

MOTION METRICS CUSTOMER AGREEMENT

Welcome to the MetricsManager™ web site (the “**Site**”). BEFORE YOU CAN USE THE SITE, YOU MUST READ, UNDERSTAND AND AGREE TO BE BOUND BY THE FOLLOWING AGREEMENT, ALL POLICIES AND TERMS INCORPORATED BY REFERENCE, AND ANY SUBSEQUENT CHANGES TO THE FOREGOING. Your access to, and use of this Site is conditioned on your acceptance without modification of the following Agreement. By using this Site, you signify your acceptance of this Agreement. If you do not agree with any part of the following Agreement, you must not use this Site.

This Agreement is a binding contract between Motion Metrics International Corp. (“**Motion Metrics**”, or “**we**”) and you, and if applicable, between Motion Metrics and the company or other legal entity that you represent. If you are agreeing to this Agreement not as an individual but on behalf of a company, then “**Customer**” or “**you**” means your company, and you are binding your company to this Agreement. Motion Metrics and Customer are also referred to individually as a “**party**” and collectively as the “**parties**”. If you are entering into this Agreement as an individual, you represent and warrant that you are over the age of eighteen (18) and possess the legal capacity to bind yourself to its terms and conditions. If you are entering into this Agreement on behalf of a business organization or entity, you represent and warrant that you are duly authorized to bind that entity to this Agreement.

Motion Metrics may modify this Agreement or any policy or guideline of the Site, at any time and in its sole discretion. Any changes or modification will be effective upon posting of the revisions and notice of such changes to the Site. Your continued use of this Site following the posting of its changes or modifications will constitute your acceptance of such changes or modifications.

By clicking on the “I agree” (or similar button) that is presented to you at the time of your Order, or by using or accessing Motion Metrics products, you indicate your consent to be bound by this Agreement.

This Agreement does not alter in any way the terms or conditions of any other agreement you may have with Motion Metrics for other products or services. If you have any question regarding the use of the Site, please refer first to the Customer Service or Help Section. All other questions or comments about the Site or its contents should be directed to admin@metricsmanagerpro.com.

1. INCORPORATED POLICIES AND TERMS AND SCOPE

1.1 Incorporated Policies and Terms. As referred to herein, “**Agreement**” means this Customer Agreement, together with all policies and addenda that are incorporated herein by reference, including the Privacy Policy, and Terms of Sale. This Agreement governs your initial purchase as well as any future purchases made by you.

1.2 Privacy Policy. Motion Metrics believes strongly in protecting user privacy and providing you notice of Motion Metrics’ collection and use of data, including personal information, collected from the Site. Therefore, Motion Metrics has adopted a Privacy Policy that sets out how Motion Metrics uses and collects information. Information provided to Motion Metrics may be stored on third party servers (“**Third-Party Servers**”) domestically or abroad, including on Third-Party Servers in the United States. While the information received resides outside of your country of residence, it may be accessible to the local courts, law enforcement, and other governmental authorities of the United States.

1.3 **Terms of Sale.** All orders placed via the Site are governed by Motion Metrics' Terms of Sale. Orders placed through other methods, such as by e-mail or by phone, will be governed by the terms of sale applicable to such orders, which may be different than the Terms of Sale for orders placed via the Site. All references to monetary amounts, including prices, on the Site and in the Terms of Sale or these Terms of Use shall be in US currency. You should refer to our Terms of Sale to learn more about applicable product warranties, our return policy, and shipping terms. By ordering and/or accepting delivery of the products, you agree to be bound by this Agreement, including the disclaimers and limitations of liability therein.

1.4 **Scope.** This Agreement governs (a) Motion Metrics' commercially available downloadable or installed software products (currently designated as "MetricsManager Basic" deployments) (the "**Software**"), (b) Motion Metrics' hosted or cloud-based solutions (currently designated as "MetricsManager Pro" deployments) (the "**Hosted Services**"), and (c) any related support or maintenance services provided by Motion Metrics. Software and Hosted Services, together with related Documentation, are referred to as "**Products**". The Products and their permitted use are further described in Motion Metrics' standard documentation (the "**Documentation**"). Section 3 (Software Terms) applies specifically to Software, and Section 4 (Hosted Services Terms) applies specifically to Hosted Services, but unless otherwise specified, other provisions of this Agreement apply to all Products.

2. MEMBERSHIP ACCOUNT OBLIGATIONS

2.1 **Registration.** After you have accepted this Agreement, you may open a membership account under the Membership section of the Site or an account will be created for you (the "**Membership Account**"). You may use your Membership Account to place orders or access or receive any Products. Any registration information that you provide to us must be accurate, current and complete. You must also update your information so that we may send notices, statements and other information to you by email or through your account. You are responsible for all actions taken through your Membership Account, whether taken by you or by other users who are authorized to perform certain functions on the Administrator's (as defined below) behalf through the Membership Account ("**Authorized Users**").

2.2 **Authorized Users.** As part of the membership registration, the person who opens the Membership Account on the Site (the "**Administrator**") may choose to provide to us the information of other Authorized Users who are authorized to perform certain functions on the Administrator's behalf through the Membership Account. The Administrator shall specifically select which functions each Authorized User has the authority to perform via the Site.

Authorized Users can access the Site using their own personal user names and passwords, but can only perform the selected functions on the Administrator's behalf. At any time, an Administrator may change an Authorized User's personal password to prevent his or her access to the Site, limit the Authorized User's authority to perform certain functions on behalf of the member, or otherwise change, add or delete Authorized Users upon written notification, with verification of receipt, to Motion Metrics. Motion Metrics will make reasonable efforts to implement such changes, additions or deletions within seven (7) business days of receipt of such written notification. If an Authorized User is no longer authorized to act on your behalf, the Administrator is responsible for using these security procedures that we have made available to you to terminate or limit the Authorized User's access to the Site.

2.3 Use of Membership Account. You will receive a password and account designation when you have completed the Membership Account information. If you are the Administrator of your Membership Account, in consideration of your use of the Site, you agree:

- (a) to provide true, accurate, current and complete information about yourself and/or the company that you represent, including but not limited to information about any and all Authorized Users; including any special circumstances or restrictions that apply to each Authorized User;
- (b) that you represent and warrant that you have the capacity and authority to execute agreements and place orders for Motion Metrics' products and services on behalf of you or your company;
- (c) that an order placed by you or an Authorized User through the Site is the equivalent of a signed purchase order, and you hereby waive any future challenge to the validity and enforceability of any order submitted via the Site on the grounds that it was electronically transmitted and authorized;
- (d) that you are responsible for all costs and charges, including without limitation, phone charges and telecommunications equipment, incurred in order to use the Site;
- (e) that you (and your company, if applicable) are fully responsible for all activities that occur under your password or Membership Account, and accept all liability for any acts or omissions of your Authorized Users arising out of their use of the Site, even if such acts or omissions are not specifically authorized by you;
- (f) to immediately notify us of any unauthorized use of your password or Membership Account or any other breach of security;
- (g) that you are fully responsible for managing your Membership Account, including but not limited to:
 - (i) maintaining the confidentiality of passwords and/or any Membership Account information; and
 - (ii) maintaining and promptly updating the Membership Account information to keep it true, accurate, current and complete;
- (h) ensuring that any Authorized User has the capacity and authority to perform the functions that they have been authorized by you to perform on behalf of you or your company; and
- (i) terminate or limit any Authorized User's access to the Site if any Authorized User is no longer authorized to act or perform certain functions on your behalf.

If you provide any information that is untrue, inaccurate, not current or incomplete, or we have reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, we may suspend or terminate your Membership Account and refuse any and all current and future use of the Site by you. Membership Account information and certain other information about you is subject to our [Privacy Policy](#).

3. SOFTWARE TERMS

3.1 License Rights. Subject to the terms and conditions of this Agreement, Motion Metrics grants you a non-exclusive, non-sublicenseable and non-transferable license to install and use the Software during the applicable License Term in accordance with this Agreement, your applicable Scope of Use, and the Documentation. The term of each Software license (the “**License Term**”) will be specified in your Order. Your License Term will end upon any termination of this Agreement, even if it is identified as “perpetual” or if no expiration date is specified in your Order.

3.2 Number of Instances. Unless otherwise specified in your order, for each Software license that you purchase, you may install one production instance of the Software on systems owned or operated by you (or your third party service providers so long as you remain responsible for their compliance with the terms and conditions of this Agreement).

3.3 Attribution. If you use any of the Software, you must include the following attribution to Motion Metrics on all user interfaces in the following format: “Powered by Motion Metrics” which must in every case include a hyperlink to <http://www.MotionMetrics.com>, and which must be in the same format as delivered in the Software.

3.4 Third Party Code. The Software includes code and libraries licensed to us by third parties, including open source software.

4. HOSTED SERVICES TERMS

4.1 Access to Hosted Services. Subject to the terms and conditions of this Agreement, Motion Metrics grants you a non-exclusive right to access and use the Hosted Services during the applicable Subscription Term (as defined below) in accordance with this Agreement and the Documentation. If Motion Metrics offers client software (e.g., a desktop or mobile application) for any Hosted Service, you may use such software solely with the Hosted Service, subject to the terms and conditions of this Agreement. You acknowledge that our Hosted Services are on-line, subscription-based products and that we may make changes to the Hosted Services from time to time.

4.2 Subscription Terms and Renewals. Hosted Services are provided on a subscription basis for a set term specified in your order (the “**Subscription Term**”). Except as otherwise specified in your order, all subscriptions will automatically renew for periods equal to your initial Subscription Term and you will be charged at the then-current rates, unless you provide prior written notice to cancel your subscription or unless you fail to pay the applicable renewal fee. If you cancel your subscription, your subscription will terminate at the end of then-current billing cycle, but you will not be entitled to any credits or refunds for amounts accrued or paid prior to such termination.

4.3 Your Data. “**Your Data**” means any data, content, code, video, images or other materials of any type that you upload, submit or otherwise transmit to or through Hosted Services. You will retain all right, title and interest in and to Your Data in the form provided to Motion Metrics. Subject to the terms of this Agreement, you hereby grant to Motion Metrics a non-exclusive, worldwide, royalty-free right to (a) collect, use, copy, store, transmit, modify and create derivative works of Your Data, in each case solely to the extent necessary to provide the applicable Hosted Service to you, and (b) for Hosted Services that enable you to share Your Data or interact with other people, to distribute and publicly perform and display Your Data as

you (or your Authorized Users) direct or enable through the Hosted Service. Motion Metrics may also access your account or instance in order to respond to your support requests.

4.4 Security. Motion Metrics implements security procedures to help protect Your Data from security attacks. However, you understand that use of the Hosted Services necessarily involves transmission of Your Data over networks that are not owned, operated or controlled by us, and we are not responsible for any of Your Data lost, altered, intercepted or stored across such networks. We cannot guarantee that our security procedures will be error-free, that transmissions of Your Data will always be secure or that unauthorized third parties will never be able to defeat our security measures or those of our third party service providers.

4.5 Storage Limits. There may be storage limits associated with a particular Hosted Service. These limits are described in the services descriptions on our Site or in the Documentation for the particular Hosted Service. Motion Metrics reserves the right to charge for additional storage or overage fees at the rates specified on our Site. We may impose new, or may modify existing, storage limits for the Hosted Services at any time in our discretion, with or without notice to you.

4.6 Responsibility for Your Data.

- (a) General. You must ensure that your use of Hosted Services and all Your Data is at all times compliant with this Agreement and all applicable local, state, federal and international laws and regulations (“**Laws**”). You represent and warrant that: (i) you have obtained all necessary rights, releases and permissions to provide all Your Data to Motion Metrics and to grant the rights granted to Motion Metrics in this Agreement and (ii) Your Data and its transfer to and use by Motion Metrics as authorized by you under this Agreement do not violate any Laws (including without limitation those relating to export control and electronic communications) or rights of any third party, including without limitation any intellectual property rights, rights of privacy, or rights of publicity, and any use, collection and disclosure authorized herein is not inconsistent with the terms of any applicable privacy policies. Other than its security obligations under Section 4.4 (Security), Motion Metrics assumes no responsibility or liability for Your Data, and you shall be solely responsible for Your Data and the consequences of using, disclosing, storing, or transmitting it.
- (b) Sensitive Data. For the purposes of this Agreement, “**HIPAA**” means the Health Insurance Portability and Accountability Act, as amended and supplemented. You will not submit to the Hosted Services (or use the Hosted Services to collect): (i) any personally identifiable information, except as necessary for the establishment of your Motion Metrics account; (ii) any patient, medical or other protected health information regulated by HIPAA or any similar federal or state laws, rules or regulations; or (iii) any other information subject to regulation or protection under specific laws such as the Gramm-Leach-Bliley Act (or related rules or regulations) ((i) through (iii), collectively, “Sensitive Data”). You also acknowledge that Motion Metrics is not acting as your Business Associate or subcontractor (as such terms are defined and used in HIPAA) and that the Hosted Services are not HIPAA compliant. Notwithstanding any other provision to the contrary, Motion Metrics has no liability under this Agreement for Sensitive Data.

4.7 Deletion at End of Subscription Term. We may remove or delete Your Data within a reasonable period of time after the termination of your Subscription Term. Motion Metrics may also use Your Data, without transferring or distributing the data to a third party, to further improve the Hosted Services and our Products.

5. SUPPORT, MAINTENANCE AND FEEDBACK

5.1 Support and Maintenance. For the purposes of this Agreement, “**New Releases**” are bug fixes, patches, major or minor releases, or any other changes, enhancements, or modifications to the Software that we make generally commercially available. Motion Metrics will provide the support and maintenance services for the Products (“**Support and Maintenance**”) at the level and during the support term specified in your Order. Support and Maintenance for Software includes access to New Releases, if and when available. You may use any New Releases that we provide to you during a valid support term in the same way that you use Software, and New Releases are included in the definition of Software in that case.

5.2 Feedback. From time to time, you may choose to submit comments, information, questions, data, ideas, description of processes, or other information to Motion Metrics, including sharing Your Modifications or in the course of receiving Support and Maintenance (“**Feedback**”). Motion Metrics may in connection with any of its products or services freely use, copy, disclose, license, distribute and exploit any Feedback in any manner without any obligation, royalty or restriction based on intellectual property rights or otherwise. No Feedback will be considered your Confidential Information (as defined below), and nothing in this Agreement limits Motion Metrics' right to independently use, develop, evaluate, or market products, whether incorporating Feedback or otherwise.

5.3 Improving Our Products. We are always striving to improve our Products. In order to do so, we need to measure, analyze, and aggregate how users interact with our Products, such as usage patterns and characteristics of our user base. We collect and use analytics data regarding the use of our Products as described in our [Privacy Policy](#).

6. RESTRICTIONS

Except as otherwise expressly permitted in this Agreement, you will not: (a) rent, lease, reproduce, modify, adapt, create derivative works of, distribute, sell, sublicense, transfer, or provide access to the Products to a third party, (b) use the Products for the benefit of any third party, (c) incorporate any Products into a product or service you provide to a third party, (d) interfere with any license key mechanism in the Products or otherwise circumvent mechanisms in the Products intended to limit your use, (e) reverse engineer, disassemble, decompile, translate, or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs to any Products, except as permitted by law, (f) remove or obscure any proprietary or other notices contained in any Product, (g) copy, publish, post or publicly disseminate information regarding the performance of the Products, (h) use, frame or utilize framing techniques to enclose any Motion Metrics trademark, logo or other proprietary information (including the images found at this Site, the content of any text or the layout/design of any page or form contained on a page), or (i) use any meta tags or any other “hidden text” utilizing an Motion Metrics name, trademark, or product name.

7. COMPLIANCE

7.1 License Certifications and Audits. At our request, you agree to provide a signed certification that you are using all Products pursuant to the terms of this Agreement. You agree

to allow us, or our authorized agent, to audit your use of the Products. We will provide you with at least 10 days advance notice prior to the audit, and the audit will be conducted during normal business hours. We will bear all out-of-pocket costs that we incur for the audit, unless the audit reveals that you have exceeded the terms of your license or subscription. You will provide reasonable assistance, cooperation, and access to relevant information in the course of any audit at your own cost. If our audit reveals that you have exceeded the terms of your license or subscription, we may invoice you for any past or ongoing excessive use, and you will pay the invoice promptly after receipt. This remedy is without prejudice to any other remedies available to Motion Metrics at law or equity or under this Agreement. To the extent we are obligated to do so, we may share audit results with certain of our third party licensors or assign the audit rights specified in this section to such licensors.

8. OWNERSHIP

Motion Metrics has developed the Software and the Hosted Services to organize and present various data to users. Products are made available on a limited license or access basis, and no ownership right is conveyed to you, irrespective of the use of terms such as “purchase” or “sale”. Such grant of license or access does not include, without limitation: (a) any resale or commercial use of the Site and/or the Technology or content therein; (b) the collection and use of any product listings or descriptions; (c) making derivative uses of the Site and/or the Technology and its contents; or (d) use of any data mining, robots, or similar data gathering and extraction methods. Except as noted above, you are not conveyed any right or license by implication, estoppel, or otherwise in or under any patent, trademark, copyright, or proprietary right of Motion Metrics or any third party.

Motion Metrics and its licensors have and retain all right, title and interest, including all intellectual property rights, in and to the Products (including all no-charge products), their “look and feel”, any and all related or underlying technology, and any modifications or derivative works of the foregoing created by or for Motion Metrics, including without limitation as they may incorporate Feedback (“**Motion Metrics Technology**”). All content included on this Site is the property of Motion Metrics and/or its various third party providers and distributors and is protected under the intellectual property laws of Canada and other countries. None of the content found on this Site may be reproduced, republished, distributed, displayed, sold, transferred, or modified without the express written permission of Motion Metrics and/or its third party providers and distributors.

9. USE OF SITE

This Site and the content provided in this Site may not be copied, reproduced, republished, uploaded, posted, transmitted or distributed without the written permission of Motion Metrics except that you may download, display and print the materials presented on this Site for the licensed purposes only; provided that, you may not, without the permission of Motion Metrics or the respective copyright owner, (a) copy, publish, or post any materials on any web site, computer network or broadcast or publications media, (b) modify the materials, and (c) remove or alter any copyright, trademark and other proprietary notices contained in the materials. Unauthorized use of this Site and/or the materials contained on this Site may violate applicable copyright, trademark or other intellectual property laws or other laws.

10. CONFIDENTIALITY

Except as otherwise set forth in this Agreement, each party agrees that all code, inventions, know-how, business, technical and financial information disclosed to such party (“**Receiving**

Party") by the disclosing party ("**Disclosing Party**") constitute the confidential property of the Disclosing Party ("**Confidential Information**"), provided that it is identified as confidential at the time of disclosure. Any Motion Metrics Technology and any performance information relating to the Products shall be deemed Confidential Information of Motion Metrics without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information. The Receiving Party may also disclose Confidential Information if so required pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law. For the avoidance of doubt, this section shall not operate as a separate warranty with respect to the operation of any Product.

11. COPYRIGHT

All copyrighted and copyrightable materials on this Site, including, without limitation, the Motion Metrics logo, design, text, graphics, pictures, and other files, and the selection and arrangement thereof (the "**Materials**") are the property of Motion Metrics, ALL RIGHTS RESERVED Copyright © 2016 Motion Metrics International Corp. and/or its licensors. Except as stated herein, none of the Materials may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including, but not limited to, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of Motion Metrics the respective copyright owner.

12. TRADEMARKS AND SERVICE MARKS

Motion Metrics, the Motion Metrics, logo, and the products and services described in this Site, including without limitation, "MOTION METRICS" "METRICSMANAGER", "PORTAMETRICS", "SHOVELMETRICS", "LOADERMETRICS", "BELTMETRICS", are either trademarks, service marks or registered trademarks of Motion Metrics and its suppliers and licensors, and may not be copied, imitated or used, in whole or in part, without the prior written permission of Motion Metrics or its suppliers or licensors. In addition, all page headers, custom graphics, button icons, and scripts are service marks, trademarks, and/or trade dress of Motion Metrics, and may not be copied, imitated, or used, in whole or in part, without the prior written permission of Motion Metrics. All other trademarks, registered trademarks, product names and Motion Metrics names or logos mentioned herein are the property of their respective owners.

13. PUBLICITY

We may identify you as a Motion Metrics customer in our promotional materials. You may request that we stop doing so by submitting an email to unsubscribe@motionmetrics.com at any time. Please note that it may take us up to 30 days to process your request.

14. AGE AND RESPONSIBILITY

You represent that you are of sufficient legal age to use this Site and to create binding legal obligations for any liability you may incur as a result of the use of this Site. You understand that you are financially responsible for all uses of this Site by you and those using your login information.

15. TERMINATION

You agree that Motion Metrics, in its sole discretion, may terminate your or any Authorized User's password, account or use of the Site, restrict your or any Authorized User's access to any component of this Site, or remove Your Data from the Hosted Services or suspend your access to the Hosted services, for any reason, including without limitation, for lack of use or if Motion Metrics believes that you or any Authorized User has violated or acted inconsistently with this Agreement or any applicable laws or regulations. Motion Metrics may also, in its sole discretion and at any time, discontinue providing the Site, or any part thereof, with or without notice. You agree that any suspension or termination of access to the Site under any provision of this Agreement may be effected without notice, and acknowledge and agree that Motion Metrics may immediately deactivate or delete your Membership Account and all related information and files in your account and/or bar any further access to such files or the Site. Further, you agree that Motion Metrics shall not be liable to you or any third party for any termination or restriction of access to the Site, for removing or deleting Your Data from or for suspending your access to any Hosted Services. You will continue to be charged for the Hosted Service during any suspension period.

16. DISCLAIMER OF WARRANTIES AND REPRESENTATIONS

ALL PRODUCTS ARE PROVIDED "AS IS" AND "AS AVAILABLE" BASIS. MOTION METRICS AND ITS SUPPLIERS MAKE NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, OF ANY KIND WITH RESPECT TO THE SITE, ITS OPERATION, CONTENTS, INFORMATION, OR MATERIALS.

MOTION METRICS EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WITH RESPECT TO THIS SITE OR ITS USE, INCLUDING BUT NOT LIMITED TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, COMPLETENESS, CURRENCY, RELIABILITY OR SUITABILITY OF ANY OF THE CONTENT OR DATA FOUND ON THIS SITE, TITLE AND NON-INFRINGEMENT, AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR EQUITY, OR FROM A COURSE OF DEALING OR USAGE OF TRADE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER MOTION METRICS NOR ANY OF ITS SUPPLIERS MAKES ANY REPRESENTATION, WARRANTY OR GUARANTEE AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF ANY PRODUCTS OR ANY CONTENT THEREIN OR GENERATED THEREWITH, OR THAT: (A) THE USE OF ANY PRODUCTS WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE; (B) THE PRODUCTS WILL OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA; (C) THE PRODUCTS (OR ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE PRODUCTS) WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS; (D) ANY STORED DATA WILL BE ACCURATE OR RELIABLE OR THAT ANY STORED DATA WILL NOT BE LOST OR CORRUPTED; (E) ERRORS OR DEFECTS WILL BE CORRECTED; OR (F) THE PRODUCTS (OR ANY

SERVER(S), INCLUDING THIRD-PARTY SERVERS, THAT MAKE A HOSTED SERVICE AVAILABLE) ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

YOU MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW. MOTION METRICS SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF MOTION METRICS.

17. LIMITATION OF LIABILITY

YOU AGREE THAT MOTION METRICS, ITS DIRECTORS, OFFICERS, EMPLOYEES OR OTHER REPRESENTATIVES SHALL NOT BE LIABLE FOR DAMAGES ARISING FROM THE OPERATION, CONTENT, ACCESS TO OR USE OF THE SITE. YOU AGREE THAT THIS LIMITATION OF LIABILITY, IS COMPREHENSIVE AND APPLIES TO ALL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION DIRECT, INDIRECT, COMPENSATORY, SPECIAL, INCIDENTAL, PUNITIVE AND CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF MOTION METRICS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES).

IN NO EVENT SHALL THE AGGREGATE LIABILITY OF MOTION METRICS (WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY) ARISING OUT OF OR RELATING TO THE USE OF THE SITE EXCEED CAD\$ 100.00 OR THE COMPENSATION YOU PAID MOTION METRICS, WHICHEVER IS LESS.

Certain laws do not allow limitations on implied warranties, or the exclusion or limitation of certain damages. If these laws apply, some or all of the above disclaimers, exclusions, or limitations, may not apply to you, and you may have additional rights to those contained herein.

18. INDEMNIFICATION

You shall indemnify, defend and hold harmless Motion Metrics and its officers, directors, employees, consultants, representatives and agents from and against any loss, liability, claim, cause of action, demand, damages, costs or expenses including without limitation reasonable legal, accounting and other professional fees, brought by or on your behalf or by third parties arising from or in connection with your use or any of your Authorized Users' use of this Site, including but not limited to:

- (a) any violation by you or any Authorised User of this Agreement;
- (b) any claim brought by a third party alleging that Your Data, or your use of the Hosted Services, infringes or misappropriates the intellectual property rights of a third party or violates applicable law; and
- (c) any damage or loss caused by Third-Party Servers

Motion Metrics reserves the right, to assume the exclusive defense and control of any matter, subject to indemnification by you, which shall not excuse your indemnity obligations.

19. LINKS

This Site may contain links to other web sites which are provided solely as a convenience to you and the inclusion of any link does not imply endorsement, investigation or verification by Motion Metrics of the linked web site or information contained therein. Motion Metrics shall not be responsible for the content of any other web sites and makes no representation or warranty regarding any other web sites or the contents or materials on such web sites. If you decide to access other web sites, you do so at your own risk.

20. RELATIONSHIP

The relationship between Motion Metrics and you will be that of independent contractors, and neither of us nor any of our respective officers, agents or employees will be held or construed to be partners, joint ventures, fiduciaries, employees or agents of the other as a result of this Agreement or use of this Site.

21. ARBITRATION

All disputes arising out of or in connection with this Agreement shall be referred to and finally resolved by a single arbitrator (the "**Arbitrator**") pursuant to the *Commercial Arbitration Act*, R.S.B.C. 1996, c. 55, as amended. The decision of the Arbitrator on all issues or matters submitted to the Arbitrator for resolution shall be conclusive, final and binding on all of the parties. The Arbitrator shall determine who shall bear the costs of arbitration pursuant to this section.

22. GOVERNING LAW

This Agreement and its performance shall be governed by the laws of the Province of British Columbia, Canada without regard to its conflict of law provisions. You consent and submit to the exclusive jurisdiction of the courts located in the City of Vancouver, in the Province of British Columbia, Canada, in all disputes arising out of or relating to the use of this Site and this Agreement.

23. EXCLUSION OF UN CONVENTION

The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to this Agreement. The Uniform Computer Information Transactions Act (UCITA) shall not apply to this Agreement regardless of when or where adopted.

24. ASSIGNMENT

You may not assign, convey, subcontract or delegate your rights, duties or obligations hereunder.

25. SEVERABILITY

These Terms of Use shall be deemed severable. In the event that any provision is determined to be unenforceable or invalid, such provision shall nonetheless be enforced to the fullest extent permitted by applicable law, and such determination shall not affect the validity and enforceability of any other remaining provisions.

26. HEADINGS

The heading used in this Agreement are included for convenience only and will not limit or otherwise affect this Agreement.

27. ENTIRE AGREEMENT

These Terms of Use, together with those incorporated herein or referred to herein constitute the entire agreement between us relating to the subject matter hereof, and it supersedes any prior understandings or agreements (whether electronic, oral or written) regarding the subject matter, and may not be amended or modified except in writing or by making such amendments or modifications available on this Site.