



# NetMotion Software Terms of Service for NetMotion Cloud Platform SAAS

**IMPORTANT - READ CAREFULLY BEFORE REGISTERING, INSTALLING OR USING THE NETMOTION CLOUD PLATFORM SAAS SERVICE AND APPLICABLE SOFTWARE COMPONENTS:**

The NetMotion Software, Inc. Terms of Service ("TOS") is a legal agreement between you (either an individual or a single entity) and NetMotion Software, Inc. ("NetMotion") under which NetMotion provides their NetMotion Cloud Platform SAAS services ("NetMotion Service"). The terms in this TOS apply to your registration, access and use of the NetMotion Service.

BY ORDERING, REGISTERING, ACCESSING OR OTHERWISE USING THE NETMOTION SERVICE, YOU ASSENT AND AGREE TO BE BOUND BY THE TERMS IN THIS TOS. IF YOU DO NOT AGREE TO THE TOS, DO NOT REGISTER, ACCESS, OR USE THE NETMOTION SERVICE.

If you will be using the NetMotion Service on behalf of an organization, you agree to the TOS on behalf of that organization and you represent that you have the authority to do so. In such case, "you" and "your" will refer to that organization.

## 1. LIMITED LICENSE AND USE OF THE NETMOTION SERVICE

1.1. **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 (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 and the payment terms applicable to the licensing of the NetMotion Service and related software components.

1.2. **Grant of License.** Subject to the terms and conditions set forth in the NetMotion Invoice and this TOS, you are granted a non-exclusive, non-transferable, revocable, limited license to access and use the NetMotion Service for your internal use during the paid subscription/license term described in the NetMotion Invoice. With regard to other NetMotion software and application products identified in the NetMotion Invoice which are downloadable to your computer, server or other electronic devices, the installation and use of such downloadable software components are governed by the applicable NetMotion EULA for such products and services and will prevail unless otherwise superseded with NetMotion's written approval of any modified terms as expressly provided in the NetMotion Invoice.

1.3. **Ownership.** Except for the rights granted herein, you agree and acknowledge that all ownership, license, intellectual property and other rights and interests in and to the NetMotion Service remains solely with NetMotion and no ownership right in any NetMotion intellectual property is conveyed to you.

1.4. **Provision and Access.** NetMotion reserves the right to modify or discontinue, temporarily or permanently, any feature associated with the NetMotion Service, with or without notice



to you. Your continuing use of the NetMotion Service is confirmation of your acceptance of any such modification or discontinuation. NetMotion reserves the right to temporarily suspend access to the NetMotion Service for operational upgrades, maintenance, or repairs and will endeavor to provide reasonable advance notice to you via email, or within the NetMotion Service, or other notification means available to NetMotion.

1.5. **Installation and Use.** NetMotion is not responsible for installation of the NetMotion Service or any related software components on your equipment. Any NetMotion Service requiring a registered user account may only be accessed and used by the end user(s) associated with the registered account or as otherwise provided in the NetMotion Invoice and applicable NetMotion EULA.

1.6. **Reservation of Rights.** NetMotion, its suppliers and licensors reserve all rights not expressly granted under this TOS, any operative NetMotion Invoice or any applicable NetMotion EULA.

## 2. LIMITATIONS

2.1. **Limitations on Use.** The NetMotion Service 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 in and to the NetMotion Service, software, applications, API's and all modifications and copies thereof, including all copyrights, proprietary rights, and other intellectual property rights therein. You may not, nor permit others to access, use, modify, separate out, embed within other products, make copies, publish for others to copy, or redistribute the NetMotion Service, software components or the printed materials accompanying the NetMotion Service for any purpose outside the scope of this TOS and applicable NetMotion EULA.

2.2. **Product Legends.** You must include all applicable copyright notices and other proprietary rights legends that come with the NetMotion Service or downloadable NetMotion software components, unaltered and unobscured, in any copies you make as permitted under this TOS and the applicable NetMotion EULA.

2.3. **Limitations on Copying, Decompiling and Reverse Engineering.** You agree that you will not reproduce, modify, copy sell, resell, provide or exploit access to the NetMotion Service, use of the NetMotion Service, or any portion of the NetMotion Service to any third party. You agree that you will not reverse engineer, decompile, disassemble, tamper, or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public API's to the NetMotion Service, or encourage or assist any third party in doing same.

2.4. **Limitations on Transfer.** You may not rent, lease, sell, sublicense, lend or otherwise transfer your rights or obligations under this TOS 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.

## 3. SECURITY AND ACCESS

NetMotion has implemented appropriate technical and organizational measures for providing a level of security appropriate to the risk of accidental loss of or damage to your data in connection with



the provision of the NetMotion Service. You will be responsible for maintaining the security of usernames and passwords, or any other codes associated with the NetMotion Service, and you agree to promptly inform NetMotion if your username and password have been lost, stolen or compromised.

#### 4. SAFEGUARDS/AUDIT RIGHTS

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

#### 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 TOS disclosed by a party ("Discloser") to the other party ("Recipient") in connection with the use or provision of the NetMotion Service 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 TOS; and (c) not disclose the Discloser's Confidential Information without the Discloser's prior consent, except 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 in 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. LIMITED WARRANTY

6.1. **Warranty.** For a period of ninety (90) days from the date of download from NetMotion servers or access is provided to the NetMotion Service, NetMotion warrants that during the applicable subscription/license term noted on the NetMotion Invoice that the NetMotion Service will perform substantially in accordance with the accompanying NetMotion Cloud Platform SAAS Service Level Agreement when used as directed by NetMotion. This Limited Warranty is void if failure of the NetMotion Service has resulted from your modification, accident, abuse, or misapplication of the NetMotion Service or software components.



6.2. **Limited Disclaimer.** With respect to the provision of hosted and cloud based NetMotion Service, you understand that, from time to time, the 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 OCCURENCES.

## 7. EXCLUSIVE REMEDY

Your exclusive remedy with respect to any breach of the Limited Warranty is, at NetMotion's option, either (i) to use reasonable commercial efforts to make the NetMotion Service available to you or (ii) calculate and provide you with a Service Credit as provided in the operative NetMotion Service Level Agreement located at <https://www.netmotionsoftware.com/legal-and-copyright>.

## 8. 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 NETMOTION SERVICE AND NETMOTION 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 NETMOTION SERVICE THAT CAUSES THE DAMAGE.

## 9. DISCLAIMER OF WARRANTIES

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 NETMOTION SERVICE AND SOFTWARE COMPONENTS. NETMOTION DOES NOT WARRANT ANY THIRD-PARTY PRODUCTS OR SERVICES. YOU UNDERSTAND THAT HOSTED AND CLOUD PRODUCTS INVOLVE THE TRANSMISSION OF DATA OVER NETWORKS THAT ARE NOT OWNED, MANAGED OR CONTROLLED BY NETMOTION OR ITS THIRD-PARTY LICENSORS, AND NETMOTION AND ITS THIRD-PARTY LICENSORS ARE NOT RESPONSIBLE FOR ANY OF YOUR DATA THAT MAY BE LOST, INTERCEPTED OR ALTERED ACROSS ANY SUCH NETWORK.

## 10. INDEMNITY

10.1. **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 TOS, NetMotion Invoice or applicable NetMotion 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.

10.2. **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 NetMotion Service by you under this TOS and any applicable NetMotion EULA.

## 11. EXPORT LAWS; FOREIGN CORRUPT PRACTICES

You acknowledge that the NetMotion Service is of U.S. origin. You agree to comply with all applicable international and national laws that apply to the NetMotion Service, 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 NetMotion Service 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 NetMotion Service (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.

## 12. U.S. GOVERNMENT RESTRICTED RIGHTS

The NetMotion Service is provided using commercial computer software and documentation developed exclusively at private expense, and in all respects is proprietary data belonging solely to NetMotion. If the NetMotion Service 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 NetMotion Service is subject to the restrictions of this TOS and any applicable NetMotion EULA. If the NetMotion Service 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 NetMotion Service is subject to the restrictions of this TOS and any applicable NetMotion EULA.

## 13. TERM AND TERMINATION

13.1. **Term and Termination.** This TOS shall become effective on the date on which you accept this TOS and shall continue until your subscription to the NetMotion Service expires, is revoked or terminated as provided herein. If you violate any term of this TOS, NetMotion may terminate your subscription to the NetMotion Service, any associated license and rights granted herein and under any applicable NetMotion EULA or NetMotion Invoice without waiving any other rights.

13.2. **Effect of Termination.** If your license terminates or is terminated for any reason, this



TOS automatically terminates and you must immediately cease using the NetMotion Service and destroy your copies of any applicable NetMotion software components and other confidential information, if any, of NetMotion or its licensors, and on request of NetMotion certify such destruction. All amounts paid by you to NetMotion or its authorized Resellers prior to termination shall be non-refundable. No termination of this TOS in any way affects the rights, duties or obligations of you or NetMotion which have accrued prior to the date of such termination.

#### 14. THIRD PARTY SOFTWARE

The NetMotion Service 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 <http://netmotionsoftware.com/legal-and-copyright/>

#### 15. GOVERNING LAW AND ATTORNEYS' FEES

Without regard to the conflict of laws rules, this TOS 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 TOS or to interpret any provision of this TOS, the prevailing party will be entitled to recover its costs, including reasonable attorneys' fees.

#### 16. ENTIRE AGREEMENT AND CHANGES TO TERMS OF SERVICE

16.1. **Merger.** This TOS constitutes the entire agreement between you and NetMotion with respect to your right to access and use the NetMotion Service, and replaces all other agreements or representations, whether written or oral. In all other respects, the terms of this TOS and any applicable NetMotion EULA can only be modified by the express written consent of both parties and set forth in the NetMotion Invoice. If any part of this TOS 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 TOS is in English. If it is translated into another language, the English language version shall prevail.

16.2. **Changes and Modifications.** You acknowledge that the NetMotion Service is an on-line, subscription product and that NetMotion may make changes to the NetMotion Service from time-to-time to provide you with an improved NetMotion Service offering. NetMotion may modify the terms and conditions of this TOS from time to time, by posting the modified TOS on our website. NetMotion will specify the effective date of the modified terms in the TOS.



## 17. PRIVACY

17.1. **Information Collected.** The NetMotion Service 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 username, phone number, adapter serial number, and application names, correlated with location information. For a complete list of information collected, consult the applicable product documentation. The information is collected from each licensed device and transmitted via a secure connection to the respective NetMotion Service server.

17.2. **Your Use of Collected Information.** You understand the NetMotion Service is capable of permitting you to use the information identified in Section 17.1 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.

17.3. **Privacy and Access to Information.** Access to personally identifiable information collected and stored in the NetMotion Service is only by authorized users via log-in controlled by username and password. Username and password accounts are established by End-User's NetMotion Service 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 NetMotion Service user or administrator. These features are provided by the NetMotion Service 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.

17.4. **Privacy and Commitment to Security.** The NetMotion Service employs physical, electronic, and administrative controls to enable End-Users to safeguard and prevent unauthorized access to the information collected.

17.5. **NetMotion's Access and Use of Information.** You understand and acknowledge that NetMotion may access and use the information collected as described in Section 17.1 above as follows:

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

b. NetMotion may use the information collected by the NetMotion Service as described in Section 17.1 for one or more of the purposes set forth in Section 17.2 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.

17.6. **Privacy Notice.** The NetMotion online privacy notice and terms are located at:



<https://www.netmotionsoftware.com/privacy>

## 18. ASSIGNMENT AND FORCE MAJEURE

18.1. **No Assignment.** You may not assign your rights or obligations under this TOS to any person or entity without the prior written consent of NetMotion. NetMotion may assign its rights and obligations under this TOS (in whole or part) without notice or your consent.

18.2. **Force Majeure.** NetMotion will not be liable to you for any delay or failure to perform any obligation under this TOS, if such failure or delay is caused by events beyond NetMotion's reasonable control, such as acts of terrorism, war, natural disaster, failure or reduction in power, communications or data networks or services.

## 19. NOTICES

19.1. **Notice Provisions.** Any notice given pursuant to the TOS must be given in writing. NetMotion may provide notice to you via electronic mail, your account or through in-service notifications. You will provide written notice to NetMotion by U.S. mail or other courier addressed to:

NetMotion Software, Inc.  
Attn: Legal Department  
1505 Westlake Ave N.  
Suite 500  
Seattle, Washington 98109

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