

DATAMOTION, INC.
TERMS OF SERVICE

Version: November 5, 2020

By becoming a registered user (“User” or “You”) of DataMotion.com You agree to the following Terms of Service. Please read them carefully. This Terms of Service refers to the Master Services Agreement, Terms and Conditions (the “MSA”) available at <https://www.datamotion.com/master-service-agreement-terms-and-conditions/>.

BY COMPLETING THE REGISTRATION PROCESS AND CLICKING THE “I ACCEPT” BUTTON, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF SERVICE.

IF YOU ARE ENROLLED IN THE SERVICE BY AN ENTITY WITH WHICH DATAMOTION ENTERED INTO A SERVICES AGREEMENT DIFFERENT FROM THE MSA INSTEAD OF THE MSA, THE TERMS OF THE OTHER AGREEMENT SHALL CONTROL AND DEPENDING ON THE TERMS OF THE OTHER AGREEMENT, THIS TERMS OF SERVICE MAY NOT APPLY TO YOU, EVEN IF YOU CLICK THE “I ACCEPT” BUTTON.

1. **Acknowledgement and Acceptance of Terms of Service.** The DataMotion Services (the “Service”), owned and operated by DataMotion, is provided to You under this Terms of Service. BY COMPLETING THE REGISTRATION PROCESS AND CLICKING THE "I ACCEPT" BUTTON, YOU ARE AGREEING TO BE BOUND AND COMPLY WITH THIS TERMS OF SERVICE, INCLUDING THE FOLLOWING.
 - 1.1. You agree to provide true, accurate, complete, and correct information about yourself as prompted by the online Registration Form during the Registration. You also agree to timely update and maintain such information to keep it true.
 - 1.2. You agree not to use the Service for illegal purposes or to conduct illegal activities, or for the transmission of material that You know to be unlawful in any jurisdiction, or the content of which is known to You to be invasive of another's privacy rights, or offensive, or that infringes or may infringe the intellectual property or other rights of another.
 - 1.3. You agree not to use the Service for the transmission of "junk mail", "spam", or "chain letters"; or to distribute any virus or other destructive code.
 - 1.4. You agree not to resale or otherwise distribute the Service, including use of or access to the Service.
 - 1.5. You agree that DataMotion may disable Your account immediately upon notice to You if DataMotion believes that You have committed a material breach of Terms of Service.
 - 1.6. You confirm that you have read and accept DataMotion privacy statement located at <https://www.datamotion.com/privacy-policy/>.
 - 1.7. You agree to be solely responsible for the contents of Your transmissions through the Service and, if applicable, for compliance with regulations such as US Export regulations, HIPAA Privacy, GDPR Privacy, etc. for data being transmitted.
 - 1.8. You agree (a) not to knowingly cause interruption of the Service or servers or networks connected to the Service; and (b) to comply with standard rules of Internet connectivity.

2. Description of the Hosted Service

- 2.1.** Under the terms of the MSA, including timely payment of applicable fees due, DataMotion shall provide You with access to the Service to send and receive e-mail messages, electronic files and data (the “**Objects**”) on DataMotion's system. You shall be responsible to provide for your own connectivity to the DataMotion Service. You understand and agree that DataMotion shall have no liability, and You shall not be excused from any of Your obligations under this Terms of Service, because of the quality, speed or interruption of the communication availability over the Internet.
- 2.2.** The Service enables Internet-based electronic courier service for encryption and transmission of Objects created and/or transmitted by and received from You and delivering the same to its designated recipient(s) solely at the discretion and direction of You. DataMotion does not process, compile or create any data from the Objects. DataMotion assumes no responsibility for Your deletion of or failure to store Your Objects. Further, the life expectancy, retention and/or deletion of the Object is under Your sole control and preset limits on storage and retention of Objects. **USER UNDERSTANDS AND AGREES THAT AN OBJECT ONCE DELETED OR EXPIRED ON THE SYSTEM CANNOT BE RECOVERED BY DATAMOTION AND THAT THERE IS NO RECOURSE WHATSOEVER TO DELETED OR EXPIRED OBJECT.**
- 2.3.** The Service enables You as a registered sender to initiate the process whereby Objects containing data known only to the sender is packaged as an encrypted package using industry-standard encryption technology and given to the Service. The Service stores the encrypted packet until a designated recipient initiates the retrieval in decrypted form. DataMotion only acts as a temporary storage place for such packets and it cannot otherwise process these packets. DataMotion has no knowledge of the contents of the encrypted and/or stored packets.
- 2.4. EXCLUSIONS: ANY DATA OBJECTS TRANSMITTED OUTSIDE OF THE SERVICE IS EXCLUDED FROM THE SCOPE OF THIS TERMS OF SERVICE AND THE MSA AND ANY OBLIGATIONS OF DATAMOTION.** Examples of such exclusions are, but not limited to: regular email transmissions, transmissions by fax or as hard copy, transmissions of Objects using physical media, etc.

3. User’s Registration and Usage Obligations

- 3.1.** You agree to provide true, accurate, complete, and correct information about yourself as prompted by the online Registration Form during the Registration. You also agree to timely update and maintain such information to keep it true. You further agree that if any Registration Data provided by You is untrue, inaccurate, not current or incomplete, DataMotion has the right to terminate Your account and refuse You any and all current or future use of the Service. DataMotion will create a User Account at the end of the Registration.
- 3.2.** If you register for the DataMotion HISP Service, DataMotion will create a Direct Address for You when on-boarded based on Your required information in accordance with DirectTrust rules and guidelines (the “**Directory Information**”). Each Direct Address created by DataMotion will become part of its Healthcare Provider Directory (the “**HPD**”) and made available to all other Authorized Users of HISP. All Direct Addresses in the HPD will be accessible to any user with a Direct Address in DataMotion HISP or from any third party HISP using a compatible search function and in accordance with Direct Protocol. You expressly consent without limitation to include your Direct Address in the HPD and to share the Directory Information with HPD of third party HISPs in accordance with guidelines provided by DirectTrust.

- 3.3. You agree to abide by all applicable local, state, national, and international laws and regulations in use of the Service, and agree not to interfere with the use and enjoyment of the Service by other Users. You agree to be solely responsible for the contents of your transmissions through the Service.
- 3.4. You agree (i) not to use the Service for illegal purposes; (ii) not to interfere with or disrupt the Service or servers or networks connected to the Service; (iii) to comply with all requirements, procedures, policies and regulations of networks connected to the Service; and (iv) to comply with all applicable laws regarding the transmission of technical data exported from the United States.
- 3.5. You agree not to transmit through the Service any unlawful, harassing, libelous, privacy invading, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind. You agree not to transmit any material that violates the rights of another, including but not limited to the intellectual property rights of another. You agree not to transmit any material that violates any applicable local, state, national, or international law or regulation. You agree not to attempt to gain unauthorized access to other computer systems or networks connected to the Service. You agree not to transmit "junk mail", "spam", "chain letters", or unsolicited mass distribution of email.
- 3.6. Notwithstanding anything stated herein this Section 3, You explicitly agree and permit DataMotion to send various Services updates, security updates, product updates, other informative material, etc. from time to time. You cannot opt out of this permission as long as you maintain Your account. Further, while submitting Registration Data and related personal data, You explicitly agree and affirm that You are aware of any and as applicable data privacy laws and regulations of Your country, state, county or any other jurisdiction. Examples of some such rules and regulations are, but not limited to, as commonly used acronyms, GLBA, HIPAA, HITECH, FTC, GDPR, APPs, PIPEDA, ICO, etc.
- 3.7. You acknowledge that You have read and understood the features of Service as detailed in Section 2 (Description of the Hosted Service). You further acknowledge that You are obligated to maintain security of the account taking care to follow proper procedure and controls, such as, but not limited to:
- 3.7.1. You shall protect and not disclose or permit unauthorized access to Service using access credentials (user ID and password); any person who has access to Your access credentials can access the account and DataMotion cannot prevent such access;
- 3.7.2. You ensure that You do not misspell either their own email address or their recipients' email addresses, which would result in the delivery of information through the Services to unauthorized person(s);
- 3.7.3. You shall not include any sensitive information (such as date of birth, Social Security Number, etc.) of any type in the Subject line of the email message sent thru Services, as the Subject line is not encrypted.
- 3.8. Please report any violations of the Terms of Service to abuse@datamotion.com.
4. **Modification of Terms of Service.** DataMotion reserves the right, at any time and from time to time, to update, revise, supplement, and otherwise modify this Terms of Service and to impose new or additional rules, policies, terms, or conditions on Your use of the Service. Such updates, revisions, supplements, modifications, and additional rules, policies, terms, and conditions (collectively the "**Additional Terms**") will be effective immediately and incorporated into this

Terms of Service. Your continued use of the DataMotion Service will be deemed to constitute your acceptance of any and all such Additional Terms. All Additional Terms are hereby incorporated into this Terms of Service by this reference.

5. **Modification to Service.** DataMotion reserves the right to modify or discontinue, temporarily or permanently, the Service with 30-day notice to You. You agree that DataMotion shall not be liable to You or any third party for any modification or discontinuance of the Service, or for subsequent loss of any messages in the event of any modification or discontinuance of the Service.
6. **DataMotion Privacy Policy**
 - 6.1. All Your Objects transmitted via the Service shall be the private, confidential communication between You and Your designated recipient(s). DataMotion cannot and shall not access, monitor or disclose the contents of Your Objects. However, DataMotion may be required to make Your Objects available to an authority as and when (a) required by law; (b) to comply with legal process; (c) if necessary to legally enforce the terms of this Terms of Service and/or the MSA; (d) to respond to legal claims that such contents violate the rights of third parties; or (e) to legally protect the rights or property of DataMotion, or others. If DataMotion is required to make available Your Objects, DataMotion shall, if possible and to the extent permitted by law or under the court order, (i) notify You prior to undertaking any such disclosure and the parties will jointly determine the manner in which such disclosure may be undertaken, and, (ii) in the event that You elect to take action to oppose any such use or disclosure, DataMotion will reasonably cooperate with You. DataMotion Privacy Policy Statement is available at <https://www.datamotion.com/privacy-policy/>.
 - 6.2. DataMotion does not sell or otherwise share Your registration information with any third party. You understand and agree that DataMotion may use aggregated, anonymous information about the usage of the Service for the purpose of improving the Service and for other internal business purposes of DataMotion. This information about You may be referred to as “**Registration Data.**”
7. **DataMotion Business Associate Agreement.** If you register for the DataMotion HISP Service, use of the Services by You as an Authorized User is subject to DataMotion’s Business Associate Agreement (the “**BAA**”) available at <https://www.datamotion.com/business-associate-agreement/>, which is incorporated herein by reference and expressly made part of this Terms of Service and shall be binding.
8. **User Account, Password and Security.** You will self-generate a password and account designation upon completing the registration process. You are solely responsible for maintaining the confidentiality of access to your account and for all activities which occur under Your account. You agree to immediately notify DataMotion of any actual or suspected unauthorized use of Your account or any other breach of security. Your DataMotion account is associated with a single authorized email address. If you forward DataMotion plugins (e.g., the "SendSecure" button) to others then DataMotion shall not be responsible for the privacy or security of Your account.
9. **Effect of Termination.** Upon termination or expiration of the MSA, Your account shall be deleted from the Service and all Objects therein shall be automatically and irreversibly deleted and purged from the Service. Prior to the date of termination, You may download any and all of your Objects for permanent storage.
10. **Non-Disclosure of Confidential Information**

10.1. Each party shall safeguard the other party's Confidential Information, as defined in the MSA, from unauthorized use and disclosure, using measures that are equal to the standard of performance used by such party to safeguard its own Confidential Information, but in no event using less than reasonable care. Therefore, except as directed by the other party or required by law, both parties agree to hold the Confidential Information of the other party in confidence and not to disclose to a third party except as reasonably necessary for purposes of the MSA.

10.2. Each party shall be responsible to promptly notify the other party of any breaches of confidentiality.

11. Indemnity

11.1. You agree to indemnify, defend and hold DataMotion and its parents, subsidiaries, affiliates, officers, directors and employees, harmless from any and all losses, liabilities, costs, damages, penalties, fines and expenses, including reasonable attorneys' fees (collectively, "**Losses**") arising from any and all third-party claims, demands, threats, suits or proceedings (collectively, "**Claims**") resulting from or arising, directly or indirectly, out of any act or omission in breach of the MSA and this Terms of Service attributable to You.

11.2. DataMotion agrees to indemnify, defend and hold You harmless from any and all Losses arising from any claim alleging that the technology used to provide the Service or that comprises the Service violates the intellectual property rights of any third party.

11.3. If any Claim is asserted or instituted with respect to which You or DataMotion is entitled to indemnification, then the party seeking indemnification shall promptly notify the indemnifying party of all material details of such Claim known to it. The party seeking indemnification agrees to cooperate with the indemnifying party in the defense of the Claim and shall not compromise or otherwise settle any such Claim without the indemnifying party's prior written consent.

12. Links. The Objects that You send or receive may contain links to other Web sites or resources. You acknowledge and agree that DataMotion is not responsible for the availability of such external sites or resources, and that DataMotion does not endorse and is not responsible or liable to You for contents on or available from such sites or resources sent through the Service. You agree that DataMotion shall not be responsible or liable to You, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on such external sites or resources.

13. DataMotion Proprietary Rights. You acquire only the right to use the Service and do not acquire any rights of ownership whatsoever in or to the Service, or any technology used to provide the Service. All rights, title, and interest in and to the Service and (other than content created as a result of use of the Service by You) the material on the DataMotion Web site, including without limitation all intellectual property rights therein, shall at all times exclusively remain with DataMotion. You shall retain all rights including ownership of intellectual property rights, if any, to content created or uploaded by You during use of the Service.

14. Warranties. DataMotion represents and warrants that: (a) DataMotion has the power and authority to enter into and fully perform its obligations under this Terms of Service; and (b) the Services will be performed in a professional manner. You represent and warrant that: (a) You have the power and authority to enter into and fully perform your obligations under this Terms of Service; and (b) You shall limit use of the Service only to authorized uses and for purposes that are in accordance with this Terms of Service.

15. Disclaimer of Warranties

- 15.1.** USER EXPRESSLY AGREES THAT USE OF THE SERVICE IS AT USER'S SOLE RISK. THE SERVICE IS PROVIDED ON AN 'AS IS' AND 'AS AVAILABLE' BASIS SUBJECT TO DATAMOTION'S PROVISION OF SUPPORT SERVICES. EXCEPT FOR DATAMOTION'S WARRANTIES EXPRESSLY PROVIDED HEREIN, DATAMOTION EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- 15.2.** DATAMOTION MAKES NO WARRANTY THAT THE SERVICE WILL MEET USER'S REQUIREMENTS, OR THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES DATAMOTION MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE. DATAMOTION MAKES NO WARRANTIES THAT DEFECTS IN THE SERVICE WILL BE CORRECTED.
- 15.3.** USER UNDERSTANDS AND AGREES THAT ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE AND THAT IS NOT PROVIDED BY DATAMOTION IN ORDER TO USE THE SERVICE IS DONE AT USER'S OWN DISCRETION AND RISK AND THAT USER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO USER'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA.

16. Limitation of Liability

- 16.1.** EXCEPT FOR AMOUNTS INDEMNIFIED UNDER THIS TERMS OF SERVICE FOR THIRD-PARTY CLAIMS AND EXCEPT FOR BREACHES OF SECTION 10 (NON-DISCLOSURE OF CONFIDENTIAL INFORMATION), NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES CAUSED BY IT (INCLUDING BUT NOT LIMITED TO THOSE RESULTING FROM UNAUTHORIZED ACCESS TO OR ALTERATION OF USER'S TRANSMISSIONS OR DATA BY THIRD PARTIES OR RESULTING FROM CIRCUMSTANCES NOT UNDER THE CONTROL OF A PARTY), INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, USE, DATA OR OTHER INTANGIBLES, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 16.2.** USER FURTHER AGREES THAT DATAMOTION SHALL NOT BE LIABLE TO USER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING FROM THE INTERRUPTION, SUSPENSION OR TERMINATION OF SERVICE, WHETHER SUCH INTERRUPTION, SUSPENSION OR TERMINATION WAS JUSTIFIED OR NOT, NEGLIGENT OR INTENTIONAL, INADVERTENT OR ADVERTENT.
- 17.** **Notice.** Any notice to You by DataMotion shall be made either via the Service or express courier service. Notices given by the Service shall have the same legal validity as any other form of notice. Notices shall be effective upon receipt or upon attempted delivery, where receipt is refused. DataMotion may also provide notices of changes to the Terms of Service or other matters by displaying notices to Users generally on the Service.

- 18. Support Services.** DataMotion’s Standard Support services are available Monday-Friday, 9:00 am to 5:00 pm Eastern Time USA. You can reach DataMotion support via e-mail (support@datamotion.com or directsupport@datamotion.com for HISP services), website (<https://www.datamotion.com/support/support-request/>) or telephone.
- 19. General**
- 19.1. Governing Law.** This Terms of Service and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Terms of Service or its subject matter or formation (the “**Dispute**”) shall be governed by and construed in accordance with the law of the State of New York without regard to conflict of law principles. Each party irrevocably agrees that the courts in the State of New York shall have exclusive jurisdiction to settle any Dispute. You expressly waive any right to the use of any other jurisdiction under any national, international, regional or local laws. You agree that regardless of any statute or law to the contrary, any Dispute or cause of action arising out of or related to use of the Service or to this Terms of Service must be filed within one (1) year after such claim or cause of action arose, or shall be forever barred.
- 19.2. Waiver.** The failure or delay by DataMotion at any time to exercise or enforce any provision of this Terms of Service shall not constitute or be construed as a waiver thereafter to enforce any such right or provision in the future.
- 19.3. Control.** To the extent that any provision in this Terms of Use is inconsistent with or contradicts any provision in the MSA, the MSA shall control. If you are enrolled in the Service by an entity with which DataMotion entered into a services agreement different from the MSA instead of the MSA, the terms of the other agreement shall control.
- 19.4. Severability.** If any provision of the terms is found by a court of competent jurisdiction to be invalid all other terms shall remain in full force and effect.

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