

Agreement for hosted Mender – Northern.tech Inc

Our Agreement consist of the below:

- **Description of service.** Our service is an over-the-air software management service, as described on our [website](https://mender.io/) (<https://mender.io/>).
- **Service Terms.** These are the general terms for your use of hosted Mender, including for maintenance and technical support, if you have paid for that.
- **Privacy policy.** What data we process, how, duration and purpose, all according to the applicable data privacy laws (<https://northern.tech/legal/privacy-policy>).
- **Our prices.** The price we charge depends on your selected plan and the number of devices. Please refer to: <https://mender.io/pricing>.

Service Terms hosted Mender

Part 1 - General

1. **Our Agreement.** These Service Terms for hosted Mender (“**Service Terms**”) regulate your use of Mender and any related services and software we may provide under the Agreement. “The Agreement” is made up of these Service Terms, our Privacy Policy and related particulars (name, service level, prices etc.) agreed to between Northern.Tech, Inc. (“**NT**”, “**we**” “**us**”, “**our**”) and you as a customer (“**Customer**”, “**you**”, “**your**”). By signing, paying, using Mender or otherwise accepting the Agreement, we grant you the right to use our Mender software provided as a service with Local Software such as add-ons (collectively, “**Mender**”, the “**Service**”), as detailed below.
2. **Rights we grant you.** We grant you a non-transferable, non-exclusive, worldwide right to use Mender as described in the Agreement, subject to our latest prices, these Service Terms and your timely payment. We and our licensors retain all intellectual property rights in the Service.
3. **Services we provide you with.** Mender is delivered as a hosted service that is continuously maintained, improved and updated. In order to enhance functionality and security we also provide you with some Local Software (see sec. 4). Maintenance includes updated versions of Local Software and related bug-fixes and other patches on such Local Software, to keep the Service up and running. The Service is substantially as presented and described in the Mender documentation.
4. **Local Software – licensing**
 - a. Mender requires Client Software (see b below) and Third-party Software (see c below) – collectively “**Local Software**” – to be installed on your devices and/or servers in order to operate. Your use of Local Software is subject to the below referenced terms of use (licenses).
 - b. “**Client Software**” is either licensed
 - i. separately from the Agreement as open source software under an Apache License, MIT License open source licenses or other licenses as referenced in 4.b.iv., or
 - ii. as part of the Agreement subject to the following closed source license terms: Use of closed source Client Software may only take place as part of the enjoyment of and linked with Mender, for the duration of the Agreement, subject to timely payment and in accordance with the Mender documentation. You may not sell, sub-license, distribute, reverse engineer, remove copyright or other notices, modify or publicly display the closed source Client Software.

- iii. Any Client Software made available through the Yocto Project (<https://www.yoctoproject.org/>) is subject to NT Yocto Layer License for Mender by Northern.Tech.
 - iv. See Mender
(<https://docs.mender.io/release-information/open-source-licenses>)
documentation for open-source license text.
- c. **“Third-party Software”** will be provided and used subject to the terms of the applicable third-party software licenses. See the Mender documentation for details on licenses or request NT to provide you with a software license list.
5. **How we improve.** We are grateful if you help us improve. Your reported bugs, experienced irregularities and feature suggestions help us improve Mender. We strive to fix critical issues as fast as possible. We prioritize issues according to severity and impact. To be able to balance the overall task load, we do so at our sole discretion.
 6. **Legal use.** You warrant that you will not use Mender in a way that infringes intellectual property rights or proprietary rights, privacy or other rights of third parties, or for anything illegal. You may access Mender only by use of our public, documented APIs or by other means described in the Mender documentation. We are never accountable or liable for the legality of your use.
 7. **Account.** You must register an account on our webpage and provide accurate and up to date data as prompted by the registration form. This is the only personal data you must upload to Mender.
 8. **Content.** You alone are responsible for all uploaded data, for example artifacts, device inventory, user account information to Mender. We will not decompress, analyze nor scrape any of the new data files (e.g. images, files, etc.) to be deployed to the devices. We reserve the right to and will delete any illegal or harmful content.
 9. **Data ownership.** You retain ownership of all data you submit. You grant us a non-exclusive, worldwide and royalty-free right to analyze and necessary use of the data in order to provide and improve the Service.
 10. **Third party terms etc.** Third party open source software is included in the software of Mender. Such software is subject to various open source licenses. All our obligations with respect to third party open source software shall be on a reasonable commercial efforts basis. You will comply with the terms of any software license that you receive from us. Use of the full on-premise version of Mender is subject to separate agreement and terms.
 11. **Security.** We expect you to establish adequate security policies. This includes taking backup of all data, setting secure configurations, performing penetration testing, encrypting your data, doing risk analysis etc. Specifically to Mender you should:
 - a. only use signed artifacts;
 - b. install the latest version of the Local Software, and

- c. backup settings, artifacts, private keys and other data needed by the Service, on a regular basis.

12. Privacy. We are compliant with applicable data protection regulations, including the California Consumer Privacy Act (CCPA). Personal information is processed in accordance with our privacy policy at <https://northern.tech/legal/privacy-policy>. Our Privacy Policy applies to use of the Service, and its terms are incorporated into these Service Terms by reference. By using the Service, you acknowledge and agree that internet transmissions are never completely private or secure.

13. Force majeure. Neither we nor you will be liable for failure or delay in performance caused by events beyond our control, which may include denial-of-service attacks, failure by third party hosting provider or utility provider, security issues, strikes, epidemics, shortages, riots, fires, war, terrorism, governmental action and other force majeure events.

14. As is. Mender, including Local Software and all related components and services are provided on an “as is” and “as available” basis without any warranties. We expressly disclaim any and all warranties, express or implied, including implied warranties of merchantability, title, fitness for particular purpose and non-infringement.

15. Limitation of liability. Our total annual liability arising out of the Agreement will not exceed the total amount paid by you in the 12 months preceding the event causing your loss or damage. We will not have any liability for any loss of data, profits, savings or revenues nor for other indirect, special, incidental or other consequential damages. Damages may not be claimed for loss that is subject to SLA credits (see sec. 28). This section 15 and the SLA compensation (sec. 28) is the only basis for liability for us under the Agreement. Any service credit granted will in any event be subtracted from any other compensation payable for loss or damage. You will indemnify and hold us harmless for any claim based on negligence (tort), product liability or other strict liability related to devices you control or service.

16. Confidentiality. We and you shall keep all personal and business information received in connection with the performance of the Agreement confidential, except for disclosure required for such performance. If you give access to such confidential information to a third party, you must make sure the third party is bound by a similar obligation of confidentiality. These commitments will not apply to information that becomes publicly known due to the actions of others, freely received from another, or independently developed by the recipient.

17. Payment.

- a. Unless otherwise agreed to in writing we charge you monthly, based on the number of devices, by use of your registered payment method. You are responsible for ensuring that payment info is valid and credit available. We may suspend your account upon seven days’ written notice if not. Accounts will be permanently deleted if suspended, or you default on payments for two consecutive months.
- b. Our prices may be changed subject to 30 days’ written notice. Any pre-paid amounts will not be refunded in the event of termination, unless caused by our default of the Agreement.
- c. Delayed payments accrue interest at 1.5% per month until we receive full payment. We may also claim reimbursement of any collection expenses and terminate the Agreement upon seven days’ written notice if fees remain unpaid.

- d. You are responsible for all taxes associated with the Agreement, such as value added tax. Any withholding taxes will be paid by you in addition to the agreed fees.

18. Excessive Usage of Mender.

- a. In order for us to provide the Service at the prices offered, your use of Mender must not involve excessive API calls or data traffic as compared to the vast majority of our other customers. Typically, excessive use of the Service is caused by misconfiguration or scripts with unintended growth and spikes in data traffic. If we determine that your use of Mender exceeds the pattern of 99% of our customers, we will notify you (to allow you to reduce the excessive usage) and, depending on the situation, we may also technically throttle your usage pending you addressing the issue. If we notify you of your excessive usage and it continues for more than 5 days or re-occurs more than 3 times in a 6-month period, we may terminate the Agreement for your material breach. Alternatively, if you have special needs (for instance your production devices must check for new updates every 5 seconds versus the expected every 1800 seconds), we can enter into a separate arrangement in which you will be charged for and allowed specific excessive usage.
- b. Without limiting the above, if the actual usage of Mender over time significantly (>25%) exceeds the assumed usage (an average, across devices, of no more than 500mb per device and 4 device updates per year), the parties shall sit down in good faith and renegotiate the price based on expected future usage using learnings from the past.

19. Notices and assignment.

- a. Notices shall be in English and in writing and sent to legal@northern.tech or the email address filed by you in your account.
- b. Neither party may assign the Agreement (or any part thereof) without the advance written consent of the other party. Either party may, however, assign the Agreement in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of such party's assets or voting securities. Any attempt to transfer or assign the Agreement except as expressly authorized under this section will be void.

20. Term and termination. The Agreement will remain effective until terminated in writing by either party. The Agreement will terminate upon expiry of the calendar month in which we receive your termination notice. We may terminate the Agreement with immediate effect if

- a. you are in material breach of the Agreement, or
- b. you are insolvent or initiate a general halt of payment to your creditors.

Our termination other than for cause, may take place only on 90 days' notice, unless another termination notice period is agreed to.

21. Effects of termination. Upon termination, use of Mender must discontinue. 30 days after the effective date of termination, all data on your account will be deleted without notice. We don't refund payments made. Termination of the Agreement will not affect any accrued payment obligations or provisions relevant after the termination is effective.

- 22. Updated terms.** We may from time to time issue new terms for the Agreement. The new terms will become binding upon you if you do not object within 45 days. If we decide not to accommodate any objections you may have, you are entitled to terminate the Agreement immediately and ask for a refund of any pre-paid amounts. The new terms will apply until the termination is effective.
- 23. Publicity.** We may use your organization's name and logo for promotional purposes, unless you request that we don't by sending us an email to legal@northern.tech. We will process your request as soon as possible. It may take up to 15 days.
- 24. Third party use.** You may not resell or relicense the Service (nor any Mender software) as such to a third party. However, you may use the Service as a part of a product or service that you combine with your own service and/or software, and deliver to your customers under your own name.
- 25. Choice of law.** The Agreement is subject to the laws of the state of California. The parties agree that any disputes that arise out of this Agreement shall be settled by the state or federal courts with jurisdiction over Palo Alto, California, as exclusive legal venue. The United Nations Convention on Contracts for the International Sale of Goods does not apply.
- 26. Export compliance.** You acknowledge that Mender and related software are or may be subject to export restrictions by the United States government and other countries and import restrictions by certain foreign governments. You agree to not and to not allow any third-party to remove or export from the United States or allow the export or re-export of any part of Mender, related software or any direct product thereof: (a) into (or to a national or resident of) any embargoed or terrorist-supporting country; (b) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (c) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (d) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. You also agree to the foregoing and warrant that you are not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. Mender and related software are further restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology, or for terrorist activity, without the prior permission of the United States government.
- 27. Power to agree.** You warrant that you have validly entered into the Agreement. You are also responsible for the conduct of your people and their compliance with the Agreement.

Part 2 - Additional services

For subscribers to service plans above Mender Professional, the following may be included (consult your order confirmation and account type):

28. SLA

- a. We warrant that Mender (excluding Local Software) will be available for a minimum 99% of the time, not counting excluded issues (see below). If we fall short, we will reimburse you 5 times the amount you paid for the Service while it was not available ("SLA credit").
- b. Calculation of SLA credit takes place per calendar month. Maximum credit for one month is capped at the cost of one month paid service. SLA credit will be deducted from next month's payment.
- c. Excluded from this warranty is unavailability caused by user errors, connectivity issues, high-level domain name servers and gateway issues, planned service, add-ons and other Local Software, maintenance or force majeure events as specified in sec. 12 (collectively, "excluded issues").

29. Technical support

- a. Our technical support is provided through:
 - email support (see hours below),
 - chat support (see hours below), and
 - our bug tracker.

Business support hours:

North and South American customers:

9 a.m. to 5 p.m. Eastern Time Monday-Friday.

Rest of the world:

9 a.m. to 5p.m. Central European Time Monday- Friday.

Both exclude public holidays.

- b. **Incident reporting.** When you experience a problem or other incident with the Service, you will need to:
 - a) Verify that the incident is reproducible.
 - b) Give information necessary to help NT track, prioritize, reproduce or investigate the incident.
 - c) Describe the issue and expected results.
 - d) Categorize the issue, for instance as general question, defect or enhancement request.

- e) Reproduce the issue and relevant data.
 - f) Provide applicable log files or console output.
 - g) Provide exact wording of all issue related error messages.
 - h) Inform about any special circumstances surrounding the discovery of the issue, such as the first occurrence, business impact and suggested priority for resolution.
 - i) Identify issue number in any ongoing communications with us on an existing issue.
- c. **Priority levels.** NT will prioritize incidents according to the following criteria:
- i. P1 (Urgent) = Issue that makes the Service completely inaccessible or the majority of its functionality unusable for Customer, which cannot be worked around.
 - ii. P2 (High) = Issue that significantly degrades performance of the Service or materially restricts Customer’s use of or the functionality of the Service, which cannot be worked around.
 - iii. P3 (Normal) = Issue that causes only minor impact on Customer’s use of the Service.
 - iv. P4 (Low) = Any other request for guidance or information.
- d. **Resolution and closure of incidents.** The resolution of incidents may take the form of software corrections, explanations, recommendations, usage instructions, workaround instructions or advising Customer of an available software fix. NT will try to explain why an issue is not solvable and suggest how to mitigate the issue. In the event that custom or unsupported plug-ins or modules are used, NT may ask the Customer to remove any unsupported plug-ins or modules. If the problem disappears upon removal of an unsupported plug-in or module, then NT may consider the issue to be resolved. NT may also at its discretion close issues by identifying the incident as outside the scope of the support.
- e. **If Customer purchases professional services.** You agree to provide us with reasonable and timely access to anything or anyone necessary to provide assistance, or else NT is excused from performing. Project timeframes or delivery dates in any order form, quote or statement of work (“SOW”) are good faith estimates only. NT’s obligations are limited to delivering professional services on a time and material basis.
- f. **Service support matrix**

SUPPORT CONTACTS AND INCLUDED INCIDENTS

If not otherwise agreed to, the following applies:

Coverage Hours	Business Support Hours (see above)
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Supported contacts at Customer	1
Max number of incidents per month	15

Additional incidents are charged for at current unit prices. Contact us for price details.

TARGET RESPONSE TIME

Acknowledgement time	2 hours for all incidents
Response time	P1 – 12 hours P2 – 48 hours P3 – 72 hours from receipt of request to correction work start.
Target resolution time	P1 – 48 hours P2 – 1 week P3 – 1 month from receipt of request to correction work is finished or work round created (only target, resolution time cannot be guaranteed).

30. Mender on-premise. If you are entitled to install the Mender software on-premise, separate agreement and terms will apply. Please contact your sales representative. The additional services described in this part 2 of the Service Terms applies only to the Service, not on-premise operated software.