

## MOTION METRICS SITE AND PRODUCTS AGREEMENT

Welcome to the MetricsManager® Pro web site (the “**Site**”). BEFORE YOU CAN USE THE SITE AND/OR ANY PRODUCT(S), 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 and/or any Product(s) is conditioned on your acceptance without modification of the following Agreement. By using this Site and/or any Product(s), 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 and/or any Product(s).

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. You, or the company that you represent are referred to in this Agreement as “**Customer**” or “**you**”. 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 that may be posted on the Site from time to time, 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 that you log into the Site, and/or by ordering, accepting delivery, using and/or accessing any one or more Product(s) or Hosted Services provided or supplied by Motion Metrics, you indicate your consent to be legally bound by the terms of 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 and/or any Product(s), 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](mailto:admin@metricsmanagerpro.com).

### • **INCORPORATED POLICIES AND TERMS AND SCOPE**

- Incorporated Policies and Terms. As referred to herein, “**Agreement**” means this Site and Products Agreement, together with all policies and addenda that are incorporated herein by reference, including without limitation the [Privacy Policy](#). This Agreement governs your use of the Site and/or Product(s). By ordering and/or accepting delivery of any one or more Product(s), you agree to be bound by this Agreement, including without limitation the disclaimers and limitations of liability therein.
- 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 or via the Site and/or the Products. Therefore, Motion Metrics has adopted a Privacy Policy that sets out how Motion Metrics uses and collects personal information. Information provided to Motion Metrics may be stored on third party servers ("**Third-Party Servers**") domestically or abroad, which may include 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.

- **Scope.** This Agreement governs any one or more of the following products and services that are purchased and used by you: (a) Motion Metrics' hosted and/or cloud-based solutions, access to which is granted to you via this Site (currently designated as "MetricsManager Pro" deployments) (referred to as the "**Hosted Services**"), and (b) any handheld devices, cameras and/or other hardware that are commercially available and supplied or provided by Motion Metrics (the "**Hardware**"), and (c) Motion Metrics' software products that are made commercially available to authorized users by embedding such software within, and used in conjunction with, Hardware (collectively, the "**Software**") (collectively referred to as the "**Products**"). Any Software, Hardware and Hosted Services, together with related Documentation, are collectively referred to as "**Products**". The Products and their permitted use are further described in Motion Metrics' standard documentation including without limitation user manuals relating to the Products that may be provided, supplied or made available to you from time to time (the "**Documentation**"). Section 3 applies specifically to Hardware and Software, and Section 4 applies specifically to Hosted Services, but unless otherwise specified, other provisions of this Agreement apply to all Products.

- **MEMBERSHIP ACCOUNT OBLIGATIONS**

- **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**"). 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**").

- **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.

- **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:

- 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;
- 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;
- that you are responsible for all costs and charges, including without limitation, phone charges and telecommunications equipment, incurred in order to use the Site;
- 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 authorised by you;
- to immediately notify us of any unauthorized use of your password or Membership Account or any other breach of security;
- that you are fully responsible for managing your Membership Account, including but not limited to:
  - maintaining the confidentiality of passwords and/or any Membership Account information; and
  - maintaining and promptly updating the Membership Account information to keep it true, accurate, current and complete;
- 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
- 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](#).

• **HARDWARE AND SOFTWARE TERMS**

- **Subscription Rights and Term.** Subject to the terms and conditions of this Agreement, Motion Metrics grants you a non-exclusive and non-transferable subscription to use the Hardware that you have ordered and paid for during the applicable subscription term for each item of Hardware (in each case, a "**Hardware Subscription Term**") in accordance with this Agreement and the Documentation. For each subscription of Hardware that you purchase ("**Hardware Subscription**"), Motion Metrics shall install one production instance of the corresponding Software (the "**Software**") on such Hardware.
- **Maintenance.** The Hardware must be maintained by you as outlined in the Documentation and in accordance with specific training provided by Motion Metrics. Lack of proper maintenance of any Hardware on the part of the Customer, will render any warranty that is provided by Motion Metrics null and void and may result in a breach or default of this Agreement by Customer that is subject to termination under Article 15, at the sole discretion of Motion

Metrics.

- **Modification.** The Hardware is the sole and exclusive property of Motion Metrics and without limiting the generality of the restrictions under Article 6, must not be changed, enhanced or modified in any manner whatsoever, without prior written consent of Motion Metrics. For greater certainty, any and all improvements, enhancements and modifications to the Hardware will become the sole and exclusive property of Motion Metrics. Any unauthorized improvements, enhancements and/or modifications of the Hardware will render any warranty that is provided by Motion Metrics null and void and may result in a breach or default of this Agreement by Customer that is subject to termination under Article 15, at the sole discretion of Motion Metrics.

- **Software 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 use the Software in conjunction with the Hardware during each applicable Hardware Subscription Term in accordance with this Agreement, and the Documentation. Such license to such Software shall automatically terminate upon any termination of this Agreement, or upon any expiration or termination of any applicable Hardware Subscription Term.

- **Third Party Code.** The Software may include code and libraries licensed to us by third parties, including open source software.

- **HOSTED SERVICES TERMS**

- **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 in accordance with this Agreement and the Documentation, during any applicable subscription term specific to the Hosted Services that you have paid for (in each case, a “**Site Subscription Term**”). . 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. Customer shall be responsible for: (a) procuring, installing, operating, supporting and maintaining Customer's systems, including computer hardware, software and browsers, necessary for Customer to access the Hosted Services (with minimum requirements as prescribed by Motion Metrics); and (b) be responsible for procuring and maintaining communication services, including high speed Internet connections between Customer's systems and the Hosted Services.

- **Your Data.** “**Your Data**” means any data, information, content, code, video, images and/or other materials of any type that you upload, submit, input, display, store, collect, measure, analyse, report or otherwise transmit to or via the Hosted Services and/or using the Product(s). You will retain all right, title and interest in and to Your Data in the form provided to Motion Metrics or collected by the Product(s). Subject to the terms of this Agreement, you hereby grant to Motion Metrics a non-exclusive, worldwide, royalty-free right and license 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 Services. Motion Metrics may also access your account from time to time, whether to respond to your support requests or otherwise.

- **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 errorfree, 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.

- **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.

- **Responsibility for Your Data.**

- **General.** You must ensure that your use of the Product(s) 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 and licenses 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, privacy and personal information rights, 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 4.3 (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.

- **End of Site Subscription Term.** We may remove or delete Your Data within a reasonable period of time following any termination or expiry of your Site Subscription Term. Motion Metrics may also use Your Data, without transferring or distributing Your Data to any third party, to further improve the Hosted Services and our Products. You hereby grant to Motion Metrics a non-exclusive, worldwide, royalty-free, perpetual right and license to use Your Data for internal business purposes, including research, development and improving the Hosted Services, Products and any other products and services offered or supplied by Motion Metrics:

- **FEEDBACK**

- **Feedback.** From time to time, you may choose to submit comments, information, questions, data, ideas, description of processes, or other information to Motion Metrics (“**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 existing Products and/or new products, whether incorporating Feedback or otherwise.

- **Improving Our Products and related services.** We are always striving to improve our Products and related services. In order to do so, we measure, monitor, analyze, and aggregate how you and other users interact with our Products and related services, including without limitation ongoing analysis of usage patterns and characteristics of our user and customer base. We collect and use such analytics data regarding the use of our Products as described in our [Privacy Policy](#).

- **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, (f) remove or obscure any proprietary or other notices contained in any Products, (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), (i) use any meta tags or any other “hidden text” utilizing an Motion Metrics name, trademark, or product name; or (j) include, or knowingly allow others to include, any Objectionable Content or introduce Viruses to the Products, where “Objectionable Content” means content that infringes any applicable laws, regulations or third-party rights, and content which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite hatred, menacing, blasphemous, misleading, deceptive or in breach of any person’s proprietary or Intellectual Property rights and “Virus” means a piece of code usually (but not necessarily) disguised as something else that causes some unexpected and, for the victim, usually undesirable, event and which is designed so that it may automatically spread to other computer users; the term “Virus” will also be deemed to include worms, cancelbots, Trojan horses, harmful contaminants (whether self-replicating or not) and nuisance-causing or otherwise harmful applets.

- **COMPLIANCE**

- 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 and/or assign the audit rights specified in this section to such licensors.

- **OWNERSHIP**

- Motion Metrics owns and has developed the Products to collect, detect, measure, analyse, organize, report, provide and present various data, content, videos, images and/or other information to users within the mining industry. 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”, whether such terms are used in a purchase order, proposal or otherwise. Such grant of license or access does not include, without limitation: (a) any resale or commercial use of the Site and/or the underlying Motion Metrics Technology or content therein; (b) the collection and use of any Product listings or descriptions; (c) making derivative uses of the Site, Products and/or the Motion Metrics Technology and its contents; or (d) use of any data mining, robots, or similar data gathering and extraction methods. Except as expressly granted under this Agreement, you are not conveyed any right or license by implication, estoppel, or otherwise in or under any patent, trademark, copyright, or proprietary rights of Motion Metrics and/or any third party licensors, providers and distributors.

- Motion Metrics and its licensors own and retain all right, title and interest, including all Intellectual Property rights, in and to the Products (including without limitation all no-charge

products and Products that use and/or contain patented technology), their “look and feel”, any and all related or underlying technology (whether patented or otherwise), 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 and within the Products is the property of Motion Metrics and/or its various third party licensors, providers and distributors and is protected under the intellectual property laws of Canada and other applicable jurisdictions. None of the content found on this Site and within the Products may be reproduced, republished, distributed, displayed, sold, transferred, or modified without the express written permission of Motion Metrics and/or its third party licensors, providers and distributors. “**Intellectual Property**” means intellectual property of every nature, whether registered or unregistered, throughout the world, including, without limitation, all copyrights, patents, patent rights, trade-marks, certification marks and industrial designs, applications for any of the foregoing, domain names, trade names, trade dress, colour schemes, slogans, brand names, business names, trade secrets, knowledge, know-how, manuals, techniques, inventions, improvements, data, drawings, formulae, calculations, processes, prototypes, specifications, models, applications, designs, techniques and any other proprietary information including all rights to sue and receive damages for past, present and future infringements thereof.

- **USE OF SITE**

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- **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. Upon any termination of this Agreement, the Receiving Party shall promptly return to the Disclosing Party, or destroy, as the parties agree, all copies of the Disclosing Party's Confidential Information. All copies, notes or other derivative material relating to the Confidential Information shall be promptly retrieved or destroyed, as agreed, and no such materials shall be retained or used by the Receiving Party in any form or for any reason, subject to Section 4.6.

- **COPYRIGHT**

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- **TRADEMARKS AND SERVICE MARKS**

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- **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](mailto:unsubscribe@motionmetrics.com) at any time. Please note that it may take us up to 30 days to process your request.

- **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.

- **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 and/or any Product(s), restrict or suspend your or any Authorized User's access to any component of this Site and/or any Product(s), or remove Your Data from the Hosted Services or suspend your access to the Hosted Services and remotely deactivate the Hardware, for any reason, including without limitation, for lack of use, if you fail to pay any fees or other amounts due and payable to Motion Metrics, if you become insolvent, file a petition for bankruptcy or commences or has commenced against you proceedings related to bankruptcy, receivership, reorganization or assignment for the benefit of creditors; and/or if Motion Metrics believes that you or any Authorized User has breached, violated or acted inconsistently with this Agreement, the Documentation or any applicable laws or regulations. Motion Metrics may also, in its sole discretion and at any time, discontinue providing the Site, Products, Hardware or any part thereof, with or without notice. You agree that any suspension or termination of access to the Site, Products, Hardware under any provision of this Agreement may be effected without notice, and acknowledge and agree that Motion Metrics may immediately deactivate the Hardware, deactivate or delete your Membership Account and all related information and files in your account and/or bar any further access to such files, the Site and/or Products. 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 and/or Products, 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 Services during any suspension period. Upon any termination, Customer shall pay to Motion Metrics the full outstanding amount of all fees and amounts payable under any existing Order(s) as of the effective date of termination of this Agreement, if any, whether already invoiced or not (including any amounts due as late payment charges), and any other monies owing to Motion Metrics hereunder.

- **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, PRODUCTS AND THEIR RESPECTIVE OPERATION, CONTENTS, INFORMATION, OR MATERIALS.

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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.

- **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 PRODUCTS AND/OR 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 PRODUCTS AND/OR THIS 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.

- **INDEMNIFICATION**

You and any Authorized User 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 the Products and/or this Site, including but not limited to:

- any breach or violation by you or any Authorised User of this Agreement;
- 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
- any unauthorized or improper use, abuse, modification and/or enhancement of the Hardware.

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.

- **FORCE MAJEURE**

- Except for any obligation to make payments hereunder (including under an Order), any delay or failure of either Party to perform its obligations under this Agreement shall be excused if, and to the extent, that the delay or failure is caused by an event or occurrence beyond the reasonable control of the Party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, action by any Governmental Authority, fires, flood, wind storms, explosions, riots, natural disasters, wars, terrorist acts, pandemics, sabotage, labour problems (including lock-outs, strikes and slow downs, except for any labour problems of the Party claiming a force majeure event); provided that written notice of delay (including anticipated duration of the delay) shall be given by the affected Party to the other Party within 5 business days of the affected Party first becoming aware of such event.

- **SURVIVAL**

- Notwithstanding the termination or expiration of this Agreement for any reason, the covenants set out in Section 4.6, Articles 8, 10, 11, 12, 15, 16, 17, 18, 22 and 23, and those provisions necessary to interpret the foregoing provisions, of this Agreement shall survive any such termination or expiration.

- **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.

- **GOVERNING LAWS AND JURISDICTION**

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, the Products and this Agreement.

- **EXCLUSION OF UN CONVENTION**

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

- **ASSIGNMENT**

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

hereunder.

- **SEVERABILITY**

The terms and conditions of this Agreement 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.

- **HEADINGS**

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

- **ENTIRE AGREEMENT**

This Agreement, together with any documents specifically 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.