



# NETMOTION SOFTWARE, INC. END-USER LICENSE AGREEMENT FOR NETMOTION MOBILITY, NETMOTION DIAGNOSTICS, NETMOTION MOBILE IQ AND NETMOTION MOBILE IQ FOR SPLUNK

## IMPORTANT-READ CAREFULLY BEFORE REGISTERING, INSTALLING OR USING THE SOFTWARE:

This NetMotion Software, Inc. End-User License Agreement ("EULA") is a legal agreement between you (either an individual or a single entity) and NetMotion Software, Inc. ("NetMotion") for the enclosed NetMotion Software products, which includes computer software object code, source code and associated documentation ("Software"). The terms of this EULA apply to your use of the Software, whether your use is (i) time- limited for "evaluation" purposes ("Evaluation License"); (ii) a subscription for a time period certain ("Subscription License"); (iii) a subscription for a time period certain utilizing NetMotion hosting services ("Subscription Hosted License"); or (iv) a long-term ("Permanent License"). The Software also includes any updates and supplements to the original Software provided to you by NetMotion during the term of your license. Any Third-Party Software provided along with the Software that so requires is licensed to you under the terms of that license agreement as more fully described below.

BY INSTALLING, COPYING, DOWNLOADING, ACCESSING OR OTHERWISE USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, DO NOT USE OR INSTALL THE SOFTWARE. IF YOU HAVE PURCHASED THE SOFTWARE, PROMPTLY RETURN THE SOFTWARE AND ALL ACCOMPANYING MATERIALS WITH PROOF OF PURCHASE TO YOUR PLACE OF PURCHASE FOR A REFUND.

## 1. SOFTWARE LICENSE

The Software is confidential and protected by United States and international patent and copyright laws and treaties, as well as other intellectual property laws and treaties. The Software is licensed to you, not sold, and NetMotion, its suppliers, and licensors retain and reserve all rights not expressly granted herein.

## 2. LICENSE GRANT

2.1. **NetMotion Invoice.** The Terms contained in the invoice issued by NetMotion or its authorized Resellers, and in any purchase order issued by you and accepted by NetMotion (hereinafter collectively, "NetMotion Invoice"), are hereby incorporated by reference solely for the purpose of identifying the quantity and type of client and server licenses and modules purchased, the level of maintenance and support to be provided, the rate at which such products and services shall be paid, the



payment terms applicable to the licensing of such Software and services, and any express mutually agreed modifications to the terms of this Agreement. The NetMotion Invoice to you identifies which of the following License Grants apply to you:

2.2. **Grant of Evaluation License.** NetMotion grants you a limited, royalty-free, non-transferable, non-exclusive, license to install and use the Software as an integrated product provided that you comply with the terms and conditions of this EULA. At the conclusion of the evaluation period, you shall be permitted to elect to receive either a Subscription License, Subscription Hosted License, or a Permanent License, whereupon, upon payment by you to NetMotion or its authorized Reseller as provided herein, this EULA shall continue to apply to you in full force and effect with respect to the license you have selected.

2.3. **Grant of Subscription License.** Upon receipt of payment by NetMotion or its authorized Resellers, as provided herein, if the NetMotion Invoice indicates that you are receiving a Subscription License, NetMotion grants you a limited, royalty-bearing, non-transferable, non-exclusive, revocable license to install and use the Software as an integrated product provided that you comply with the terms and conditions of this EULA. The Subscription License shall run for the time period set forth in the NetMotion Invoice (hereinafter "Subscription Term") and shall be renewable as set forth therein. If you do not purchase a renewal for your Subscription License prior to the expiration of the Subscription Term, your Subscription License will automatically terminate and this EULA shall no longer apply. If you wish to reinstate your expired Subscription License, you will be required to agree to the then-current EULA and/or you may be subject to the payment of additional fees and expenses.

2.4. **Grant of Subscription Hosted License.** Upon receipt of payment by NetMotion or its authorized Resellers, as provided herein, if the NetMotion Invoice indicates that you are receiving a Subscription Hosted License, NetMotion grants you a limited, non-transferable, non-exclusive, revocable license (i) to install and use the client component of the Software on your authorized End-User device(s) as an integrated product provided that you comply with the terms and conditions of this EULA and (ii) to use the NetMotion hosting services (hereinafter NetMotion Host Services") in conjunction with authorized End-User device(s). You acknowledge that at no time shall you be entitled to download, distribute, copy, modify, install or otherwise redistribute the server component of the Software.

The Subscription Hosted License shall run for the time period set forth in the NetMotion Invoice (hereinafter "Subscription Term") and shall be renewable as set forth therein. If you do not purchase a renewal for your Subscription Hosted License prior to the expiration of the Subscription Term, your Subscription Hosted License will automatically terminate and this EULA shall no longer apply. If you wish to reinstate your terminated Subscription Hosted License, then you will be required to agree to the then-current EULA and/or you may be subject to the payment of additional fees and expenses.

Upon expiration of the Subscription Term or termination of the Subscription Hosted License, NetMotion reserves the right to deny access to the NetMotion Host Services and to withhold, remove and/or discard, delete or destroy any content or data stored on the host server without notice to you.

2.5. **Grant of Permanent License.** Upon receipt by NetMotion or its authorized Resellers of payment, as provided herein, if the NetMotion Invoice indicates that you are receiving a Permanent License, NetMotion grants you a perpetual, fully paid-up, non-transferable, non-exclusive, worldwide



(subject to applicable export restrictions) limited license to install and use the Software as an integrated product for internal business purposes, provided that you comply with the terms and conditions of this EULA.

2.6. **Grant of Source Code License for Mobile IQ App for Splunk.** The Mobile IQ App for Splunk includes certain proprietary source code files that are confidential and licensed for internal business use only. If you have a license to install and use Mobile IQ App for Splunk, you may modify the source code files. However, after any such modification, the source code files will not be supported by NetMotion or be covered by any warranty under the license agreement. The source code licensed to you under this Section 2.6, is a limited, non-transferable, revocable license to install and use the modified source code files for the duration of the software licensed to you to use Mobile IQ for Splunk. The source code license granted in this Section 2.7 does not grant you any ownership or perpetual rights in the modified source code files and you shall not sell, lease, share or transfer the source code files to any other party.

2.7. **Installation and Use of Server Component.** Unless you are operating under the Subscription Hosted License, you may install and use one copy of the server component of the Software on each Server(s) you are licensed to use. For purposes of this EULA, "Server" means any computer on which the server component of the Software is installed or used. You acknowledge that, if you are operating under the Subscription Hosted License, at no time shall you be entitled to download, distribute, copy, modify, install or otherwise redistribute the server component of the Software.

2.8. **Install and Use Client Component.** You may install the number of copies of the client component of the Software for which you have obtained a license on devices solely for your internal use only.

2.9. **Access to Database.** You agree to provide NetMotion access to the Software data subject to the terms and conditions set forth in Section 16.

2.10. **Reservation of Rights.** NetMotion, its suppliers and licensors reserve all rights not expressly granted to you under this EULA.

### 3. LIMITATIONS

3.1. **Limitations on Use, Modifying, Copying, Publishing and Redistributing.** The Software is solely licensed to you as an integrated product for use in your internal business. NetMotion and its suppliers and licensors retain all rights, title, interest and ownership of the Software, and all modifications and copies thereof, including all copyrights, proprietary rights, and other intellectual property rights therein. Except as expressly provided in this EULA, you may not, nor permit others to modify, separate out, embed within other products, make copies, publish for others to copy, or redistribute the Software or the printed materials accompanying the Software for any purpose outside the scope of this Agreement. You may, if licensed hereunder, make copies of the Software only for archival and backup purposes and one copy of electronic documentation accompanying the Software for each license you have acquired for the Software. You must include all applicable copyright notices and other proprietary rights legends that come with the Software, unaltered and unobscured, in any copies you make. You may keep the original media, if any, on which NetMotion provided the Software solely for backup or archival purposes. If the



original media is required to use the Software, you may make one copy of the Software solely for backup or archival purposes. You shall not provide copies of the Software, or any portion thereof, whether integrated or standalone, to any third party.

3.2. **Limitations on Reverse Engineering, Decompiling and Disassembly.** The Software in both object code and source code form includes valuable and confidential trade secret information of NetMotion and its licensors. You may not disclose or modify the Software or make derivative works thereof, reverse engineer, decompile, or disassemble the Software or otherwise attempt to gain access to the source code for the Software, except and only to the extent expressly permitted by the terms of this EULA and applicable law notwithstanding this limitation.

3.3. **Limitations on Transfer.** You may not rent, lease, sell, sublicense, lend or otherwise transfer or assign your rights or obligations under this EULA to any person or entity without the prior written consent of NetMotion. Such consent may be conditioned on the payment of additional license fees or the imposition of additional transfer restrictions.

## 4. TERMINATION

4.1. **Term of Agreement.** The term of this Agreement shall commence on the date on which you accept this EULA and shall continue until the respective license terminates or is revoked and terminated as provided herein.

4.2. **Evaluation License.** If you have received an Evaluation License, your license to such version of the Software will terminate the date the Evaluation License times out or expires.

4.3. **Subscription License.** If you have received a Subscription License or a Subscription Hosted License, your subscription to the Software will automatically terminate at the end of the Subscription Term unless you have renewed the subscription before the expiration of the Subscription Term. With respect to the Subscription Hosted License, upon termination or expiration of the Subscription Term, NetMotion reserves the right to deny you access to the NetMotion Host Services and to withhold, remove and/or discard, delete or destroy any content stored on the host server without notice to you.

4.4. **Termination.** If you violate any term of this EULA, NetMotion may revoke and terminate the license and rights granted hereunder in this EULA without waiving any other rights.

4.5. **Effect of Termination.** If your license terminates or is revoked and terminated for any reason, this EULA automatically terminates and you must immediately cease using and destroy all copies of the Software and other confidential information, if any, of NetMotion or its licensors, and, on request of NetMotion, certify said destruction. All amounts paid by you to NetMotion or its authorized Resellers prior to termination shall be non-refundable. No termination of this Agreement shall in any way affect the rights, duties or obligations of either you or NetMotion which have accrued prior to the date of such termination.

## 5. CONFIDENTIALITY

5.1. **Definition.** "Confidential Information" means any information, technical data, or know-



how marked or considered confidential or proprietary by either party to this EULA disclosed by a party ("Discloser") to the other party ("Recipient") in connection with the use or provision of the Software that is either marked confidential or would reasonably be considered as confidential under the circumstances. Despite the foregoing, Confidential Information does not include information that: (a) is or becomes public through no fault of the Recipient; (b) the Recipient already lawfully knew; (c) was rightfully given to the Recipient by an unaffiliated third party without restriction on disclosure; or (d) was independently developed by the Recipient without reference to the Discloser's Confidential Information.

**5.2. Restrictions on Disclosure and Use.** The Recipient will: (a) protect the Discloser's Confidential Information using commercially reasonable efforts; (b) use the Discloser's Confidential Information only as permitted by this EULA; and (c) not disclose the Discloser's Confidential Information without the Discloser's prior consent, except to those persons who need to those affiliates, employees and professional advisors who have a need to know it and have agreed in writing to keep it confidential on terms comparable to those un this Section. The Recipient may disclose the Discloser's Confidential Information when and to the extent required by law or legal process, but only after Recipient, if permitted by law, uses reasonable efforts to notify the Discloser before disclosure of Discloser's Confidential Information.

## **6. SAFEGUARDS/AUDIT RIGHTS**

You agree to: (i) implement internal safeguards to prevent any unauthorized copying, distribution, modification or use of the Software; (ii) provide NetMotion written certification of the number of copies of the Software installed or used on request, and (iii) to allow NetMotion to audit your premises and systems for compliance with this EULA during regular business hours. NetMotion will pay for the cost of the audit unless the audit shows a discrepancy in the number of copies of the Software used over the licenses you have acquired, in which event, you shall pay for the cost of the audit.

## **7. INDEMNITY**

**7.1. Your Indemnity Obligation to NetMotion.** You hereby agree to indemnify and hold harmless NetMotion from and against any claim, action, proceeding, loss, liability, judgment, penalty, obligation, damage or cost, including attorneys' fees, which arise from or relate to (1) your breach of any obligation set forth in this EULA and (2) your negligent act(s) or omission(s). You will undertake at your cost the defense of any claim, suit or proceeding with counsel reasonably acceptable to NetMotion. NetMotion reserves the right to participate in the defense of the claim, suit, or proceeding at NetMotion's expense, with counsel of NetMotion's choosing.

**7.2. NetMotion's Indemnity Obligation to You.** NetMotion shall, at its cost and expense, defend and/or settle any claim brought against you by an unaffiliated third party alleging that your use of the NetMotion Service infringes or violates any third party's patent, trademark or copyright rights. However, you must (1) provide NetMotion with prompt written notice of any such claim; (2) agree to give NetMotion sole control of the defense and settlement of the claim; and (3) provide reasonable cooperation and assistance to NetMotion, at NetMotion's expense. NetMotion shall not be required to indemnify you in the event of any unauthorized modification or use of the Software by you under this EULA.



## 8. EXPORT LAWS; FOREIGN CORRUPT PRACTICES

You acknowledge that the Software is of U.S. origin. You agree to comply with all applicable international and national laws that apply to the Software, including the US Export Administration Regulations (15 CFR, Parts 730-774), as well as end-user, end-use and destination restrictions issued by U.S. and other governments. The Software contains encryption and cannot be exported outside the United States or Canada without a U.S. Commerce Department export license or applicable license exception. You agree that you will not directly or indirectly export, re-export or import the Software (or portions thereof) other than to Canada, without first obtaining an export license or determining that a license exception is authorized and applicable and notifying NetMotion in writing of such export. You further agree that you will avoid any activity that violates U.S. or local laws, including the U.S. Foreign Corrupt Practices Act.

## 9. U.S. GOVERNMENT RESTRICTED RIGHTS

The Software is commercial computer software and documentation developed exclusively at private expense, and in all respects is proprietary data belonging solely to NetMotion. If the Software is acquired by or on behalf of agencies or units of the Department of Defense (DoD), then, pursuant to DoD FAR Supplement Sections 227.7201 through 227.7202 and its successors (48 C.F.R. 227.7201-227.7202) the Government's right to use, reproduce or disclose the Software is subject to the restrictions of this EULA. If the Software is acquired by or on behalf of civilian agencies of the United States Government, then, pursuant to FAR Sections 2.101 and 12.212 and its successors (48 C.F.R. 2.101 and 48 C.F.R. 12.212), the Government's right to use, reproduce or disclose the Software is subject to the restrictions of this EULA.

## 10. GOVERNING LAW AND ATTORNEYS' FEES

Without regard to the conflict of laws rules, this EULA is governed by the laws of the State of Washington, USA, and specifically excludes the United Nations Convention on Contracts for the International Sale of Goods. In any action or suit to enforce any right or remedy under this EULA or to interpret any provision of this EULA, the prevailing party will be entitled to recover its costs, including reasonable attorneys' fees.

## 11. LIMITED WARRANTY

11.1. **Warranty.** For a period of ninety (90) days from the date of shipment or download from NetMotion of the Software, NetMotion warrants that (a) the unmodified Software will perform substantially in accordance with the accompanying written materials when used as directed, and (b) the media upon which the Software is delivered will be free of defects. This Limited Warranty is void if failure of the Software has resulted from modification, accident, abuse, or misapplication.

11.2. **Limited Disclaimer.** With respect to the Subscription Hosted License, you understand that, from time to time, the hosting services MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. NETMOTION IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.



## **12. EXCLUSIVE REMEDY AND DISCLAIMER OF WARRANTIES**

Your exclusive remedy with respect to any breach of the Limited Warranty is, at NetMotion's option, either repair or replacement of the non-conforming Software or return of the pro-rata price you paid for the non-conforming Software. You must return all non-conforming Software to NetMotion with your proof of purchase to be entitled to this remedy. Outside the United States, neither these remedies nor any product support services offered by NetMotion are available without proof of your purchase from an authorized international source. TO THE FULL EXTENT PERMITTED BY LAW, NETMOTION AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, WITH REGARD TO THE SOFTWARE.

## **13. LIMITATION OF LIABILITY**

NETMOTION AND ITS LICENSORS WILL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR PERSONAL INJURY, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS OR CONFIDENTIAL INFORMATION, LOSS OF PRIVACY, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF NETMOTION OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, THE ENTIRE LIABILITY OF NETMOTION AND ITS LICENSORS UNDER THIS AGREEMENT AND LIMITED WARRANTY SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU FOR THE SOFTWARE THAT CAUSES THE DAMAGE.

## **14. THIRD PARTY SOFTWARE**

The Software may contain or be distributed with software code or products from third parties ("Third Party Software"). NetMotion has secured all necessary rights from such third parties to use, distribute and sublicense such Third Party Software in conjunction with the Software. Any Third Party Software so requiring, is sub-licensed to you under the terms of that Third Party Software license. The terms of any such Third Party Software license apply only to the specific software code or product of the named third party and do not extend to any other portion of the Software licensed by NetMotion or other third party intellectual property, including trademarks. In any event, the disclaimer of warranty and limitation of liability provisions of this EULA shall apply to all of the Software. Applicable Third Party Software licenses are available at <https://netmotionsoftware.com/legal-and-copyright/>

## **15. ENTIRE AGREEMENT**

This EULA constitutes the entire agreement between you and NetMotion with respect to your right to use the Software, and replaces all other agreements or representations, whether written or oral. Terms contained in the invoice(s) issued by NetMotion or its authorized Resellers, and in any purchase order issued by you and accepted by NetMotion or its authorized Resellers, are hereby incorporated by reference solely for the purpose of identifying the quantity and type of client and server licenses and modules purchased, the level of maintenance and support to be provided, the rate at which such products





and services shall be paid and the payment terms applicable to the licensing of such Software and services. The terms of this EULA cannot be modified by any terms in any printed forms used by the parties in performing the EULA and can only be modified by express written agreement and consent of both parties as set forth in the applicable NetMotion Invoice. If any part of this EULA is held to be unenforceable as written, it will be enforced to the maximum extent allowed by applicable law, and will not affect the enforceability of any other part. The original of this EULA is in English. If it is translated into another language, the English language version shall prevail.

## 16. PRIVACY

16.1. **Information Collected.** The Software collects network, performance, and usage information from licensed devices within an End-User's mobile deployment. The types of personally identifiable information collected vary by the type of device and may include but are not limited to device names, logged-in user name, phone number, adapter serial number, and application names, correlated with location information. The information is collected from each licensed device and transmitted via a secure connection to the respective Software server, using an SSL and/or VPN connection, as placed in service and configured by the End-User's Software administrator.

16.2. **Your Use of Information Collected.** You understand the Software is capable of permitting you to use the information identified in Section 16.1 to determine when and where a device has been used, and may also be used to display maps that show traces, coverage, connections, network performance and other collected information plotted for one or more devices during a specified time-period. You further understand and acknowledge that licensed devices contribute information that are individually identifiable and that correspond to the actual date and time of data generation, enabling review and analysis of collected information.

16.3. **Privacy and Access to the Information.** Access to personally identifiable information collected and stored in the Software is only by authorized users via log-in controlled by user-name and password. User-name and password accounts are established by End-User's Software administrator(s). PDF files, KML location files, and image files containing personally identifiable information and map information can be configured, exported and saved by an authorized Software user or administrator. These features are provided by the Software to allow End-Users to analyze, document and archive the information. These files contain no inherent encryption and contain personally identifiable information and you agree to take reasonable precautions to properly secure the personally identifiable information in accordance with End-User's privacy information policies and applicable state and federal laws.

16.4. **Privacy and commitment to security.** The Software employs physical, electronic, and administrative controls to enable End-Users to safeguard and prevent unauthorized access to the information collected.

16.5. **NetMotion's Access and Use of Information.** You understand and acknowledge that NetMotion may access and use the information collected as described in Section 16.1 of this EULA as follows:

a. To perform routine maintenance, technical support or help, troubleshooting, debugging of the Software, quality control checks and the like, during the term of this EULA; and





b. NetMotion may use the information collected by the Software as described in Section 15.1 for one or more of the purposes set forth in Section 16.2 and may share such information with unrelated third parties, provided however, that NetMotion shall not disclose personally identifiable information to unrelated third parties, unless required by court order, law, regulation or the like.

c. Privacy notice. The NetMotion online privacy statement is available at <https://www.netmotionsoftware.com/privacy>.

*Revision Date: October 16, 2020*

**© 2020 NetMotion Software. All rights reserved.**