

Service Agreement for Preview Version

This Service Agreement (“SA”) is a legal agreement between 4-Layer Simulations LLC (“4-Layer”) and you. This SA applies to the Preview Version of the cloud-based web service supplied by 4-Layer at nephel3t.com (“the Service”) and its use. By using the Service you accept all the terms and conditions of this SA. Causing a file to be uploaded to the Service using the web page interface of the Service is considered use of the Service. If you do not agree to the terms of this SA, you must not use the Service.

Grant of Service:

This SA grants you use of the Service in accordance with the terms of this SA. The SA is non-exclusive and non-transferable. The SA is limited. The SA does not grant any rights to obtaining any other services supplied by 4-Layer now or in the future.

You are limited to using the Preview Version of the Service only during a preview time period that is provided by 4-Layer. Thereafter, you do not have any right to use the Preview Version of the Service. 4-Layer reserves the right to start, suspend, or end a preview time period at any time.

Copyright:

Copyright, intellectual rights, or proprietary rights vesting in the Service are owned by 4-Layer.

All rights not specifically granted in this SA are reserved by 4-Layer. No rights to use the Service shall be implied and are expressly excluded.

Any copyright vesting in the machine-generated network simulation code (*i.e.*, C++ code) itself produced for you by the Service, in response to you uploading a 4Layer Modeler model file (*i.e.*, a *.flm file) to the Service, is transferred from 4-Layer to you or the organization that you represent or are employed by, as applicable.

Restrictions:

You agree not to transfer, assign, sell, rent, lease, loan, or lend the Service granted to you to any third party.

You agree not to attempt to make any extension, modification, improvement, reduction, or derivative work of the Service. You agree not to reverse engineer the Service.

You agree to only cause files to be uploaded to the Service by manually clicking on the “Submit Model File” button provided by the web page interface of the Service.

You agree not to use a robot, script, computer program, or other type of mechanization to cause files to be uploaded to the Service. You agree not to make any use of the service for the purposes of load testing the Service, denial-of-service attack, or experimental evaluation of the Service itself.

You agree that the Service, or any part of it, may not be used to create or form a part of any service or product which competes with 4-Layer or operates as a replacement for the Service.

You agree not to attempt to access, access, copy, expose, distribute, or propagate any software owned by 4-Layer that is hosted on servers in the cloud to implement and provide the Service.

Warranties:

4-Layer gives no warranty to the maximum extent permitted by applicable law.

4-Layer gives no warranty that the Service operates error free or that defects in the Service will be corrected.

4-Layer gives no warranty relating to the service availability of the Service, where service availability is defined to be the proportion of time in a calendar year that the Service is operating.

4-Layer gives no warranty relating to the response time of the Service, where response time is defined to be the time from when you cause a file to be uploaded to the Service to when output is returned to you by the Service.

4-Layer gives no warranty that the Service may not sometimes fail to provide output to you when you cause a file to be uploaded to the Service.

4-Layer provides the Service “AS IS AND AS AVAILABLE AND WITH ALL FAULTS” to the maximum extent permitted by applicable law, without warranty of any kind, either expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

Liability:

4-Layer shall not be liable to you or to any third party for any loss of or corruption to data.

4-Layer shall not be liable to you or to any third party for any direct or indirect loss of business, loss of profits, loss of revenue, loss of possible or potential savings, business interruption or the like.

4-Layer shall not be liable to you or to any third party for any general, indirect, incidental, special, or consequential loss or damage arising out of the use of or inability to use the Service.

Notwithstanding any damages that you might incur for any reason whatsoever, the entire liability of 4-Layer arising from or related to this SA shall be limited to the amount paid by you to 4-Layer for your most recent subscription to the Service.

Modifications:

4-Layer reserves the right to modify, suspend, discontinue, or reinstate the Service, without liability to you and with or without notice.

4-Layer reserves the right to replace the Service at any time with a newer version of the Service that is or is not backwards compatible, without liability to you and with or without notice.

4-Layer reserves the right to suspend, discontinue, reinstate, or update any software provided by 4-Layer that is used to create model files (.flm files), without liability to you and with or without notice.

Third Party Licenses:

The Service may make use of third party software or services. Third party software or services used in the implementation of the Service may be subject to third party licenses. You hereby agree to the terms and conditions for such third party software or services.

Termination:

4-Layer may terminate this SA without notice if you fail to comply with any of its terms and conditions.

Additional Conditions:

The provision of the Service is limited to model files that do not exceed certain bounds in terms of the number of each type of network model element appearing in a *.flm model file. 4-Layer reserves the right to set or modify the bounds at any time without liability to you and with or without notice.

You do not acquire ownership of the Service, product literature, or user guides supplied for the Service. You do not acquire ownership of or rights to obtaining software owned by 4-Layer that is hosted on servers in the cloud to implement and provide the Service.

4-Layer will not store any model file that you cause to be uploaded to the Service beyond the time at which the output (*i.e.*, machine-generated network simulation code) of a service request is provided to you and the service instantiation is terminated.

4-Layer is permitted to keep a record of Model Size Information for a *.flm model file that you cause to be uploaded to the Service, where model size information is defined to be the number of each type of network model element appearing in the uploaded model file.

If any provision of this SA is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.

The relationship of the parties is that of service-user and service-provider.

All notices to 4-Layer shall be in writing and shall be sent by registered mail to the Resident Agent of record of 4-Level Simulations LLC in the Commonwealth of Massachusetts, United States of America.

This SA and any disputes arising of or connected to this SA, including non-contractual disputes, are subject to the laws of the Commonwealth of Massachusetts.

Disputes in relation to the SA, including non-contractual claims, shall be decided exclusively by courts in the Commonwealth of Massachusetts.

4-Layer is permitted to reference you as a user of the Service on web sites or in product literature owned by 4-Layer, in public and/or private funding or grant applications, in presentations to clients, and at trade events.

This SA is the entire agreement between you and 4-Layer relating to the Service.