

Genymotion Device Image - Genymotion – Android Emulator for app testing

PLEASE READ CAREFULLY: IF YOU ARE ACCEPTING THIS TERMS OF USE (“AGREEMENT”) ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY (“CUSTOMER”), YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THE CUSTOMER TO THIS AGREEMENT. UNLESS THE CUSTOMER HAS ANOTHER VALID AGREEMENT FOR THE PURCHASE AND USE OF GENYMOBILE, INC. (“GENYMOBILE”) PRODUCTS (AS DEFINED BELOW), THIS AGREEMENT GOVERNS YOUR RIGHTS TO THE GENYMOBILE PRODUCTS. BY CLICKING “ACCEPT” CUSTOMER ACCEPTS THIS AGREEMENT AND THE AGREEMENT WILL BE DEEMED A BINDING CONTRACT BETWEEN GENYMOBILE AND CUSTOMER. IF CUSTOMER DOES NOT AGREE TO OR CANNOT COMPLY WITH ALL OF THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT OR IF YOU DO NOT HAVE AUTHORITY TO BIND THE CUSTOMER, THEN DO NOT CLICK “ACCEPT” AND CUSTOMER WILL NOT BE AUTHORIZED TO USE THE PRODUCTS.

This Agreement is entered into as of the earlier of the date that Customer accepts the terms and conditions herein or, if earlier, first orders any product (the “Effective Date”).

1. Definitions

- a. “Product” means Genymotion Device Image, made available by access to and use of software hosted by the Cloud Provider to which Customer has purchased a license to use under the relevant Order.
- b. “Order” means any purchase order, product schedule or ordering document between Customer and the Cloud Provider that identifies the product licensed or sold and any applicable licensing parameters (e.g., the number of licenses).
- c. “Documentation” means the written and/or electronic release notes, implementation guides, or other published technical documentation about the applicable product that is provided by Genymobile to Customer.
- d. “Downstream customer” means a customer of a Genymobile’s customer.

2. Rights of Access and Use

Subject to the terms and conditions of this Agreement, during the applicable License Term, Genymobile hereby grants to Customer a nonexclusive license for Customer to access and use the product in accordance with the applicable Documentation. Customer may provide access to the product to its employees, contractors, customers and affiliates (and any employees and contractors of such affiliates), provided Customer is responsible for their actions that violate the terms of this Agreement. The license granted under this Section 2 shall terminate upon the termination or expiration of this Agreement.

3. Use Restrictions; Customer Obligations

As a condition of the license granted in Section 2, Customer shall not itself and shall not authorize or permit any third party to: (a) reverse engineer, decompile, decode, decrypt, disassemble, or attempt to derive any source code from the product (except and only to the extent any foregoing restriction is prohibited by applicable law); (b) use the Documentation except for supporting Customer’s authorized use of the product; or (c) use the product to store or transmit malicious code or infringing, libelous, unlawful or tortious material; or (d) disrupt the integrity or performance of any product; or (i) employ or authorize a Genymobile Competitor to use or view the product or Documentation, or to provide management, support or similar services with regard to the product without the prior written consent of Genymobile. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of any product and notify Genymobile promptly of any such unauthorized access or use. In addition, when using or otherwise accessing the Genymobile product, Customer and its Permitted Users shall at all times abide by the Genymobile’s Acceptable Use Policy.

4. Payment, Refund and Cancellation

a. Payment

Customer shall pay the fees for Genymobile product as set forth in the applicable Order.

b. Refunds and Cancellations

Refund eligibility is at Genymobile sole and exclusive discretion, should customers request a refund of any fees after they have purchased access to Genymotion Device image (Cloud PaaS) from cloud providers for any supported instance type, even if they have not launched it.

Should customers decide to stop using or cancel after they launch Genymotion Device image (Cloud PaaS) from cloud providers for any reason other than a technical problem, within the time period for which they have the right to access the product, refund eligibility is at Genymobile sole and exclusive discretion.

Should customers face an issue other than forgetting to stop devices, they must first contact [Genymotion technical support](#) to be eligible for a refund. Approval, as well as full or partial refund, is at Genymobile sole and exclusive discretion.

5. Confidentiality.

a. Definition

“Confidential Information” means non-public information provided by one party (“Discloser”) to the other (“Recipient”) that is designated as confidential or reasonably should be considered as such, excluding information that (i) is or becomes public through no fault of the Recipient, (ii) was known to Recipient before the disclosure, (iii) is disclosed to Recipient by a third party without violation of any confidentiality restrictions, or (iv) is independently developed by the Recipient without access to or use of the Discloser’s information. Genymobile Confidential Information includes but is not limited to all products (and any derivatives, performance data, benchmark results, security assessments, product roadmaps and any other technical information relating to the products), Documentation and its derivatives, and Genymobile’s pricing. The terms and conditions of this Agreement are the Confidential Information of both parties.

b. Non-disclosure and Non-Use

The Recipient shall (i) only use the Confidential Information of the Discloser to exercise its rights and/or to perform under this Agreement, (ii) use the same degree of care to prevent unauthorized use and disclosure of Discloser’s Confidential Information as it does for its own confidential information, but in no event less than reasonable care, and (iii) with respect to employees, contractors, or agents of Recipient, limit access to the Discloser’s Confidential Information only to those employees, contractors, or agents who have a need to access such Confidential Information and who are subject to confidentiality obligations at least as restrictive as those specified in this Section 5. The Recipient may disclose the Discloser’s Confidential Information to the extent required by any court, governmental body, or law or regulation, provided that, if legally permissible, Recipient shall provide prompt written notice to the Discloser of such disclosure. Upon written request of the Discloser, the Recipient shall return or destroy, at Discloser’s option, the Discloser’s Confidential Information.

6. Ownership

This is a subscription agreement for use of Genymobile product and not an agreement for sale. Customer acknowledges that it is obtaining only a limited right to the Genymobile product and that irrespective of any use of the words “purchase”, “sale” or like terms hereunder no ownership rights are being conveyed to Customer under this Agreement. Genymobile and its suppliers own and retain all right, title, and (except as expressly licensed in this Agreement) interest in and to the product. Customer is not obligated to provide Genymobile with any suggestions or feedback about the products or services (“Feedback”). To the extent Customer does provide Feedback to Genymobile, Customer assigns ownership of such Feedback to Genymobile and Genymobile may use and modify such Feedback without any obligation, restriction or payment. Further, Customer acknowledges that the Genymobile product is offered as an on-line solution, and that Customer has no right to obtain a copy of the Genymobile product itself.

7. Indemnity

a. Indemnification by Genymobile

Genymobile shall at its cost and expense (i) defend or settle any claim brought against Customer and its directors, officers and employees (“Customer Indemnitee(s)”) by an unaffiliated third party alleging that Customer’s use of the product infringes or violates that third party’s intellectual property right(s), and (ii) pay, indemnify and hold Customer Indemnitees harmless from any settlement of such claim or any damages finally awarded to such third party by a court of competent jurisdiction as a result of such claim.

b. Indemnification for Genymobile

Should a customer build their product leveraging the Genymobile product (Genymotion Cloud) for further use by downstream customer, customer shall at its cost and expense (i) defend or settle any claim brought against Genymobile and its directors, officers and employees (“Genymobile Indemnitee(s)”) by an unaffiliated third party alleging that downstream customer’s use of the customer’s product infringes or violates that third party’s intellectual property right(s), and (ii) pay, indemnify and hold Genymobile Indemnitees harmless from any settlement of such claim or any damages finally awarded to such third party by a court of competent jurisdiction as a result of such claim.

c. Remedies

If a claim under Section 7.a occurs or in Genymobile’s opinion is reasonably likely to occur, Genymobile may at its expense and sole discretion: (i) procure the right to allow Customer to continue using the applicable product, (ii) modify or replace the applicable product to become non-infringing, or (iii) if neither (i) nor (ii) is commercially practicable, terminate Customer’s license to the affected portion of applicable product and refund a portion of the pre-paid, unused license fees paid by Customer corresponding to such product.

d. Exclusions

Genymobile shall have no obligations under this Section 7.a if the claim is based upon or arises out of: (i) any modification to the applicable product not made by or at the direction of Genymobile, (ii) any combination or use of the applicable product with any third party products or systems, to the extent that such claim is based on such combination or use, (iii) Customer’s continued use of the allegedly infringing technology after being notified of the infringement claim, (iv) Customer’s failure to use Updates made available by Genymobile, (v) Customer’s failure to use the product in accordance with the applicable Documentation, and/or (vi) use of the product outside the scope of the license granted under this Agreement. This Section 7.a constitutes Customer’s sole and exclusive remedies, and Genymobile’s entire liability, with respect to infringement of third party intellectual property rights.

e. Indemnification by Customer

Customer shall at its cost and expense (i) defend or settle any claim brought against Genymobile and its directors, officers and employees (“Genymobile

Indemnitee(s)”) by an unaffiliated third party alleging that the Customer Data infringes or violates a third party’s intellectual property or privacy right(s), and (ii) pay, indemnify and hold Genymobile Indemnitees harmless from any settlement of such claim or any damages finally awarded to such third party by a court of competent jurisdiction as a result of such claim. “Customer Data” means any data originated by Customer or Customer Representatives that Customer or Customer Representatives submit to the product.

f. Procedures

Each indemnitor’s indemnification obligation is conditioned on the indemnitee: (i) giving the indemnitor prompt written notice of such claim, (ii) permitting the indemnitor to solely control and direct the defense or settlement of such claim, provided the indemnitor shall not settle any claim in a manner that requires the indemnitee to admit liability or pay money without the indemnitee’s prior written consent, and (iii) providing the indemnitor all reasonable assistance in connection with the defense or settlement of such claim, at the indemnitor’s cost and expense.

8. Support and Maintenance Services

Support and maintenance services shall be provided in accordance with the support and maintenance terms and conditions specified in support policy.

9. Warranties.

a. Product

Genymobile represents and warrants to Customer that the product materially conforms to the specifications specified in the relevant Documentation. Customer must notify Genymobile of any warranty deficiencies within thirty (30) days from the provision of the deficient product. Customer’s sole and exclusive remedy and the entire liability of Genymobile for Genymobile’s breach of this warranty will be for Genymobile, at its option, to (i) repair such product (and/or deliver new applicable Software) or (ii) terminate the applicable License Term and refund any prepaid, unused subscription fees paid to Genymobile for the unused period of any such terminated License Term.

b. Professional Services

Customer may order professional services from Genymobile. Such professional services shall be subject to the terms and conditions of this Agreement and mutually agreed-upon statement of work (if any). For ninety (90) days following the date of delivery of any professional service by Genymobile to Customer, Genymobile represents and warrants that such professional services shall be professional, workman-like and performed in a manner conforming to generally accepted industry standards and practices for similar services. Customer’s sole and exclusive remedy and the entire liability of Genymobile for Genymobile’s breach of this warranty will be for Genymobile, at its option, to re-perform the non-conforming services or refund the fees paid for such non-conforming professional services.

c. Exclusions

The express warranties do not apply if the applicable product (i) has been modified, except by or at the direction of Genymobile, (ii) has not been used, or maintained in accordance with this Agreement and Documentation, (iii) has been subjected to abnormal stress, misuse, negligence or accident, and/or (iv) is used with any other software or products not specified in the Documentation. Additionally, these warranties only apply if notice of a warranty claim is provided within the applicable warranty period.

d. Disclaimer

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS SECTION 9, THE PRODUCT AND SERVICES ARE PROVIDED “AS IS,” AND Genymobile PROVIDES NO OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND Genymobile SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

10. Term and Termination

The access rights granted herein with respect to the product shall remain effective until the License Term for the relevant product expires.

11. Limitation of Liabilities

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR ANY BREACHES OF OR FOR LIABILITY ARISING OUT OF SECTION 3 (RESTRICTIONS), 5 (CONFIDENTIALITY) OR A PARTY’S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, OR CUSTOMER’S PAYMENT OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREOF (UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STATUTE, TORT OR OTHERWISE) FOR: (a) ANY LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOST DATA, OR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR SUCH DAMAGES OR LOSSES WERE REASONABLY FORESEEABLE, OR (b) AN AMOUNT THAT EXCEEDS THE TOTAL FEES PAYABLE TO

Genymobile FOR THE RELEVANT PRODUCT OR SERVICE DURING THE TWELVE-MONTH PERIOD BEFORE THE EVENT GIVING RISE TO SUCH LIABILITY. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SPECIFIED IN THIS AGREEMENT. MULTIPLE CLAIMS SHALL NOT EXPAND THE LIMITATIONS SPECIFIED IN THIS SECTION 11.

12. General

a. Export/Import

The product and Documentation may be subject to U.S. and foreign import and export control laws and regulations. Customer agrees to comply with all such regulations applicable to Customer, including obtaining applicable import licenses.

b. U.S. Government End Users

The product and Documentation are “commercial items,” as that term is defined in 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R.227.7202-1 through 227.729204, the product and Documentation are being licensed to U.S. Government end users only as “commercial items” and with only those rights as are granted to all other end users pursuant to the terms and conditions of this Agreement.

c. In-Licensed Materials and Open Source

The product may contain or may interoperate with software services or other technology that is not owned by Genymobile but has been licensed to Genymobile by a third party or that is available under open source or free software licenses (“In-Licensed Materials”). The In-Licensed Materials may be subject to additional terms and conditions made available as required to Customer. To the extent Genymobile uses open source software in its product, the applicable licenses shall not restrict the license rights granted to Customer under this Agreement or impose further obligations or restrictions upon Customer, provided Customer uses the product in accordance with this Agreement.

d. Governing Law and Jurisdiction

Except as otherwise provided in Schedule A (if applicable), this Agreement, and the rights and duties of the parties arising from this Agreement, shall be governed by, construed, and enforced in accordance with the laws of the State of California, excluding its conflicts-of-law principles. The sole and exclusive jurisdiction and venue for actions arising under this Agreement shall be state and federal courts in LOCATION and the parties agree to service of process in accordance with the rules of such courts. The Uniform Computer Information Transactions Act and the United Nations Convention on the International Sale of Goods shall not apply.

e. Assignment

Neither party may assign this Agreement without prior written consent of the other party, provided however either party may do so to a successor-in-interest of substantially all of its business and/or assets. Any assignment in violation of this Section 12.e shall be void. Subject to the foregoing, all rights and obligations of the parties under this Agreement shall be binding upon and inure to the benefit of and be enforceable by and against the successors and permitted assigns.

f. Data Communications

Genymobile may or may not collect, access, use, store, safeguard, disclose and transfer (“Process”) Personal Information (i) for the purposes of this Agreement, including without limitation, to implement and deliver the product and its features and associated services, provide Customer support, and help Customer prevent or address service or technical problems, (ii) as otherwise expressly permitted by Customer in writing, or (iii) as compelled by law. Customer shall make such disclosures, obtain such consents, and provide such access, choices and other applicable rights to individual users with regard to the Processing of Personal Information as are required under applicable law, rules or regulations. “Personal Information” means any information relating to an identified or identifiable individual user that is obtained by or communicated to Genymobile by Customer in performance by Genymobile of its obligations under this Agreement. Genymobile may or may not collect, analyze, and use aggregated, de-identified technical data and related information (such as product or feature usage, device metrics/metadata and/or mobile application usage) to facilitate market research, product development/improvement and to provide support and maintenance services. Genymobile may or may not use, store, or disclose such information or material derived from such information, as long as it is in a form that does not identify or is not attributable to any individual.

g. Equitable Relief

The parties agree that a material breach of this Agreement adversely affecting Genymobile’s or its suppliers’ intellectual property rights in the product or either party’s Confidential Information may cause irreparable injury to such party for which monetary damages would be an inadequate remedy and the non-breaching party shall be entitled to equitable relief (without a requirement to post a bond) in addition to any remedies it may have under this Agreement or at law.

h. Publicity

Genymobile may publicly disclose that Customer is a customer of Genymobile and a licensee of the product, including in a list of Genymobile customers and other promotional materials.

i. Independent Contractor

The parties are independent contractors. This Agreement shall not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties.

j. Waiver & Severability; Amendments

The failure of either party to enforce any provision of this Agreement shall not constitute a waiver of any other provision or any subsequent breach. If any provision of this Agreement is held to be illegal, invalid or unenforceable, the provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remaining provisions of this Agreement will remain in full force and effect. This Agreement may only be amended, or any term or condition set forth herein waived, by written consent of both parties.

k. Notices

Except as otherwise provided in this Agreement, all legal notices to Customer will be given in writing to any Customer address listed on the applicable Order. All legal notices to Genymobile will be given in writing to: Genymobile, Inc., 541 Jefferson Avenue, Suite 100, Redwood City, CA 94063 U.S.A., Attention: General Counsel. Such notices will be effective (a) when personally delivered, (b) on the reported delivery date if sent by a recognized international or overnight courier, or (c) five business days after being sent by registered or certified mail (or ten days for international mail). For clarity, purchase orders, invoices, and other documents relating to order processing and payment are not legal notices and may be delivered electronically in accordance with Genymobile and Customer's standard ordering procedures.

l. Entire Agreement

This Agreement consists of these terms and conditions, and the attached schedule(s), which are incorporated by reference. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes and cancels all prior agreements, representations, communications, and understandings of the parties, written or oral, relating to such subject matter, and is not intended to confer upon any person other than the signatories below any rights or remedies. This Agreement prevails over any conflicting, or additional terms of any ordering document, acknowledgment, confirmation or other document issued by Customer before or after the execution of this Agreement unless such conflicting or additional terms have been introduced via an amendment and accepted in writing by both parties. The headings of sections of this Agreement are for convenience and are not for use in interpreting this Agreement.