

This End User Licence Agreement (the “EULA”) is a legally binding agreement between you and LambdaTest regarding your use of the LambdaTest Product via the Datadog Marketplace. By subscribing to, accessing, or using the LambdaTest Product, you agree to be bound by the terms and conditions of this EULA. If you do not agree with these terms and conditions, you are not authorized to use the LambdaTest Product.

1. Definitions

“**Affiliate**” means any entity controlling, controlled by, or under common control with a party from time to time. An entity shall be deemed to “control” if it owns, directly or indirectly, in excess of 50% of voting power, issued share capital, or other securities of the entity.

“**Datadog**” means Datadog, Inc.

“**Datadog Marketplace**” means an online catalog of products and services you can subscribe to via your existing Datadog customer account.

“**Confidential Information**” means any information expressly identified as confidential or which would reasonably be considered confidential or proprietary under the circumstances, including but not limited to product roadmaps, source code, and trade secrets.

“**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.

“**LambdaTest**” means LambdaTest Inc, a company registered in California, United States number _____, with its registered office at 1390 Market Street, Suite 200, San Francisco CA 94102.

“**LambdaTest Product**” means the software program licensed by LambdaTest and hosted on the Datadog Marketplace platform and any upgrades or updates LambdaTest provides to you.

“**Documentation**” means the end-user documentation for the LambdaTest Products as made commercially available and provided by LambdaTest.

“**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.

“**Update**” means a version or release of the LambdaTest Product intended to have updated functionality, a software maintenance update, a patch, or a bug-fix.

“Upgrade” means a version or release of the LambdaTest Product encompassing substantially new or enhanced features or functionality.

2. License

2.1 Licence Grant. Subject to your payment of the fees when due and your compliance with the terms and conditions of this EULA, LambdaTest grants you a non-exclusive, non-sublicensable, non-transferable, limited-term license to use the LambdaTest Product via the Datadog Marketplace solely for your internal business purposes of unit test generation, security scanning and/or refactoring (as applicable to the LambdaTest Product) performed on code developed by you and your affiliates. The Licensed Product may also contain third-party components with separate notices and licensing terms specified in the Documentation.

2.2 Restrictions. You must not: (i) translate or create derivative works of the LambdaTest Product; (ii) (except as expressly provided by Clause 2.3) sublicense, assign, transfer or otherwise make the LambdaTest Product available to any third party or use the LambdaTest Product for the benefit of any third party; (iii) (except to the extent that this restriction is prohibited by applicable law) modify, adapt, alter, copy, reverse engineer, decompile, make error corrections, disassemble, or otherwise attempt to derive the source code for the LambdaTest Product in whole or in part; (iv) disclose any performance information or analysis (including without limitation benchmarks) from relating to the Licensed Product; (v) remove, alter, obscure or destroy any proprietary notices on the LambdaTest Product; (vi) use the LambdaTest Product as a consumer, or (vii) use the LambdaTest Product in any manner other than as described in the Documentation or this EULA.

2.3 Third Parties. LambdaTest agrees that your Affiliates and service providers may use the LambdaTest Product provided that: (i) use by service providers is limited solely to providing services to you and your Affiliates; (ii) the Affiliates and service providers comply with this EULA; and (iii) you assume liability for the acts and omissions of the Affiliates and service providers.

2.4 Ownership. The LambdaTest Product, and all Intellectual Property Rights therein, are and shall remain the exclusive property of LambdaTest (and its suppliers, licensors, and contributors, if any). Except for the rights expressly granted under this EULA, (i) LambdaTest (and its suppliers, licensors, and contributors) reserves all right, title, and interest in and to the LambdaTest Product and all Intellectual Property Rights therein, and (ii) no right, title, interest or license in or to the LambdaTest Product or any other Intellectual Property Rights, whether by implication, inducement, estoppel or otherwise, is granted, assigned or transferred to you. The LambdaTest Product is licensed, not sold or given.

2.5 Suggestions. If you provide LambdaTest with any suggestions or other input relating to the LambdaTest Product, you (i) grant LambdaTest an irrevocable, perpetual, royalty-free, sub-licensable, and transferable license to use such suggestions and input for any purpose, and (ii) warrant that LambdaTest's use of such suggestions and input does not infringe the Intellectual Property Rights of any third party.

3. Term and Termination

3.1 Term.

(a) With reference to LambdaTest Services, these terms shall begin on the date the Customer accepts it and continue 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 monthly or annually, depending upon the Subscription Term ("Renewal Term").

3.2. 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.

3.3. Termination by LambdaTest

LambdaTest can terminate a Customer's Account in case the 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.

3.4. 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).

3.5. Effect of Termination

Upon any expiration or termination, Customer will immediately cease all use of and access to all LambdaTest Services and delete (or, at LambdaTest's request, return) all copies of the Documentation, any LambdaTest passwords or access codes, and any other LambdaTest CI in its possession. In addition, any Fees accrued but not paid shall become immediately due and payable upon termination.

3.6 Survival. Clauses 2, 3, 7, 8, 9, 10, 11, and 12 shall survive the expiry or termination of this EULA for any reason.

4. Support and Maintenance

4.1 Requesting Support. LambdaTest provides break-fix support to its customers using automated (web+mobile) and manual tests done on LambdaTest Services or integrations supported on 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 a 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.

4.2 Exclusions. LambdaTest shall have no obligation to correct errors caused by: (a) improper installation of the LambdaTest Product; (b) alterations or modifications to the LambdaTest Product; (c) use of the LambdaTest Product in a manner inconsistent with its Documentation; (d) any combination of the LambdaTest Product with hardware or software not specified in its Documentation; (e) accident, hardware malfunction, abuse or improper use.

4.2 Updates and Upgrades. LambdaTest will provide Updates for the LambdaTest Product during your subscription period in accordance with its normal Update cycle. In addition, upgrades may be provided at LambdaTest's discretion or otherwise available as an option for an additional subscription fee as specified in the Price List. You hereby expressly consent to receive automatic updates and free Upgrades offered by LambdaTest from time to time.

5. Changes

LambdaTest may change or retire a LambdaTest Product or a version of a LambdaTest Product at any time. In the event of retirement, (i) you may continue to use the LambdaTest Product until your current subscription period ends; and (ii) you may continue to receive support for such LambdaTest Product or version in accordance with Clause 4 for a period of ninety (90) days (or

until your subscription period ends if earlier). Unless required by applicable law, LambdaTest will not provide a refund for changes or retirements.

6. Customer Content

6.1 Licence. You grant LambdaTest and Datadog a worldwide, royalty-free, transferable license to host and use Customer Content for the purpose of providing the LambdaTest Product.

6.2 Acceptable Use. You acknowledge and agree that neither LambdaTest nor Datadog are responsible for Customer Content. Customer Content must not (i) breach any contract, law, or regulation; (ii) be fraudulent, defamatory, violent, obscene, offensive, threatening, or likely to cause anxiety to any person; (iii) discriminate by race, sex, religion, nationality, disability, sexual orientation or age; or (iv) infringe the Intellectual Property Rights of any person. While neither LambdaTest nor Datadog are obliged to monitor Customer Content, LambdaTest reserves the right to suspend or terminate your subscription to the LambdaTest Product if LambdaTest reasonably believes that you are in breach of this Clause 6.2.

6.3 Deletion. You acknowledge and agree that LambdaTest (or Datadog as applicable) may delete your Customer Content at any time after the expiry or termination of your subscription to the LambdaTest Product.

7. Plan and Payment Terms

7.1 Subscription Plan. The prices, features, and options of the LambdaTest Services depend on the Subscription Plan selected and any changes instigated by the 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 outlined in these Terms, applicable Subscription Plan.

Subscription fees for the LambdaTest Product and optional Upgrades are specified in the Price List. You shall make payment of all fees via Datadog in US dollars. All fees are exclusive of value-added tax or other applicable sales tax, which you shall pay as prescribed by applicable law. If any withholding is required by law, you shall gross up such fees in order to leave LambdaTest with the same amount as it would be entitled to receive in the absence of any such withholding.

7.2 Refunds. All fees paid are non-refundable except as expressly provided in the Cancellation Policy. Any permitted refunds will be processed and paid via Datadog.

7.3 Variations. LambdaTest may vary its Price List at any time. Such variation shall not affect your current subscription period. If you have signed up to auto-renew an annual subscription,

such price change will not apply to your renewal unless LambdaTest notifies you of the new price at least ninety (90) days before renewal.

7.4 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. Customers must promptly notify LambdaTest of any change in their invoicing address and update their account with any changes related to their 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 outlined 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 it identifies even if it has already issued an invoice or received payment. The customer agrees to notify us about any billing problems or discrepancies within thirty (30) days after they first appear on your invoice. If the 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. The 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. The 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. The customer must make all payments without any setoffs, withholdings, or deductions 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. Customers 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 the Customer for any reason against amounts due or asserted to be due from LambdaTest.

8. Confidentiality and Data Protection

(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 confidential information in a nondisclosure agreement with a third party after the Receiving Party is notified of such a 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 representatives 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 representatives 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 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.

8.1 Obligations. A receiving party (the “Recipient”) shall maintain the confidentiality of all Confidential Information of the disclosing party (the “Discloser”) and shall not use such Confidential Information other than as necessary for the performance of its rights and obligations under this EULA or as otherwise permitted herein. The Recipient shall not disclose Confidential Information to any third party without the Discloser’s prior written consent save for those Affiliates, directors, officers, employees, agents, suppliers, and contractors who have entered into a written agreement with the Recipient that is no less protective of the Discloser’s Confidential Information than this EULA and who have a need to know such information. The Recipient shall assume liability for the use of the Confidential Information by such persons. The Recipient shall use the same measures to protect the Discloser’s Confidential Information that it uses to protect its own confidential information but in no event less than reasonable measures.

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

8.3 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.

9. Warranties

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 NON-INFRINGEMENT. LAMBDATEST DOES NOT WARRANT THAT CUSTOMER’S USE OF THE 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 THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF LAMBDATEST. CUSTOMERS 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. THE 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.

10. Limitation of Liability

10.1 EXCLUSION OF LIABILITY. SUBJECT TO CLAUSE 10.3, NEITHER PARTY (NOR THEIR SUPPLIERS, LICENSORS, AND CONTRIBUTORS) WILL BE LIABLE UNDER ANY CIRCUMSTANCES WHATSOEVER TO THE OTHER PARTY (OR ANY PERSON CLAIMING UNDER OR THROUGH IT), WHETHER IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE FOR INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL LOSS. IN PARTICULAR, BUT WITHOUT LIMITATION, LAMBDATEST SHALL NOT BE LIABLE FOR (i) ANY LOSS OF PROFITS; (ii) ANY LOSS OR CORRUPTION OF DATA; (iii) ANY LOSS OR CORRUPTION OF COMPUTER SOFTWARE OR SYSTEMS; (iv) ANY LOSS OR DAMAGE TO EQUIPMENT; (v) ANY LOSS OF CONTRACT OR BUSINESS OPPORTUNITY; (vi) ANY BUSINESS INTERRUPTION; (vii) ANY LOSS OF SAVINGS (WHETHER ACTUAL OR ANTICIPATED); (viii) ANY HARM TO REPUTATION OR LOSS OF GOODWILL; (ix) ANY COST OF SUBSTITUTE SOFTWARE, GOODS OR SERVICES.

10.2 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 6 (Customer Content &

Responsibilities); or (c) from a party's breach of its obligations in Section 8 (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 contract, 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.

10.3 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.

10.3 NON-EXCLUDED LIABILITIES. NOTHING IN THIS EULA SHALL EXCLUDE OR LIMIT: (i) YOUR LIABILITY FOR BREACH OF THE OBLIGATIONS UNDER CLAUSES 2, 8, 11.5 OR 12.4; (ii) YOUR OBLIGATION TO PAY FEES FOR THE LAMBDATEST PRODUCT WHEN DUE; (iii) A PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE; (iv) A PARTY'S LIABILITY FOR FRAUD OR FRAUDULENT MISREPRESENTATION; OR (v) ANY OTHER MATTER IN RESPECT OF WHICH IT WOULD BE UNLAWFUL TO EXCLUDE OR RESTRICT LIABILITY.

11. Indemnities

11.1 LambdaTest's Obligation. Subject to Clauses 11.2 to 11.4 inclusive, LambdaTest will (i) defend and/or settle at its own expense any action brought against you by a third party, to the extent that such action is based upon a claim that the LambdaTest Product licensed hereunder infringes any third party's copyright, database rights and registered trademarks in the United States or the United Kingdom (the "Claim"), and (ii) indemnify you against any costs and damages finally awarded against you that are specifically attributable to such Claim, or those costs and damages agreed to by LambdaTest in a monetary settlement of such Claim.

11.2 Your Obligation. You must: (i) notify LambdaTest promptly in writing of such Claim; (ii) not make any admission of liability, agreement, or compromise without the prior written consent of LambdaTest; (iii) give LambdaTest sole control of the defense of the Claim and any related counterclaim or settlement negotiations; (iv) provide reasonable cooperation and assistance in such defense, counterclaim, and settlement at LambdaTest's expense. You may also participate in the defense with counsel of your own choice at your own expense.

11.3 Remedies. If the LambdaTest Product is or is likely to be the subject of a Claim, then LambdaTest may (at its option and expense) either (i) procure the right for you to use the

affected LambdaTest Product; (ii) replace or modify the affected LambdaTest Product so that it becomes non-infringing; or (iii) terminate your subscription to the affected LambdaTest Product and provide a pro-rata refund of fees which relate to the period after termination.

11.4 Exclusions. LambdaTest will have no obligation under this Clause 11 or otherwise to the extent that any claim is based upon (i) third party open source software; (ii) use of the LambdaTest Product other than in accordance with this EULA or the Documentation; (iii) use of the LambdaTest Product in combination with any other product, equipment, software or data not provided by LambdaTest; (iv) modification of the LambdaTest Product by anyone other than LambdaTest; or (v) use of the affected LambdaTest Product after LambdaTest has provided one of the remedies under Clause 11.3. The indemnity given under this Clause 11 shall be your sole and exclusive remedy in respect of any infringement.

11.5 Customer Indemnity. You agree to indemnify and hold LambdaTest harmless from (i) any claim or action alleging that Customer Content infringes the Intellectual Property Rights of or breaches confidentiality obligations to a third party; (ii) any claim or action alleging that your Customer Content or use of the LambdaTest Product breaches applicable IDatadog or regulations; (iii) any breach of Clause 12.4; and/or (iv) any loss or damage caused by your gross negligence, wilful misconduct or fraud.

12. General

12.1 Notices. 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 the delivery in writing or email, in which case notice will be deemed given upon receipt or (c) registered or certified mail, postage prepaid and returned 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 outlined in the 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. In addition, Datadog may also deliver notices on LambdaTest's behalf to contact details you provided via your Datadog account. Email notices will be effective on delivery, and postal notices will be effective two (2) working days from sending.

12.2 Parties. The parties are independent. This EULA does not create any agency, employment, partnership, or other relationship. This EULA does not confer any rights on any person under the Contracts (Rights of Third Parties) Act 1999.

12.3 Third-party content. We may provide, or third parties may provide, links to other third-party websites, 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.

12.4 Export. In its use of LambdaTest Services, the 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.

12.5 Assignments. You may not assign or transfer any of your rights or obligations under this EULA. You give general consent that LambdaTest may assign, transfer or subcontract all or any of its rights or obligations under this EULA. This EULA will bind and inure to benefit each party's permitted successors, transferees, 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.

12.6 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).

12.7 Governing Law. This EULA and any disputes or claims arising out of or in connection with it or its subject matter or formation (including but not limited to non-contractual disputes or claims) 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.

12.8 Jurisdiction. The parties hereby submit to the exclusive jurisdiction of the English court to settle any dispute or claim arising out of or in connection with this EULA or its subject matter or formation (including but not limited to non-contractual disputes or claims). This EULA is written and will be construed in the English language. You acknowledge that any actual or threatened disclosure of LambdaTest Confidential Information or infringement of LambdaTest Intellectual Property Rights will constitute immediate and irreparable harm to LambdaTest for which monetary damages would be an inadequate remedy and for which LambdaTest will be entitled to seek injunctive relief. Nothing in this Clause 12.8 will prevent LambdaTest from seeking injunctive relief, protecting its Intellectual Property Rights and Confidential Information, or recovering overdue payments from any court of competent jurisdiction.

12.9 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.

12.10 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 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.

12.11 Severability. If any provision of this EULA is deemed invalid, unenforceable, or illegal, such provision will be modified to achieve the objectives of such provision. If modification is not possible, the relevant provision shall be deleted. Any modification or deletion under Clause 12.11 shall not affect the validity and enforceability of the rest of this EULA.

12.12 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.

12.13 Entire Agreement. This EULA, and any document referred to in it, constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior agreements and communications. You acknowledge and agree that you have not based your purchasing decision on the future availability of any new products, versions, and/or features. Nothing in this Clause 12.13 shall limit or exclude any liability for fraud.

12.14 Variation. LambdaTest may amend this EULA at any time by posting a revised version online or sending you a notice. Such changes shall apply from the date of revision. Otherwise, this EULA may only be amended by a written document signed by the authorized representatives of both parties.

Contact

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.