

End-User License Agreement for the DataPortal

IMPORTANT-READ CAREFULLY BEFORE USING THE TELEMATICS SERVICES: This End-User License Agreement ("**EULA**") is a legal agreement between you, as an End-Customer or an End-User (both defined below) and Fecon, LLC ("**Fecon**") for your licensed use of the Telematics Services, whereby Fecon's Licensor (defined below) shall be a third-party beneficiary under this EULA. By accepting this EULA or by activating, accessing, or otherwise using the Telematics Services, you agree to be and will be bound by the terms of this EULA as a condition of your license and use of the Telematics Services. You will be asked to review and either accept or not accept the terms of this EULA. If you do not agree to the terms of this EULA, your use is prohibited and you may not activate, access, or otherwise use the Telematics Services.

1. Definitions.

"Activation Date" means the date End-Customer or one of its End-Users first activates the Telematics Services or other commencement of the Telematics Services as determined between Fecon and End-Customer.

"Communication Units" or "**CUs**" means the onboard hardware devices sold by Fecon to the End-Customer and installed on End-Customer Machines that transmit End-Customer Machine Data to and from the Data Platform, enabling subscribed and licensed access by the End-Customer and its End-Users via the Web Portal or Fecon App.

"Fecon App" means any Fecon-developed application that interfaces with the Service to provide access to End-Customers or End-Users.

"End-Customer" means the business entity that is subscribed and licensed to use the Telematics Services sourced by Fecon from its Licensor.

"End-Users" means End-Customer employees or temporary contract personnel who are end-users licensed to use Telematics Services on behalf of the End-Customer under this EULA.

"Data Platform" means the cloud-based data platform, together with its Web Portal, Realtime Client, REST API and other IT systems, on and through which the Software runs the Telematics Services, stores the Machine Data, and provides End-Customers and their End-Users licensed access under Subscription.

"Web Portal" means the website branded in the name of Fecon containing the DataPortal and/or Standard Portal, through which End-Customers and their End-Users gain online access to use the Telematics Services.

"Derivatives" means any derivatives, modifications, error corrections, patches, bug fixes, metadata, configuration (calibration) settings, Software updates, upgrades, improvements, enhancements, and subsequent releases to the Software, no matter the creator.

"Firmware" means the software and or applications programming interface embedded within the CUs that interface with the Machine, including adaptations or other Derivatives (whoever the creator) to enable the CU to be compatible and communicate with the Machine controller communications protocol.

"Licensor" means Bosch Rexroth Corporation.

"Licensor Intellectual Property" means the Firmware, the Software, the Data Platform, the Web Portal, the Manuals, and the Telematics Services.

"Machine" means a vehicle, off-highway mobile machine, or other asset that includes a Telematics Communication Unit and is used in End-Customer's business operations, for which Machine Data is transmitted via the Telematics Services.

"Machine Data" means: (a) the machine-readable (raw) data collected from CUs and transmitted to the Data Platform and (b) the human-readable data processed from the raw data by the Telematics Services in the form of individual and aggregate data about an

End-Customer's Machines on status, geographical location and other vehicle and machine data transmitted between the Data Platform and CUs.

"Malicious Code" means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

"Manual" or **"Manuals"** means the user and installation guides provided in electronic or hardcopy to an End-Customer in conjunction with the Telematics Services.

"Mobile Communication Service" means all communication standards used by CUs, e.g. LTE, 5G, or other communication service used for transmitting Machine Data to and from CUs and Data Platform.

"Software" means the Software in object code format that performs the Telematics Services on the Data Platform, including the Web Portal, the Software updates, and Derivatives thereof, any metadata, configuration (calibration), settings, or calibration (configuration) tools corresponding thereto, and any installation and user guides and other software documentation related thereto.

"Subscription" means the End-Customer subscription to Telematics Services provided by Fecon.

"Subscription Term" means the duration of the Subscriptions for End-Customers set between Fecon and End-Customer.

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

2. Grant of Limited Sub-License to Telematics Services.

As of the Activation Date and during the Subscription Term, Fecon hereby grants (on behalf of Licensor) to the End-Customer and its End-Users a limited, non-sublicenseable, terminable, personal, nonexclusive and nontransferable:

- (a) license to use the Firmware,
- (b) license to use the Software,
- (c) right to access and use the Telematics Services via the Web Portal (to the extent of the Service Level), or Fecon App for End-Customer's internal business purpose of enabling its End-Users to monitor and control Machines, and
- (d) license to use the resultant Machine Data generated by the Telematics Services and sorted on the Data Platform, to the exclusion of:
 - (i) any use by any users other than the subscribing End-Customer and its End-Users;
 - (ii) any use with telematics control units or other devices not licensed from Licensor; and
 - (iii) any use for any machine not constituting a Machine of an End-Customer.

3. License Limitations.

Neither the End-Customer nor its licensed End-Users shall:

- (a) make any aspect of the Telematics Services or other Licensor Intellectual Property available to anyone, or permit anyone to use such Licensor Intellectual Property,
- (b) transfer, sell, resell, lend, disclose, use, license, sublicense, distribute, rent or lease any aspect of the Telematics Services or other Licensor Intellectual Property in a service bureau or outsourcing offering or for timesharing purpose,
- (c) use the Telematics Services or other Licensor Intellectual Property to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights,
- (d) use the Telematics Services or other Licensor Intellectual Property to store or transmit Malicious Code,
- (e) attempt to gain unauthorized access to any aspect of the Telematics Services, other Licensor Intellectual Property, or Fecon's related systems and networks,
- (f) intentionally interfere with or disrupt the integrity or performance of the Telematics Services or the data contained therein,
- (g) copy the Telematics Services, other Licensor Intellectual Property or any part, feature, function or user interface thereof,
- (h) reverse engineer, decompile, translate, disassemble or attempt to discover any source code or underlying ideas or algorithms of Licensor Intellectual Property or otherwise use Licensor Intellectual Property other than as permitted herein, or attempt to deface or remove any copyright, trademark, and other notices that appear on any Licensor Intellectual Property.
- (i) utilize robots, spiders, scrapers or other similar data collection or extraction tools, to utilize programs, algorithms or methods to search, access, acquire, copy, or monitor the Telematics Services, or
- (j) test, scan, or examine the vulnerability of the Telematics Services.

This Section 3 shall survive the termination of this EULA. End-Customer is solely responsible for any activity that occurs under the licensed account.

4. Licensor Intellectual Property.

The limited license and rights granted to you pursuant to Section 2 confers no title or ownership in Licensor Intellectual Property and shall not be construed as a sale of any rights in the foregoing. Subject to the limited license and rights granted to you pursuant to Section 2, Licensor shall own all rights, title, and interest in and to all Licensor Intellectual Property, as well as: (a) any Derivatives, improvements, enhancements, corrections, or customizations to the foregoing, jointly or independently created or developed by you and/or Licensor and (b) any suggestions, recommendations, and other feedback provided by you. Nothing in this EULA grants you any right to the Software source code. This Section 4 shall survive the termination of this EULA.

5. Machine Data.

Subject to the limited license and rights granted to you pursuant to Section 2, Fecon or Licensor shall own the Machine Data, and may freely collect and use the Machine Data for any lawful purpose, including but not limited to providing the Telematics Services to End-Customer or its End-Users. Fecon may also license the Machine Data, including to Licensor, to use in anonymous form. By activating this license, End-Customer consents to the collection, use, sale, or otherwise transfer of any and all Machine Data received from the End-Customer's Machine. This Section 5 shall survive the termination of this EULA.

6. Use of Use History and Profile Information.

By accepting this EULA or by activating, accessing, or otherwise using the Telematics Services and thereby agreeing to this EULA, you hereby grant Licensor and Fecon the right to unrestricted access and use of: (a) your Service account profile data and (b) your usage history data related to your usage of the Services and Machine Data ("**Usage History**"), as necessary for Licensor or Fecon to configure and/or reconfigure the End-Customer Service accounts to provide the Services. In addition thereto, acceptance of this EULA or activation or use of the Telematics Services constitutes your consent for Licensor or Fecon to, from time-to-time, aggregate your Usage History with Usage History of other End-Users and compile the same into a non-personally identifiable form and provide this aggregated Usage History to third parties without notice to End-Customer or End-User.

7. Feedback.

You may from time to time provide suggestions, comments, or other feedback to Fecon with respect to the Telematics Services and any other Licensor Intellectual Property ("**Feedback**"). You agree that any Feedback is and will be given voluntarily at your discretion. You hereby grant to Fecon and Licensor a royalty-free, non-exclusive, sublicensable, transferable, worldwide right and license to use, disclose, reproduce, distribute, or otherwise exploit the Feedback for any purpose.

8. Technical Support.

Licensor does not provide direct technical support to the End-Customer or its End-Users for Telematics Services, Software, Web Portal, CUs, or the Mobile Communication Service ("**Support Items**"). Fecon is solely responsible for the provision of technical support to End-Customers and/or End-Users for the Support Items on terms agreed upon between Fecon and End-Customer.

9. Warranty Disclaimer.

THE TELEMATICS SERVICES AND OTHER SUPPORT ITEMS, WHETHER FOR FREE OR FOR A CHARGE, ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. FECON AND LICENSOR MAKE NO REPRESENTATIONS AND GRANT NO WARRANTIES TO THE END-CUSTOMER OR ITS END-USERS RESPECTING THE TELEMATICS SERVICES OR OTHER SUPPORT ITEMS. ALL REPRESENTATIONS AND WARRANTIES RESPECTING THE SUPPORT ITEMS ARE HEREBY DISCLAIMED, WHETHER EXPRESS, IMPLIED, STATUTORY, WRITTEN, OR ORAL, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OF THIRD PARTIES' INTELLECTUAL PROPERTY RIGHTS, OR ANY WARRANTY THAT THE TELEMATICS SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS OR THAT THE OPERATION THEREOF WILL BE ERROR-FREE OR UNINTERRUPTED. This Section 9 shall survive the termination of this EULA.

10. Limitation of Liability.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR, FECON OR THEIR RESPECTIVE AFFILIATES BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, DIRECT, INDIRECT, SPECIAL, PUNITIVE OR OTHER DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO, WITHOUT LIMITATION, THE USE OF OR INABILITY TO USE THE SERVICES, LOST PROFITS, LOST OR INACCURATE DATA OR MACHINE DATA, FAILURE OF SECURITY MECHANISMS, AND WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF LICENSOR, FECON OR THEIR RESPECTIVE AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS EXCLUSION OF DAMAGES WILL BE EFFECTIVE EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. IN NO EVENT WILL FECON'S OR LICENSOR'S TOTAL LIABILITY TO YOU UNDER THIS EULA EXCEED THE AMOUNT YOU HAVE PAID TO FECON OR LICENSOR IN THE SIX (6) MONTHS PRIOR TO ANY CLAIM. This Section 10 shall survive the termination of this EULA.

11. Indemnification.

You agree to defend, indemnify, and hold harmless Licensor, Fecon, its suppliers, and its resellers from and against liabilities, costs, damages, and expenses (including settlement costs and reasonable attorneys' fees) arising from any claims from any person or entity that result from or relate to your use, reproduction, or distribution of the Telematics Services or your breach of any representation, warranty, or obligation under this EULA.

12. Termination; Suspension

This EULA may be terminated at any time upon: (a) termination of the Subscription Term, (b) termination of the agreement between Fecon and Licensor, (c) any notice by Fecon to End-Customer for any failure by End-Customer or its End-Users to comply with any term or condition of this EULA. This EULA will terminate immediately if End-Customer fails to comply with any term or condition of this EULA. Upon termination of this EULA for any reason: (a) the license granted in Section 2 and all other licenses or rights granted elsewhere in this EULA shall automatically and simultaneously terminate and (b) End-Customer and its End-Users shall immediately discontinue the use of the Telematics Services and any other Licensor Intellectual Property. The Telematics Services may also be suspended at any time by Fecon if End-Customer or any End-Users breach any term of this Agreement, or if required to by Licensor. Any suspension of the Telematics Services may be rescinded if Fecon or Licensor determines that the reason for the suspension has been remedied or no longer exists.

13. Applicable Law. Venue.

This EULA shall be governed by the laws of the State of Ohio, without regard to its conflicts of law principles and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). Any claim, dispute, or matter under or in connection with this EULA shall be brought exclusively in the state or federal courts located in the State of Ohio.

14. Severability.

In the event any provision of this EULA 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.

15. Force Majeure.

Neither Fecon nor Licensor shall be liable hereunder for any failure or delay in the performance of its obligations under this EULA if such failure or delay is on account of causes beyond its control, including but not limited to labor disputes, civil commotion, war, fires, floods, inclement weather, governmental regulations or controls, casualty, government authority, strikes, telecommunications failure or delay, epidemics, pandemics, or acts of God, in which event Fecon and/or Licensor shall be excused from its obligations for the period of the delay and for a reasonable time thereafter.

16. Acknowledgement.

By using the Telematics Services, you agree to comply with all applicable local, state, federal, and international laws and regulations in its performance under this EULA.