

## **MASTER SERVICES AGREEMENT FOR HOSTED MENDER**

This Master Services Agreement for Hosted Mender (“**Agreement**”) and its appendices govern the provision and use of Hosted Mender, a remote software updater for embedded devices (the “**Service**”). The Agreement is entered into between Northern.tech AS, a Norwegian company with business registration number 892 847 282 (“**We**”, “**Us**” or “**Our**”) and you, a company using the Service (“**You**” or “**Your**”).

### **1. RIGHT TO USE THE SERVICE AND SUPPORT**

We grant You a non-exclusive, non-sublicensable, non-assignable and worldwide right to access and use the Service. A more detailed description of the Service is provided at <https://mender.io>.

We will provide support on a reasonable effort basis provided that You have paid all Fees due. You can submit any support requests to Us through Our online support portal available at <https://support.mender.io>.

### **2. RESTRICTIONS**

Unless explicitly permitted by Us, You will (i) not reverse engineer, modify, adapt, alter, translate, or create derivative works from code, algorithms, ideas, know-how etc. relevant to the Services; (ii) not remove any proprietary notices or marks, and (iii) use the Service solely for its intended purpose, and not (for example) in any manner that causes unnecessary data traffic and load to the servers that we use to provide the Service.

If we have reasonable suspicion that You use the Service in breach of this Agreement, we may suspend Your access to the Service permanently or temporarily without any refund of any outstanding or paid Fees, and You will be charged the applicable Fees up until this point.

### **3. ACCOUNT REGISTRATION**

You may need to register for a Northern.tech / Mender Account (“**Account**”) in order to place orders. 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 Accounts. Only companies can register an Account.

### **4. OPEN SOURCE SOFTWARE**

You acknowledge and agree that the Service uses open source software. All open source licenses used in the Service are listed at <https://docs.mender.io>.

### **5. FEES AND PAYMENT**

The fees for using the Service (“**Fees**”) depends on the number of Active Devices and Your actual usage. The Fees consists of certain fee elements described in more detail in Appendix A. You can use Our price calculator (<https://mender.io/pricing>) for a more precise estimation of the Fees that will apply.

The Fees are charged monthly by charging the credit card number You registered when signing up for the Service. You are responsible for ensuring that the credit card number is valid and renewed in time. Invalid credit card numbers might lead to Account suspension. We

may change the Fees or institute new fees by providing You with written notice prior to the changed Fees or new fee(s) taking effect. Such changes will take effect thirty (30) days after the date of our notice or, if later, upon renewal. To the extent We accept to bill You through invoicing, Our invoices shall be paid within thirty (30) days of the date of the invoice. You shall be responsible for all taxes associated with this Agreement.

If we do not receive payment in full of any Fees within 30 calendar days of issue of the relevant invoice, We are entitled to charge late interest on all outstanding amounts at 1.5% per month until We receive full payment. We may also claim reimbursement of any collection expenses, and may terminate the Agreement with immediate effect.

**6. WARRANTIES**

We warrant that We will provide the Service using commercially reasonable skill and care.

Except as set forth in this Section 5, the Service is provided “as is”. To the extent permitted by law, We hereby disclaim all warranties whether express, implied or statutory with respect to the Services, including without limitation any implied warranties of suitability, merchantability, fitness for a particular purpose, functionality, title, non-infringement of third-party rights, accuracy and security. We do not warrant that the Service will be uninterrupted or error-free or that the security mechanisms included in or with or implemented by the Service will not have inherent limitations, or that the Service will sufficiently meet the Your requirements.

We will use reasonable efforts to notify you in advance of any scheduled maintenance or other scheduled service interruption. Notifications will be made on <https://status.mender.io>

**7. LIABILITY AND INDEMNITY**

In no event will a party be liable to the other party for any special, punitive, indirect, incidental, exemplary, or consequential damages arising out of or related to this Agreement, including, but not limited to, loss of data, loss of the use or performance of any products, loss of revenues, loss of profits, loss of goodwill, business interruption or loss of anticipated savings.

Our total cumulative liability for all claims related this Agreement shall not exceed the amount of Fees We have received from You under this Agreement during the twelve (12) months period immediately preceding such claim.

Notwithstanding the foregoing, or anything to the contrary herein, in no event will the exclusion of damages or limitations of liability apply to: (i) either party's breach of its confidentiality obligations under Section 11; (ii) Your use of the Service or any licenses outside the rights specifically granted to You in this Agreement; (iii) any loss, cost, liability and damage for which We become liable arising from or relating to Your Data and (iv) liabilities that cannot be limited by law.

**8. INTELLECTUAL PROPERTY RIGHTS**

We and our licensors retain all ownership and right, including without limitation, copyrights, trademarks, domain names, rights in Confidential Information, patents, design rights, rights in computer software, database rights, or any other intellectual property or proprietary rights, in

each case whether registered or unregistered and including all applications (or rights to apply) (“Intellectual Property Rights”) in and to the Service.

To the extent relevant, You or your licensors retain all ownership in and to your Intellectual Property Rights. You grant Us the right to use the Your Intellectual Property Rights to the extent this is required to fulfill the purpose of the Agreement.

## **9. DATA**

**Data collection.** We collect Data that (i) you submit, upload or otherwise transmit to or through the Service (ii) is generated as a result of Your use of the Service and (iii) is otherwise necessary in order to provide the Service to You. The term “Data” shall include any data, including content, code and other materials. A list of the type of Data the We collect can be found at <https://northern.tech/legal/data>.

**Ownership.** You retain all right, title and interest in and to any Data that you submit, upload or otherwise transmit to or through the Service. You grant Us a non-exclusive, worldwide and royalty-free right to use the Data solely to the extent such use is necessary to provide the Service to You.

**Your responsibilities.** You are responsible for (i) ensuring that the Data You transfer to Us complies with all applicable laws and regulations and rights of third parties (including without limitation intellectual property rights and rights of privacy), and (ii) for obtaining any rights that may be required to submit, upload or otherwise transmit Data to Us and for Us to use the Data as regulated by this Agreement.

**Security.** We implement and maintain industry standard security measures intended to protect Data from loss, misuse, alteration etc.

**Personal data.** Except for the information registered in connection with Your establishment of an Account (see Section 3), You shall not submit to Us, use the Service to collect, or otherwise use the Service so that we receive, information that directly or indirectly identifies any natural person. The personal data You submit when registering Your Account will be used only to administer the customer relationship, such as providing the Service, invoicing, marketing etc. Please see our privacy policy for more information.

Each party agrees to comply with all applicable data protection and privacy laws arising from its obligations under the Agreement and to reasonably co-operate with the other party in order to allow the other party to comply with any laws as deemed necessary from time to time.

## **10. TERM AND TERMINATION**

You may terminate this Agreement by sending Us a written notice. The Agreement will terminate upon expiry of the calendar month during which you sent us Your termination notice.

We may terminate this Agreement with immediate effect if You commit a material breach of the Agreement. Such material breach includes, without limitation breach of the Agreement and bankruptcy.

You will not be entitled to refund or other credit of any prepaid amounts when the Agreement is terminated.

## **11. CONFIDENTIALITY**

As a result of the entering into or performance of this Agreement, each of the parties may disclose information that is proprietary or otherwise confidential to the other party (“Confidential Information”). Confidential Information includes, without limitation, non-public information that a party designates as being proprietary or confidential or which by its nature or the circumstances surrounding its disclosure reasonably ought to be treated as confidential, such as business, technical or financial information. Each party (“Receiving Party”) will protect the Confidential Information of the other party (“Disclosing Party”) with the same degree of care, but no less than reasonable care, as the party uses to protect its own Confidential Information.

The nondisclosure obligations set forth herein will not apply to any portion of Confidential Information that a Disclosing Party can demonstrate with documentary evidence is: (i) now, or hereafter becomes through no act or omission on the part the Disclosing Party, known to the general public, (ii) known to the Disclosing Party at the time of receiving the Confidential Information without an obligation of confidentiality, (iii) hereafter rightfully furnished to the Disclosing Party by a third party without restriction on disclosure, or (iv) independently developed by the Disclosing Party without any use of the Confidential Information.

Each party agrees to restrict access to Confidential Information to its employees or contractors on a need to know basis and only to persons who have agreed in writing to be bound by a confidentiality obligation which is as protective of the other party’s interests as this Agreement.

## **12. NOTICES**

All notices, consents and approvals under this Agreement must be delivered in writing by email to the other party.

Any notices Notices to be sent by You to Us shall be sent to:

[legal@northern.tech](mailto:legal@northern.tech)

Any notices to be sent by Us to You shall be sent to the email address a) provided when You signed up for the Service, or b) associated with the Account.

## **13. FORCE MAJEURE**

Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations.

## **14. RELATIONSHIP OF THE PARTIES**

The parties are independent contractors. Nothing in this Agreement will be deemed to create an agency, employment, partnership, fiduciary or joint venture relationship between the parties. You will not have, and will not represent to any third party that You have, any authority to act on behalf of Us.

## **15. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties and supersedes all other agreements, arrangements or understandings between the parties in relation to the subject matter of this Agreement. However the obligations of the parties under any pre-existing

non-disclosure agreement shall remain in full force and effect insofar as there is no conflict between the same and this Agreement. The parties confirm that they have not entered into this Agreement on the basis of any statement, representation, assurance or warranty of any person (whether a party to this Agreement or not) that is not expressly set out in this Agreement.

## **16. PUBLICITY**

We may identify you as a Northern.tech customer and Mender.io user in our promotional materials after 40 days of sign up. You may request that we stop doing so by submitting an email to [legal@northern.tech](mailto:legal@northern.tech) at any time. It may take us up to 30 days to process your request.

The above includes the right to include Your trademarks (including logo) and name in our promotional materials.

## **17. MODIFICATIONS**

The Agreement may only be modified or terminated in writing by duly authorized representatives of both parties.

## **18. SEVERABILITY AND WAIVER**

If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect. The parties agree to replace any invalid provision with a valid provision, which most closely approximates the intent and commercial effect of the provision held to be invalid. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

## **19. ASSIGNMENT AND SUCCESSORS**

This Agreement shall be binding and inure to the benefit of the parties hereto and their respective successors and assigns. You may not assign any of Your rights nor delegate any of Your obligations under this Agreement to any third party without Our prior written consent.

## **20. GOVERNING LAW AND LEGAL VENUE**

This Agreement shall be interpreted in accordance with the laws of Norway, except that body of laws controlling conflict of laws. In the event of a dispute arising out of or relating to this Agreement (including non-contractual disputes or claims), the parties shall first seek settlement of the dispute by negotiation between senior executives of the parties. If they are unable to settle the dispute within thirty (30) days, or such other period as the parties shall agree in writing, the dispute shall be finally resolved by arbitration pursuant to the Norwegian Act on Arbitration of 2004, which hereby is incorporated into this Agreement. The place of arbitration shall be Oslo, Norway. The initiation of arbitration proceedings, the proceedings and the award(s) shall be treated as Confidential Information.

## **21. ACCEPTANCE OF THE AGREEMENT**

By checking the "I Accept" box when signing up for the Service, creating an account or otherwise using the Service, You accept to have read the Agreement, and that the use of the Service and any additional order placed by You (or anyone on Your behalf), is governed by

this Agreement. You further confirm that you are an authorized representative of the company and have the power and authority to enter into and bind the company to this Agreement.

## **APPENDIX A**

### **Hosted Mender - Pricing**

With Hosted Mender you pay for using the Service on a monthly basis. At the end of each calendar month, we will calculate and send a bill based on your consumption during that month.

The monthly bill will consist of and be calculated as follows:

#### **Activation Fee**

Each new device that authenticates and is authorized against the Hosted Mender service will be charged a one-time Activation fee.

A device that has been decommissioned or de-authorized will be charged another Activation fee if it later re-authenticates and re-authorizes and becomes Active.

A pre-authorized device will be charged an Activation fee the first time it authenticates against the Hosted Mender service and therefore becomes Active.

Activation Fee per device is dependent on the total amount of Active Devices during the month, see <https://mender.io/pricing/>

#### **Monthly Device Fee**

Every Active Device, will be subject to a monthly fee. The fee will be applied as of the month the device first became Active, whether this happened in the very beginning or the end of the month. A device that became Active for instance March 20th, will be charged the Monthly Device Fee on the bill for the month of March.

A device that has been de-authorized and later again becomes Active will not be charged another Monthly Device Fee if this happens within the same month.

Monthly Device Fee per device is dependent on the total amount of Active Devices during the month, see <https://mender.io/pricing/>

#### **Device Deployment Fee**

Every time you create a Deployment, there will be a Device Deployment Fee. The Device Deployment Fee is the price for one Deployment to one device. When creating a Deployment to multiple devices, the total Device Deployment Fee charged for this Deployment is the number of devices that are part of the Deployment (at creation time) multiplied by the Device Deployment Fee.

Device Deployment Fee per Deployment is dependent on the total amount of Active Devices calculated at the last day of the month, see <https://mender.io/pricing/>

## **Data Transfer Fee**

Every time you do a Deployment to a device, download Artifact(s), or other data traffic between device and the Hosted Mender service occur, Data Transfer Fee will incur. Data Transfers Fees are calculated as the actual amount of data traffic from the Hosted Mender service.

Data Transfer Fee per gigabyte (rounded up to the closest gigabyte) is fixed and does not vary with usage. See <https://mender.io/pricing/> for current price per gigabyte for Data Transfer.

## **Storage Fee**

To use Hosted Mender you will need to upload Artifacts to be used for later Deployments. Storage Fees are based on the total number of Gigabytes all your uploaded Artifacts consume from the Hosted Mender Service. It is calculated as the average number of Gigabytes required per hour during the month.

Storage Fee per gigabyte is fixed and does not vary with usage. See <https://mender.io/pricing/> for current price per gigabyte for Storage.

## **Definitions:**

**Active Device:** A device that has authenticated and is authorized to use Hosted Mender is deemed an Active Device. A device needs to be de-commissioned or de-authorized to no longer be in an Active state.

**Deployment:** is defined to have occurred once you press the “Create Deployment” in the GUI, or call the associated API call which will create a Deployment.

**Artifact:** is a Mender specific format that contains the software update itself and various user generated and provided data files needed for Deployments.

**Hosted Mender:** is the hosted service provided by Northern.tech consisting of Mender backend services that enables your devices to connect to it and use Mender to deploy updates to them.