

Zero G Software, Inc. Agreement for InstallAnywhere (Rev. IA-020504)

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1. DEFINITIONS

1.1. "Zero G" means Zero G Software, Inc., a California corporation with its principal offices located at 514 Bryant Street, San Francisco, CA 94107, telephone +1-415-512-7771. Zero G's web address is www.ZeroG.com. Zero G can also be contacted by e-mail at sales@ZeroG.com.

1.2. "Software" means all software provided to You by Zero G in Java byte code or object code format only, and all associated files, including, without limitation, any Documentation, in any and all versions which Zero G in its sole option elects to provide to You, unless such subsequent version(s) are governed by a different license agreement.

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1.4. "Documentation" means the written or on-line instructions, help information, and other reference materials related to the Software, provided to You by Zero G.

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2.3. Source Code. Nothing in this Agreement grants You, Your Distributors, and/or any person(s) acting with or for You any rights, license or interest with respect to the source code of the Software.

2.4. Software Updates. Nothing in this Agreement grants You, Your Distributors, and/or any person(s) acting with or for You the right to receive any upgrades, modifications or other enhancements to the Software at any time.

3. OWNERSHIP/PROPRIETARY RIGHTS

3.1. Ownership. Your rights in and to the Software are solely as set forth in Section 2, and do not include any rights of ownership. You agree that Zero G (or its suppliers) owns all right, title and interest (including, but not limited to, ideas, know-how, copyright, patent, trade secret and other intellectual property rights) to the Software, including any and all modifications, enhancements, derivative works and other alterations by any person or entity.

3.2. Intellectual Property Rights. The Software, the structure, organization and code embodied in the Software are the valuable and confidential trade secrets of Zero G and are protected by intellectual property laws and treaties. You agree to take all reasonable measures to protect Zero G's intellectual property rights and to abide by all applicable laws.

3.3. Copyright Notices. You agree not to remove, alter, or destroy any proprietary, trademark or copyright markings or notices placed upon or contained within the Software or any related materials.

3.4. Modifications. Zero G reserves the right to modify or discontinue the Software at any time without prior notice to or consent by You.

4. PRICE AND PAYMENT

You agree to pay all Software fees as set forth on the Zero G Site as of the date You register the then-available version of the Registered Software. Zero G reserves the right to change its prices at any time or from time to time as solely determined by Zero G.

5. RESTRICTED USE DURING EVALUATION PERIOD

You may use an Unregistered copy of the Software for an indefinite period of time (the "Evaluation Period"). During the Evaluation Period, the Unregistered Software creates a restricted installer product that will run for only three (3) days after it is created and is therefore unsuitable for commercial distribution (however this restriction may not apply to all versions of the Software). Once You are satisfied that the Software fulfills Your requirements, You may register the Software and remove this restriction by obtaining a registration number from Zero G or from an authorized reseller of the Software.

6. REPRESENTATIONS AND WARRANTY

6.1. You represent and warrant that (i) You have the right to enter into this Agreement, (ii) Your use of the Software will not violate any applicable local, state, national or international law, and (iii) You shall only represent to third parties such information and material about the Software as Zero G states in its published product descriptions, advertising and promotional materials or as may be stated in other non-confidential written material furnished by Zero G, as modified from time to time.

6.2. If You have paid a license fee for a Registered copy of the Software, then for a period of thirty (30) days from the date of registration of the Software, Zero G warrants the Software against any defects resulting from the electronic transmission process, and any Software media supplied by Zero G will be free from defects in materials and workmanship.

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7.3. You acknowledge and agree that Zero G makes no representations or warranties to any third parties, including, but not limited to, End Users and Distributors. Any representations or warranties of any kind made to any third party are made solely by You, not Zero G. Zero G reserves the right at any time to cease the support of the Software and to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of the Software.

8. LIMITATION OF LIABILITY

8.1. EXCEPT AS EXPRESSLY STATED ABOVE, IN NO EVENT SHALL ZERO G OR ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, SUPPLIERS OR RESELLERS BE LIABLE FOR DAMAGES TO OR THROUGH YOU, ANY END USER, OR ANY OTHER PERSON OR ENTITY FOR BREACH OF, ARISING UNDER, OR RELATED TO THIS AGREEMENT OR THE SOFTWARE OR SERVICE PROVIDED HEREUNDER, UNDER ANY THEORY INCLUDING, BUT NOT LIMITED TO, DIRECT, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR SIMILAR DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR DATA, OR ANY OTHER LOSS) WHETHER FORESEEABLE OR NOT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

8.2. IN ANY CASE, ZERO G'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE LIMITED TO THE LESSER OF ACTUAL, PROVEN DIRECT DAMAGES OR THE AMOUNT ACTUALLY PAID BY YOU FOR THE SOFTWARE.

9. INDEMNIFICATION

You agree that You shall, at Your own expense, defend, or at Your option settle, any action instituted against Zero G or its officers, directors, employees, representatives, agents, suppliers, Distributors or resellers, and pay any award or damages finally assessed against Zero G or its officers, directors, employees, representatives, agents, suppliers, Distributors or resellers or agreed to be paid by You in settlement resulting from such action, insofar as the same is based upon a claim that any of Your products, software or services or the use of any of Your products software or services either alone or in combination with any part of the Software (i) infringes or misappropriates any copyright, trade secret, or patent or any other proprietary right; (ii) violates any applicable law, statute or regulation; (iii) violates any applicable third party privacy, publicity, intellectual property or other proprietary right; or (iv) causes damages claimed by third parties, provided that Zero G gives You: (i) prompt notice in writing of such action, (ii) the right to solely control and direct the investigation, preparation, defense and settlement of the action (provided that any settlement must be approved by Zero G); and (iii) reasonable assistance and information.

10. PROTECTION FROM UNAUTHORIZED USE

10.1. Validation Procedure. IN ORDER TO PROTECT THE SOFTWARE FROM UNAUTHORIZED USE, THE SOFTWARE CONTAINS A TRANSPARENT VALIDATION PROCEDURE. IF THE SOFTWARE DETECTS ANY VIOLATION OF THE TERMS OF THIS AGREEMENT, YOU MAY BE UNABLE TO USE THE SOFTWARE AND/OR CREATE UNRESTRICTED INSTALLER PRODUCTS UNTIL THE PROBLEM IS CORRECTED. IF THIS OCCURS, YOU SHOULD IMMEDIATELY CONTACT ZERO G.

10.2. Reports. Within thirty (30) days following Zero G's written request, and no more frequently than twice in any twelve (12) month period, You shall provide Zero G with a written statement certifying that You are not using copies of the Software in violation of Section 2.

10.3. Audit. During the term of this Agreement and for a period of twelve (12) months thereafter, You shall permit, no more than once in any twelve month period, a third party auditor, upon thirty (30) days prior written notice from Zero G and during normal business hours, to examine and audit Your records to determine Your compliance with this Agreement and report such findings to Zero G. Zero G shall bear the expense of the audit unless the audit uncovers that You have underpaid Zero G by 5% or more of the license fees rightfully owed to Zero G, in which event You shall bear the expenses for such audit. In the event such audit is the result of Your failure to provide reports as set forth in Section 10.2 above, then You shall bear the expense of such audit.

11. SUPPORT

You may enter into a separate support agreement with Zero G by paying the applicable fees. However, Zero G shall not provide any support to Distributors and End Users and You agree that all support, if any, provided to Distributors and End Users of the Software, or Your Products, software and services shall be by You at Your expense.

12. TERMINATION

12.1. This Agreement (and any licenses granted herein to You or Your Distributors or End Users) will terminate immediately if You provide any false information to Zero G or if You fail to comply with the terms and conditions of this Agreement. You may terminate this Agreement at any time by notifying Zero G. Upon the termination of this Agreement, You must delete all copies of the Software from Your computer and archives.

12.2. YOU AGREE THAT UPON TERMINATION OR YOUR BREACH OF THIS AGREEMENT FOR ANY REASON, ZERO G MAY TAKE ACTIONS SO THAT THE SOFTWARE NO LONGER OPERATES OR IS UNABLE TO PRODUCE UNRESTRICTED INSTALLER PRODUCTS.

12.3. In addition, following any termination of this Agreement, You do not have the right to distribute any of Your software, products or services containing the installer engine of the Software and/or the application launcher contained within the Software if any of the following conditions apply: (i) You have not Registered the Software; (ii) You paid for the Software but the monies You paid were returned to You; (iii) You violated any of the terms of this Agreement.

12.4. Survival of certain terms: The following Sections shall survive any expiration or termination: 1-DEFINITIONS, 3-OWNERSHIP/PROPRIETARY RIGHTS, 8-LIMITATION OF LIABILITY, 9-INDEMNIFICATION, and 14-MISCELLANEOUS PROVISIONS and any claims or causes of action then in existence, and any payment obligations hereunder.

13. MARKETING

You agree to be identified as a customer of Zero G and You agree that Zero G may refer to you by name, trade name and trademark, if applicable, and may briefly describe your business in Zero G's marketing materials and web site. You grant Zero G a license to use Your name and any of Your tradenames and trademarks solely in connection with the rights granted to Zero G pursuant to this paragraph.

14. MISCELLANEOUS PROVISIONS

14.1. Governing Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California, irrespective of its choice of law principles. All disputes arising out of this Agreement shall exclusively be brought in the California state courts in and for the County of San Francisco or the United States District Court for the Northern District of California. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

14.2. Assignability. This Agreement is personal to You and shall not be assignable by You, by operation of law or otherwise, without the prior written consent of Zero G (at Zero G's sole discretion). Zero G may assign or transfer this Agreement or any of its rights or obligations hereunder at any time. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties, their respective successors and permitted assigns.

14.3. Confidential Information. You agree that the Software and any information concerning the Software, including its nature and existence, and any other information disclosed by Zero G to You, will be considered and referred to collectively in this Agreement as "Confidential Information."

Confidential Information, however, does not include information that: (i) is now or subsequently becomes generally available to the public through no action of Yours; (ii) You can demonstrate to have had rightfully in Your possession prior to disclosure to You by Zero G; (iii) is independently developed by You without the use of any Confidential Information; or (iv) You rightfully obtain from a third party who has the right to transfer or disclose it.

You agree not to disclose, publish, or disseminate Confidential Information to anyone other than Your employees and contractors who agree to be bound by the terms of this Agreement. All Confidential Information remains the sole property of Zero G. You agree to take reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of Confidential Information. You agree to use Confidential Information solely for the purpose of testing the Pre-Release Software in conjunction with Your products and not for any third party's benefit without the prior written approval of Zero G in each instance. You have no implied licenses or other rights in the Confidential Information not specifically granted in this Agreement.

When requesting and receiving technical support, You will not provide Zero G with any information that is confidential to You or any third party. Any notice, legend, or label to the contrary contained in any materials provided by You to Zero G shall be without effect.

14.4. Other Provisions. This Agreement constitutes the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations and understandings between the parties regarding the subject matter hereof. Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived, only by a writing signed by the party to be bound. If any provision of this Agreement is found to be invalid or unenforceable, such provision shall be severed from the Agreement and the remainder of this Agreement shall be interpreted so as best to reasonably effect the intent of the parties hereto. All headings herein are not to be considered in the construction or interpretation of any provision of this Agreement. Zero G and You are independent contractors. Failure of either Zero G or You to insist on performance of any term or condition of this Agreement or to exercise any right or privilege thereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

14.5. Export Controls: You agree to comply with all applicable U.S. export control laws and regulations, including without limitation, the laws and regulations administered by the United States Department of Commerce and the United States Department of State.

EACH PARTY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS.