charges monthly. We may bill you more frequently for fees accrued if we suspect that your account is fraudulent or at risk of non-payment. You will pay us the applicable fees and charges for any order or subscription of the Service Offerings as described on the Zenlayer Console Site using one of the payment methods we support. All amounts payable by you under this Agreement will be paid to us without setoff or counterclaim, and without any deduction or withholding. Fees and charges for any new Service or new feature of a Service will be effective when we post updated fees and charges on the Zenlayer Console Site, unless we expressly state otherwise in a notice. We may increase or add new fees and charges for any existing Services you are using by giving you at least 60 days' prior notice. We may elect to charge you

interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) on all late payments.

5.2 Taxes. Each party will be responsible, as required under applicable law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on that party upon or with respect to the transactions and payments under this Agreement. All fees payable by you are exclusive of Indirect Taxes, except where applicable law requires otherwise. We may charge and you will pay applicable Indirect Taxes that we are legally obligated or authorized to collect from you. You will provide such information to us as reasonably required to determine whether we are obligated to collect Indirect Taxes from you. We will not collect, and you will not pay, any Indirect Tax for which you furnish us a properly completed exemption certificate or a direct payment permit certificate for which we may claim an available exemption from such Indirect Tax. All payments made by you to us under this Agreement will be made free and clear of any deduction or withholding, as may be required by law. If any such deduction or withholding (including but not limited to cross-border withholding taxes) is required on any payment, you will pay such additional amounts as are necessary so that the net amount received by us is equal to the amount then due and payable under this Agreement. We will provide you with such tax forms as are reasonably requested in order to reduce or eliminate the amount of any withholding or deduction for taxes in respect of payments made under this Agreement.

## 6. Temporary Suspension.

6.1 Generally. We may suspend your or any End User's right to access or use any portion or all of the Service Offerings immediately upon notice to you if we determine:

- (a) your or an End User's use of the Service Offerings (i) poses a security risk to the Service Offerings or any third party, (ii) could adversely impact our systems, the Service Offerings or the systems or Content of any other Zenlayer customer, (iii) could subject us, our affiliates, or any third party to liability, (iv) exceeds what we deem to be reasonable usage; or (iv) could be fraudulent;
- (b) you are, or any End User is, in breach of this Agreement, including any of the Policies;
- (c) you are in breach of your payment obligations under Section 5; or
- (d) you have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

6.2 Effect of Suspension. If we suspend your right to access or use any portion or all of the Service Offerings:

- (a) you remain responsible for all fees and charges you incur during the period of suspension; and
- (b) you will not be entitled to any service credits under the Service Level Agreements for any period of suspension.

## 7. Term; Termination.

7.1 Term. The term of this Agreement will commence on the Effective Date and will remain in effect until terminated under this Section 7. Any notice of termination of this Agreement by either party to the other must include a Termination Date that complies with the notice periods in Section 7.2.

## 7.2 Termination.

(a) Termination for Convenience. You may terminate this Agreement for any reason by providing us notice and closing your account for all Services for which we provide an account closing mechanism. We may terminate this Agreement for any reason by providing you at least 30 days' advance notice.

(b) Termination for Cause.

(i) By Either Party. Either party may terminate this Agreement for cause if the other party is in material breach of this Agreement and the material breach remains uncured for a period of 30 days from receipt of notice by the other party. No later than the Termination Date, you will close your account.

(ii) By Us. We may also terminate this Agreement immediately upon notice to you (A) for cause if we have the right to suspend under Section 6, (B) if our relationship with a third-party partner who provides software or other technology we use to provide the Service Offerings expires, terminates or requires us to change the way we provide the software or other technology as part of the Services, or (C) in order to comply with the law or requests of governmental entities.

## 7.3 Effect of Termination.

(a) Generally. Upon the Termination Date:

(i) except as provided in Section 7.3(b), all your rights under this Agreement immediately terminate;

(ii) you remain responsible for all fees and charges you have incurred through the Termination Date and are responsible for any fees and charges you incur during the post-termination period described in Section 7.3(b);

(iii) you will immediately return or, if instructed by us, destroy all Zenlayer Content in your possession;

(iv) Sections 4.1, 5, 7.3, 8 (except the license granted to you in Section 8.3), 9, 10, 11, 13 and 14 will continue to apply in accordance with their terms; and

(v) 3 days after the Termination Date, Your Content will be deleted from the server in which it was contained.

(b) Post-Termination. Unless we terminate your use of the Service Offerings pursuant to Section 7.2(b), during the 72 hours following the Termination Date:

(i) we will not take action to remove from the Zenlayer systems any of Your Content as a result of the termination; and

(ii) we will allow you to retrieve Your Content from the Services only if you have paid all amounts due under this Agreement.

After 72 hours, Your Content will be deleted from the server in which it was contained. For any use of the Services after the Termination Date, the terms of this Agreement will apply and you will pay the applicable fees at the rates under Section 5.

## 8. Proprietary Rights.

8.1 Your Content. Except as provided in this Section 8, we obtain no rights under this Agreement from you (or your licensors) to Your Content. You consent to our use of Your Content to provide the Service Offerings to you and any End Users.

8.2 Adequate Rights. You represent and warrant to us that: (a) you or your licensors own all right, title, and interest in and to Your Content and Suggestions; (b) you have all rights in Your Content and Suggestions necessary to grant the rights contemplated by this Agreement; and (c) none of Your Content or End Users' use of Your Content or the Service Offerings will violate the Acceptable Use Policy.

8.3 Service Offerings License. We or our licensors own all right, title, and interest in and to the Service Offerings, and all related technology and intellectual property rights. Subject to the terms of this Agreement, we grant you a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to do the following: (a) access and use the Services solely in accordance with this Agreement; and (b) copy and use the Zenlayer Content solely in connection with your permitted use of the Services. Except as provided in this Section 8.3, you obtain no rights under this Agreement from us, our affiliates or our licensors to the Service Offerings, including any related intellectual property rights.

8.4 License Restrictions. Neither you nor any End User will use the Service Offerings in any manner or for any purpose other than as expressly permitted by this Agreement. Neither you nor any End User will, or will attempt to (a) modify, distribute, alter, tamper with, repair, or otherwise create derivative works of any Content included in the Service Offerings (except to the extent Content included in the Service Offerings is provided to you under a separate license that expressly permits the creation of derivative works), (b) reverse engineer, disassemble, or decompile the Service Offerings or apply any other process or procedure to derive the source code of any software included in the Service Offerings (except to the extent applicable law doesn't allow this restriction), (c) access or use the Service Offerings in a way intended to avoid incurring fees or exceeding usage limits or quotas, or (d) resell or sublicense the Service Offerings. You will not misrepresent or embellish the relationship between us and you (including by expressing or implying that we support, sponsor, endorse, or contribute to you or your business endeavors). You will not imply any relationship or affiliation between us and you except as expressly permitted by this Agreement.

8.5 Suggestions. If you provide any Suggestions to us or our affiliates, we and our affiliates will be entitled to use the Suggestions without restriction. You hereby irrevocably assign to us all right, title, and interest in and to the Suggestions and agree to provide us any assistance we require to document, perfect, and maintain our rights in the Suggestions.

## 9. Indemnification.

9.1 General. You will defend, indemnify, and hold harmless us, our affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any Losses arising out of or relating to any third-party claim concerning: (a) your or any End Users' use of the Service Offerings (including any activities under your Zenlayer account and use by your employees and personnel); (b) breach of this Agreement or violation of applicable law by you, End Users or Your Content; or (c) a dispute between you and any End User. You will reimburse us for reasonable attorneys' fees, as well as our employees' and contractors' time and materials spent responding to any third party subpoena or other compulsory legal order or process associated with third party claims described in (a) through (c) above at our then-current hourly rates.

### 9.2 Intellectual Property.

(a) Subject to the limitations in this Section 9, and except in the case of a free evaluation license, Zenlayer will defend you and your employees, officers, and directors against any third-party claim alleging that the Services infringe or misappropriate that third party's rights under any United States patent issued sixty (60) days or more before delivery of such Services or any copyright or misappropriation of any trade secret. The foregoing obligations do not apply with respect to a Service or portions or components thereof (i) not created by Zenlayer, (ii) made in whole or in part in accordance to Your specifications, (iii) that are modified after delivery by Zenlayer, or (iv) where Your use of such Services is not strictly in accordance with the terms of this Agreement.

(b) Subject to the limitations in this Section 9, you will defend Zenlayer, its affiliates, and their respective employees, officers, and directors against any third-party claim alleging that any of Your Content infringes or misappropriates that third party's intellectual property rights.

(c) Neither party will have obligations or liability under this Section 9.2 arising from infringement by combinations of the Services or Your Content, as applicable, with any other product, service, software, data, content or method. In addition, Zenlayer will have no obligations or liability arising from your or any End User's use of the Services after Zenlayer has notified you to discontinue such use. The remedies provided in this Section 9.2 are the sole and exclusive remedies for any third-party claims of infringement or misappropriation of intellectual property rights by the Services or by Your Content.

(d) For any claim covered by Section 9.2(a), Zenlayer will, at its election, either: (i) procure the rights to use that portion of the Services alleged to be infringing; (ii) replace the alleged infringing portion of the Services with a non-infringing alternative; (iii) modify the alleged infringing portion of the Services to make it non-infringing; or (iv) terminate the allegedly infringing portion of the Services or this Agreement.

9.3 Process. The obligations under this Section 9 will apply only if the party seeking defense or indemnity: (a) gives the other party prompt written notice of the claim; (b) permits the other party to control the defense and settlement of the claim; and (c) reasonably cooperates with the other party (at the other party's expense) in the defense and settlement of the claim. In no event will a party agree to any settlement of any claim without the written consent of the other party.

## 10. Disclaimers.

THE SERVICE OFFERINGS ARE PROVIDED "AS IS." EXCEPT TO THE EXTENT PROHIBITED BY LAW, OR TO THE EXTENT ANY STATUTORY RIGHTS APPLY THAT CANNOT BE EXCLUDED, LIMITED OR WAIVED, WE AND OUR AFFILIATES AND LICENSORS (A) MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICE OFFERINGS, AND (B) DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED OR EXPRESS WARRANTIES (I) OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, (II) ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE, (III) THAT THE SERVICE OFFERINGS WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, AND (IV) THAT ANY CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR ALTERED.

## 11. Limitations of Liability.

WE AND OUR AFFILIATES AND LICENSORS WILL NOT BE LIABLE TO YOU UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES



(INCLUDING DAMAGES FOR LOSS OF PROFITS, REVENUES, CUSTOMERS, OPPORTUNITIES, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER WE NOR ANY OF OUR AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS, (II) OUR DISCONTINUATION OF ANY OR ALL OF THE SERVICE OFFERINGS, OR, (III) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE SERVICE LEVEL AGREEMENTS, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS; (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA; OR (E) FOR ANY MATTER BEYOND OUR REASONABLE CONTROL. IN ANY CASE, EXCEPT FOR PAYMENT OBLIGATIONS UNDER SECTION 9.2, OUR AND OUR AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT YOU ACTUALLY PAY US UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS BEFORE THE LIABILITY AROSE. THE LIMITATIONS IN THIS SECTION 11 APPLY ONLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 12. Modifications to the Agreement.

We may modify this Agreement (including any Policies) at any time by posting a revised version on the Zenlayer Console Site or by otherwise notifying you in accordance with Section 13.10; provided, however, that we will provide at least 90 days' advance notice in accordance with Section 13.10 for adverse changes to any Service Level Agreement. Subject to the 90 day advance notice requirement with respect to adverse changes to Service Level Agreements, the modified terms will become effective upon posting or, if we notify you by email, as stated in the email message. By continuing to use the Service Offerings after the effective date of any modifications to this Agreement, you agree to be bound by the modified terms. It is your responsibility to check the Zenlayer Console Site regularly for modifications to this Agreement. We last modified this Agreement on the date listed at the end of this Agreement.

## 13. Miscellaneous.

13.1 Assignment. You will not assign or otherwise transfer this Agreement or any of your rights and obligations under this Agreement, without our prior written consent. Any assignment or transfer in violation of this Section 13.1 will be void. We may assign this Agreement without your consent (a) in connection with a merger, acquisition or sale of all or substantially all of our assets, or (b) to any affiliate or as part of a corporate reorganization; and effective upon such assignment, the assignee is deemed substituted for Zenlayer as a party to this Agreement and Zenlayer is fully released from all of its obligations and duties to perform under this Agreement. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of the parties and their respective permitted successors and assigns.

13.2 Entire Agreement. This Agreement incorporates the Policies by reference and is the entire agreement between you and us regarding the subject matter of this Agreement. This Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between you and us, whether written or verbal, regarding the subject matter of this Agreement (but does not supersede prior commitments to purchase Services pursuant to a separate

duly executed service agreement or order form). We will not be bound by, and specifically object to, any term, condition or other provision that is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) including for example, any term, condition or other provision (a) submitted by you in any order, receipt, acceptance, confirmation, correspondence or other document, (b) related to any online registration, response to any request for bid, request for proposal, request for information, or other questionnaire, or (c) related to any invoicing process that you submit or require us to complete. If the terms of this document are inconsistent with the terms contained in any Policy, the terms contained in this document will control, except that the Service Terms will control over this document.

**13.3 Force Majeure.** We and our affiliates will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond our reasonable control, including acts of God, labor disputes or other industrial disturbances, electrical or power outages, utilities or other telecommunications failures, pandemic, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

**13.4 Governing Law.** The Governing Laws, without reference to conflict of law rules, govern this Agreement and any dispute of any sort that might arise between you and us. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

**13.5 Disputes.** Any dispute or claim relating in any way to your use of the Service Offerings, or to any products or services sold or distributed by Zenlayer will be adjudicated in the Governing Courts, and you consent to exclusive jurisdiction and venue in the Governing Courts, subject to the additional provisions below.

(a) If the applicable Zenlayer Contracting Party is Zenlayer, Inc., the parties agree that the provisions of this Section 13.5(a) will apply. Disputes will be resolved by binding arbitration, rather than in court, except that you may assert claims in small claims court if your claims qualify. The Federal Arbitration Act and federal arbitration law apply to this Agreement. There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of this Agreement as a court would. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our Legal Department at 21680 Gateway Center Drive, Suite 350, Diamond Bar, CA 91765. The arbitration will be conducted by the American Arbitration Association (AAA) under its rules, which are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. Payment of filing, administration and arbitrator fees will be governed by the AAA's rules. We and you agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a claim proceeds in court rather than in arbitration we and you waive any right to a jury trial. Notwithstanding the foregoing we and you both agree that you or we may bring suit in court to enjoin infringement or other misuse of intellectual property rights.

**13.6 Trade Compliance.** In connection with this Agreement, each party will comply with all applicable import, re-import, sanctions, anti-boycott, export, and re-export control laws and regulations, including all such laws and regulations that apply to a U.S. company, such as the Export Administration Regulations, the International Traffic in Arms Regulations, and economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, you are solely responsible for compliance related to the manner in which you choose to use the Service Offerings, including your transfer and processing of Your Content, the provision of Your Content to End Users, and the Zenlayer region in which any of the foregoing occur. You represent and warrant that you and your financial institutions, or any party that owns or controls you or your financial institutions, are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, including



but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (e.g., the Specially Designated Nationals List and Foreign Sanctions Evaders List of the U.S. Department of Treasury, and the Entity List of the U.S. Department of Commerce), the European Union or its Member States, or other applicable government authority.

**13.7 Independent Contractors; Non-Exclusive Rights.** We and you are independent contractors, and this Agreement will not be construed to create a partnership, joint venture, agency, or employment relationship. Neither party, nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other. Both parties reserve the right (a) to develop or have developed for it products, services, concepts, systems, or techniques that are similar to or compete with the products, services, concepts, systems, or techniques developed or contemplated by the other party, and (b) to assist third party developers or systems integrators who may offer products or services which compete with the other party's products or services.

**13.8 Language.** All communications and notices made or given pursuant to this Agreement must be in the English language. If we provide a translation of the English language version of this Agreement, the English language version of the Agreement will control if there is any conflict.

**13.9 Confidentiality and Publicity.** You may use Zenlayer Confidential Information only in connection with your use of the Service Offerings as permitted under this Agreement. You will not disclose Zenlayer Confidential Information during the Term or at any time during the 5-year period following the end of the Term. You will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Zenlayer Confidential Information, including, at a minimum, those measures you take to protect your own confidential information of a similar nature. You will not issue any press release or make any other public communication with respect to this Agreement or your use of the Service Offerings.

**13.10 Notice.**

(a) **To You.** We may provide any notice to you under this Agreement by: (i) posting a notice on the Zenlayer Console Site; or (ii) sending a message to the email address then associated with your account. Notices we provide by posting on the Zenlayer Console Site will be effective upon posting and notices we provide by email will be effective when we send the email. It is your responsibility to keep your email address current. You will be deemed to have received any email sent to the email address then associated with your account when we send the email, whether or not you actually receive the email.

(b) **To Us.** To give us notice under this Agreement, you must contact Zenlayer by personal delivery, overnight courier or registered or certified mail to the mailing address, as applicable, listed for the applicable Zenlayer Contracting Party in Section 14 below. We may update the address for notices to us by posting a notice on the Zenlayer Console Site. Notices provided by personal delivery will be effective immediately. Notices provided by overnight courier will be effective one business day after they are sent. Notices provided registered or certified mail will be effective three business days after they are sent.

**13.11 No Third-Party Beneficiaries.** Except as set forth in Section 9, this Agreement does not create any third-party beneficiary rights in any individual or entity that is not a party to this Agreement.

**13.12 U.S. Government Rights.** If the Service Offerings are provided to the U.S. Government, either directly or through subcontractors, such Service Offerings shall be offered as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" as defined in 48 CFR § 2.101 with the same rights and restrictions generally applicable to the Service Offerings. U.S. Government and/or their subcontractors shall receive only those rights with respect to the Software and Documentation as are granted to all other end users under license, in

accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors. If you are using the Service Offerings on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, you will immediately discontinue your use of the Service Offerings. The terms "commercial item" "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

13.13 No Waivers. The failure by us to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit our right to enforce such provision at a later time. All waivers by us must be in writing to be effective.

13.14 Severability. If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect and intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from this Agreement, but the rest of the Agreement will remain in full force and effect.

13.15 Evaluation License and Restrictions. If You have registered on the Zenlayer Console Site for a free evaluation license, then subject to the terms hereof, Zenlayer grants You a personal, non-sublicensable, non-transferable, non-exclusive, right to use the Services on a trial basis free of charge for the period listed on the Zenlayer Console Site for the applicable Service, in accordance with the Documentation, only for the purpose of evaluation for a paid license, and only for use in a test environment. You may not use an evaluation license for any Services in a production environment. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, DURING THE FREE EVALUATION TRIAL THE PRODUCTS ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY. NOTWITHSTANDING ANYTHING ELSE HEREIN OR OTHERWISE, NEITHER ZENLAYER NOR ANY LICENSOR SHALL BE LIABLE OR OBLIGATED WITH RESPECT TO ANY EVALUATION LICENSES, UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY (I) FOR ANY AMOUNTS IN EXCESS IN THE AGGREGATE OF ONE HUNDRED DOLLARS (\$100); (II) FOR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES OR RIGHTS; (III) FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES; (IV) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA; OR (V) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL. LICENSEE ACKNOWLEDGES THAT THE FREE EVALUATION LICENSE PRODUCT MAY INCLUDE FEATURES TO PREVENT USE AFTER THE APPLICABLE LICENSE PERIOD, IN EXCESS OF THE LICENSED CAPACITY, AND/OR USE INCONSISTENT HERewith.

13.16 Not-for-Resale License and Restrictions. If you are a Zenlayer registered business partner, then subject to the terms hereof and any applicable use limitations set forth in this Agreement or on the Zenlayer Console Site, Zenlayer grants You a personal, non-sublicensable, non-transferable, non-exclusive, right to use a licensed product in object code form for a period of one (1) year, only in accordance with this Agreement and the Documentation, for the purposes of demonstrating the Services or training Your personnel on the installation, configuration, and use of the Services (a "NFR License"). You may not use the Services in a production environment. You will maintain the copyright notice and any other notices that appear on the Services, any copies, and any media. THE SERVICES PROVIDED UNDER AN NFR LICENSE ARE PROVIDED FOR TRAINING AND DEMONSTRATION PURPOSES ONLY AND NOT FOR USE IN A PRODUCTION ENVIRONMENT. ALL NFR LICENSE PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. NOTWITHSTANDING ANYTHING ELSE HEREIN OR OTHERWISE, NEITHER ZENLAYER NOR ANY LICENSOR SHALL BE LIABLE

OR OBLIGATED WITH RESPECT TO AN NFR LICENSE PRODUCT, UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY (I) FOR ANY AMOUNTS IN EXCESS IN THE AGGREGATE OF ONE HUNDRED DOLLARS (\$100); (II) FOR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES OR RIGHTS; (III) FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES; (IV) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA; OR (V) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL.

#### 14. Definitions.

“Acceptable Use Policy” means the policy located at <http://www.zenlayer.com/aup> (and any successor or related locations designated by us), as it may be updated by us from time to time.

“Account Country” is the country associated with your account. If you have provided a valid tax registration number for your account, then your Account Country is the country associated with your tax registration. If you have not provided a valid tax registration, then your Account Country is the country where your billing address is located, except if you have a credit card associated with your Zenlayer account that is issued in a different country and your contact address is also in that country, then your Account Country is that different country.

“Account Information” means information about you that you provide to us in connection with the creation or administration of your Zenlayer account. For example, Account Information includes names, usernames, phone numbers, email addresses and billing information associated with your Zenlayer account.

“API” means an application program interface.

“Content” means software (including machine images), data, text, audio, video or images.

“Documentation” means the user guides and admin guides (in each case exclusive of content referenced via hyperlink) for the Services located at <https://support.zenlayer.com> (and any successor or related locations designated by us), as such user guides and admin guides may be updated by Zenlayer from time to time.

“End User” means any individual or entity that directly or indirectly through another user: (a) accesses or uses Your Content; or (b) otherwise accesses or uses the Service Offerings under your account. The term “End User” does not include individuals or entities when they are accessing or using the Services or any Content under their own Zenlayer account, rather than under your account.

“Governing Laws” and “Governing Courts” mean, for each Zenlayer Contracting Party, the laws and courts set forth in the following table:

Zenlayer Contracting Party	Governing Laws	Governing Courts
Zenlayer Inc.	The laws of the State of California	The state and federal courts in San Francisco, Santa Clara, or Los Angeles, in the State of California
Zenlayer Networks Ireland Limited	The laws of the United Kingdom	The courts of the Cities of London, England, Paris, France, or Amsterdam, The Netherlands.

Zenlayer Networks India Private Limited	The laws of India	The federal courts of the City of Mumbai
Zenlayer (Singapore) Pte. Ltd.	The laws of Singapore	The courts of Singapore

“Indirect Taxes” means applicable taxes and duties, including, without limitation, VAT, Service Tax, GST, excise taxes, sales and transactions taxes, and gross receipts tax.

“Losses” means any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys’ fees).

“Policies” means the Service Terms, Privacy Policy, Site Terms, Terms of Use, all restrictions described in the Zenlayer Content and on the Zenlayer Console Site, and any other policy or terms referenced in or incorporated into this Agreement, but does not include whitepapers or other marketing materials referenced on the Zenlayer Console Site.

“Privacy Policy” means the privacy policy located at <https://www.zenlayer.com/privacy-policy> (and any successor or related locations designated by us), as it may be updated by us from time to time.

“Service” means each of the services made available by us or our affiliates, including those web services described in the Service Terms.

“Service Attributes” means Service usage data related to your account, such as resource identifiers, metadata tags, security and access roles, rules, usage policies, permissions, usage statistics and analytics.

“Service Level Agreement” means all service level agreements that we offer with respect to the Services and post on the Zenlayer Console Site, as they may be updated by us from time to time. The service level agreements we offer with respect to the Services are located at <https://www.zenlayer.com/service-level-agreements/> (and any successor or related locations designated by Zenlayer), as may be updated by Zenlayer from time to time.

“Service Offerings” means the Services (including associated APIs), the Zenlayer Content, and any other product or service provided by us under this Agreement.

“Service Terms” means the rights and restrictions for particular Services located at <https://www.zenlayer.com/acceptable-use-policy> (and any successor or related locations designated by us), as may be updated by us from time to time.

“Site Terms” means the terms of use located at <http://www.zenlayer.com/terms-of-use/> (and any successor or related locations designated by us), as may be updated by us from time to time.

“Suggestions” means all suggested improvements to the Service Offerings that you provide to us.

“Term” means the term of this Agreement described in Section 7.1.

“Termination Date” means the effective date of termination provided in accordance with Section 7, in a notice from one party to the other.



"Your Content" means Content that you or any End User transfers to us for processing, storage or hosting by the Services in connection with your Zenlayer account and any computational results that you or any End User derive from the foregoing through their use of the Services. Your Content does not include Account Information.

"Zenlayer Confidential Information" means all nonpublic information disclosed by us, our affiliates, business partners or our or their respective employees, contractors or agents that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. Zenlayer Confidential Information includes: (a) nonpublic information relating to our or our affiliates or business partners' technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (b) third-party information that we are obligated to keep confidential; and (c) the nature, content and existence of any discussions or negotiations between you and us or our affiliates. Zenlayer Confidential Information does not include any information that: (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been known to you at the time of your receipt from us; (iii) is 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 you without reference to the Zenlayer Confidential Information.

"Zenlayer Console Site" means <http://console.zenlayer.com/> (and any successor or related site designated by us), as may be updated by us from time to time.

"Zenlayer Content" means Content we or any of our affiliates make available in connection with the Services or on the Zenlayer Console Site to allow access to and use of the Services, including APIs; WSDLs; Documentation; sample code; software libraries; command line tools; proofs of concept; templates; and other related technology (including any of the foregoing that are provided by our personnel). Zenlayer Content does not include the Services.

"Zenlayer Contracting Party" means the party identified in the table below, based on your Account Country. If you change your Account Country to one identified to a different Zenlayer Contracting Party below, you agree that this Agreement is then assigned to the new Zenlayer Contracting Party under Section 13.1 without any further action required by either party.

Account Country	Zenlayer Contracting Party	Mailing Address
India	Zenlayer Networks India Private Limited	21680 Gateway Center Dr., Suite 350 Diamond Bar, CA 91765
Singapore	Zenlayer (Singapore) Pte. Ltd.	21680 Gateway Center Dr., Suite 350 Diamond Bar, CA 91765
Any country within Europe, the Middle East, or Africa (excluding South Africa) ("EMEA")**	Zenlayer Networks Ireland Limited	21680 Gateway Center Dr., Suite 350 Diamond Bar, CA 91765
Any country that is not listed in this table above.	Zenlayer Inc.	21680 Gateway Center Dr., Suite 350 Diamond Bar, CA 91765

