

LayerX Holdings LLC Intellectual Property Infringement Indemnification

- a. C1 shall indemnify, defend at its expense and hold Customer harmless from and against any third party demand, claim, allegation, cause of action, investigation, suit or proceeding ("Claim") brought against Customer alleging that the Hardware or Software constitutes a misappropriation or infringement of any copyright, trademark or trade secret of any third party enforceable in the US.
- b. If the Software or any part thereof is found to infringe upon any copyright, trademark or trade secret of any third party, or any part thereof is enjoined or interfered with in any manner, C1 shall, at its option and sole expense, within thirty (30) calendar days of such injunction or interference, either: (a) procure for Customer the right to continue using such Software free of any liability for infringement or violation; (b) replace or modify such Software with a non-infringing product of equivalent or better functionality that is reasonably satisfactory to Customer; or (c) in the event C1 is unable, after exercising reasonable efforts to implement one of the options set forth in **subsection (a) or (b)** above, accept return of the Software at C1's sole cost and expense and refund to Customer an amount equal to [the depreciated amount, based on a three (3) year depreciation schedule, paid by Customer to C1 for the Software.
- c. If C1 is required to indemnify Customer in accordance with the terms of this section, then the procedures set forth in herein shall apply, and C1 shall be responsible for paying all settlements, judgments, awards, fines, penalties, interest, liabilities, losses, costs, damages and expenses, including attorneys' fees and disbursements and court costs ("Losses") sustained or incurred by the Customer.
- d. Notwithstanding any of the foregoing, C1 shall have no liability for any Claim that is based on: (i) the use of other than the latest version of the Software provided by C1 to Customer, if such infringement could have been avoided by the use of the latest version of the Software, or (ii) the use or combination of the Software with software, hardware or other materials not recommended by C1, provided such infringement would not have arisen but for such use or combination, or (iii) use of the Software in a manner other than that for which it was designed or contemplated as evidenced by the written materials accompanying the Software that describe its use and operation, or (iv) any modification of the Software by Customer or on Customer's behalf by a third party, (v) any compliance with designs, plans or specifications furnished by Customer or on Customer's behalf; or (vi) the Apache Software. Customer agrees to indemnify and defend at its expense or settle any Claim against C1 alleging that the Software infringes any patent, copyright, trademark, trade secret or other intellectual property or proprietary right of a third party, due to any of the exceptions in the preceding sentence, except **subsection (vi)**. If Customer is required to indemnify C1, then the procedures set forth herein shall apply and Customer shall be responsible for paying all Losses incurred or sustained by C1.
- e. This section, subject to the provisions of section 1. below, provides the sole and exclusive obligations and remedies of the parties in connection with any third party claim suit or other demand described in this section or which otherwise asserts a violation of a third party's intellectual property rights.

Procedures for Indemnification.

1. **Notice and Cooperation.** If any Claim is asserted against either party an ("Indemnified Party"), such Indemnified Party shall give written notice thereof to the Indemnifying Party promptly after such Claim is asserted. After receiving such notice, if the Indemnifying Party acknowledges in writing to the Indemnified Party that the right of indemnification under this Agreement applies with respect to such Claim, then the Indemnifying Party shall take control of the defense, investigation and settlement (subject to the further terms of this Section) of such Claim at its sole cost and expense. The Indemnified Party shall cooperate in all reasonable respects with the Indemnifying Party and its attorneys, at the Indemnifying Party's expense, in the defense, investigation and trial of such Claim and any appeal arising therefrom.
2. **Defense Declined.** Except in the case of C1's infringement indemnification obligations herein, if the Indemnifying Party declines to assume defense of a Claim: (a) the Indemnified Party may assume such defense and, if such defense is so assumed, unless the parties otherwise agree in writing, the Indemnifying Party thereafter shall be barred from assuming such defense at a later time; and (b) if it is later determined by a court of competent jurisdiction, without right of further appeal, that such Claim was eligible for indemnification by the Indemnifying Party under this Section, within thirty (30) calendar days following such determination, the Indemnifying Party shall reimburse the Indemnified Party in full for all liabilities, obligations, judgments, settlements, costs and expenses (including reasonable attorneys' fees) incurred by the Indemnified Party in connection with such Claim.
3. **Defense Accepted.** If the Indemnifying Party accepts defense of a Claim as provided herein, the Indemnified Party nonetheless shall have the right to engage independent counsel, at its sole cost and expense, to monitor and participate in the defense of the matter as such counsel or the Indemnified Party deems fit to protect its interests. The Indemnifying Party and its counsel must reasonably cooperate with the Indemnified Party's counsel to enable such counsel to adequately represent the interests of the Indemnified Party. If a court of competent jurisdiction later determines, without right of further appeal, that a Claim for which the Indemnifying Party assumed defense was not eligible for indemnification herein, within thirty (30) calendar days following such determination, the Indemnified Party shall reimburse the Indemnifying Party in full for all liabilities, obligations, judgments, settlements, costs and expenses (including reasonable attorneys' fees) incurred in connection with such Claim.
4. **Settlement of Claims.** No settlement of a Claim that involves a remedy other than the payment of money by the Indemnifying Party along with standard settlement terms, specifically including a dismissal of all Claims with prejudice as well as a non-admission of liability or other wrongdoing on the part of the Indemnified Party, shall be entered into by the

Indemnifying Party without the prior written consent of the Indemnified Party. In no event shall an acknowledgment of guilt or fault by, or an adverse judgment be entered against, the Indemnified Party as part of a settlement without its express written consent.