

## 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 Combilift ("**OEM**") for your licensed use of the Telematics Services, whereby OEM'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 OEM and End-Customer.

**"Communication Units"** or **"CUs"** means the onboard hardware devices sold by OEM 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.

**"End-Customer"** means the business entity that is subscribed and licensed to use the Telematics Services sourced by OEM 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 OEM 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, improvements, 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 Proemion GmbH.

**"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.

**"Manuals"** or **"Manuals"** means the user and installation guides provided in electronic or hardcopy to 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 OEM.

**“Subscription Term”** means the duration of the Subscriptions for End-Customers set between OEM 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 License to Telematics Services.**

As of the Activation Date and during the Subscription Term, OEM hereby grants (on behalf of Licensor) to the End-Customer and its End-Users a limited, 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) 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 or permit to 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 or other Licensor Intellectual Property, (f) copy the Telematics Services, other Licensor Intellectual Property or any part, feature, function or user interface thereof, (g) 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. This Section 3 shall survive the termination of this EULA.

## **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, Licensor is entitled to use the collected Machine Data in anonymous form in order to improve its products and services and for DataPlatform statistics (e.g. total number of active CUs). 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 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 configure and/or reconfigure the End-Customer Service accounts to provide the Services. In addition thereto, Licensor may 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 Licensor specified third parties.

#### **7. 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**”). OEM is solely responsible for provision of technical support to End-Customers and/or End-Users for the Support Items on terms agreed upon between OEM and End-Customer.

#### **8. Warranty Disclaimer.**

LICENSOR MAKES NO REPRESENTATIONS AND GRANTS 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 WRITTEN OR ORAL, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. OEM is solely responsible for the provision (if any) of warranties to End-Customers and/or End-Users for the Support Items (if any) on terms agreed upon between OEM and End-Customer. This Section 8 shall survive the termination of this EULA.

#### **9. Limitation of Liability.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR OR ITS AFFILIATES BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, DIRECT, INDIRECT, SPECIAL, PUNITIVE OR OTHER DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SERVICES OR MACHINE DATA AND WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF LICENSOR OR ITS AFFILIATE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS EXCLUSION OF DAMAGES WILL BE EFFECTIVE EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. This Section 9 shall survive the termination of this EULA.

#### **10. Termination.**

This EULA may be terminated at any time upon: (a) termination of the Subscription Term, (b) termination of the Master Telematics Agreement between OEM and Licensor, (c) any notice by Licensor to End-Customer for any failure by End-Customer or its End-Users to comply with any term 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.

#### **11. Applicable Law. Venue.**

This EULA shall be governed by the laws of the Federal Republic of Germany, without regard to its conflicts of law principles and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). The District Court (Landgericht) of Frankfurt am Main, Chamber for International Commercial Disputes, shall have exclusive jurisdiction. Official language used in Court may be English.