

## **Fecon Dealer Activation Agreement**

This Activation Agreement ("**Agreement**") is by and between Fecon, LLC ("**Fecon**"), an Ohio limited liability company and you ("**Dealer**") and is effective as of the date of creating a Dealer account to access Machine Data derived from the Telematics Services ("**Effective Date**"). By activating, accessing, or otherwise using the Telematics Services, you agree and will be bound by the terms of this Agreement. The End User License Agreement (defined below) is incorporated herein by reference and made a part of this Agreement as if fully restated herein.

### **1. Definitions.**

**"Administrator"** means the business entity responsible for authorizing and managing all Dealer, Customer, and End-User Account activity.

**"End-User(s)"** means an individual registered and identified by the Administrator to use Telematics Services under this Agreement.

**"Telematics Services"** or **"Services"** means the telematics services provided by the Software on the Data Platform and accessed by Dealers, Customers and their End-Users under any Subscription and/or this license via the Web Portal or Fecon App that monitors and controls Machine Data transmitted to and from CUs installed on Machines.

### **2. End User License Agreement.**

The EULA is incorporated herein by reference and made a part of this Agreement as if fully restated herein. Therefore, when Dealer accepts this Agreement, the Dealer also accepts and agrees to be legally bound by the terms and conditions of the EULA. Any capitalized terms used but not defined below have the meanings as set forth in the EULA.

### **3. Term and Termination.**

This Agreement is effective as of the Effective Date for a term of three (3) years unless earlier terminated as provided for below. This Agreement shall automatically renew for successive one (1) year periods unless either party gives at least thirty (30) days written notice of non-renewal to the other party. The Agreement may be terminated at any time: (a) by either party upon giving thirty (30) days written notice to the other party; (b) upon termination of the Master Telematics Agreement between Fecon and Licensor; (c) upon any notice by Fecon to Customer for any failure by Customer or its End-Users to comply with any term or condition of the EULA or this Agreement; or (d) upon termination of Fecon's agreement with Dealer.

### **4. Activation.**

By entering into this Agreement, Dealer hereby requests that Fecon establish and activate a Dealer account for the Telematics Services via the Web Portal through which it can access telematics data for its Customer(s) and End-Users.

### **5. Payment Terms.**

Customer's initial three (3) year subscription term will be at no cost to Dealer. Thereafter, at Fecon's discretion and with at least 60 days' notice prior to renewal, Fecon may charge a fee for Dealer's continued access to the Telematics Services. If Fecon charges a fee for the Telematics Services, Fecon will inform Dealer of the fee to be charged in the

aforementioned notice, and will include an invoice for such fee. Invoices will be due upon receipt and considered past due if over 30 days late. Fecon reserves the right to terminate Dealer's access to the Telematics Services if any payment is not received within 30 days of the invoice date.

#### **6. End-User Accounts.**

Dealer does not have authority to create End-User accounts for Dealer's Customers. The Administrator shall have the authority and ability to create End-User accounts for authorized individuals to use the Telematics Services on Customer's behalf. The Administrator has the authority and ability to deactivate End-User accounts as necessary.

#### **7. Intended Use.**

The Telematics Services are to be used and installed per the Manuals provided to Dealer and/or any other instructions provided by Fecon (collectively, the "**Guidelines**"). Any use beyond or against the Guidelines are at Dealer's own risk. Fecon does not warrant or make any representations whatsoever regarding the use of the Telematics Services for any unintended use.

#### **8. Security.**

Fecon agrees to provide for a data protection and security program consistent with state, federal, and international laws and regulations and generally accepted industry standards.

#### **9. Intellectual Property Indemnity.**

Fecon shall indemnify, defend, or at its discretion, settle any third-party claim, suit or proceeding against Dealer to the extent that the Telematics Services (excluding any third-party software) infringes on any patent, copyright, trademark, or trade secret. Dealer will notify Fecon in writing of such claim, suit or proceeding; give Fecon sole control of the defense or settlement of such a claim; and provide all information and assistance reasonably requested by Fecon or its representatives to handle the defense or settlement of the claim. Fecon is not liable under this section if the alleged claim is caused by or based on: (a) use of the Telematics Services in combination with software not provided by Fecon if infringement would have been avoided in the absence of the combination; (b) modifications to the Telematics Services, including but not limited to the CUs, or Firmware, if the infringement would have been avoided by the absence of modifications; or (c) use of the Telematics Services in violation or outside the scope of this Agreement. THIS SECTION STATES DEALER'S SOLE AND EXCLUSIVE REMEDY AND FECON'S ENTIRE LIABILITY WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION CLAIMS PROVIDED UNDER THIS SECTION.

#### **10. Limited Warranty.**

Fecon warrants that the Telematics Services will be provided in a manner consistent with generally accepted industry standards. Fecon will not knowingly introduce Malicious Code or harmful malware into the Telematics Services. In the event of non-conformance with this warranty, Fecon will use commercially reasonable efforts to correct such non-conformance.

#### **11. Governing Law.**

The laws of the State of Ohio shall govern the construction of this Agreement and you agree to be subject to personal jurisdiction in the State of Ohio for the purposes of enforcing the provisions of this Agreement.

#### **12. Severability.**

In the event any provision of this Agreement is found to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of any of the remaining provisions shall not in any way be affected or impaired.

**13. Amendment.**

Fecon may modify any or all of the Agreement at any time. Fecon will provide you with notice of the revision.

**14. Acknowledgement.**

By using any part of the Telematics Services, you indicate that you have read this Agreement, understand it, and agree to be bound by its terms and conditions. You also agree to comply with all applicable local, state, federal, and international laws and regulations in its performance under this Agreement.