



## **“iTAP” App End-User License Agreement (EULA).**

### **Preamble**

The present Smart Phone / Tablet (hereinafter: “Device”) Application or App “iTAP” (hereinafter: “Licensed Product”) provided by Bendix Commercial Vehicle Systems LLC (hereinafter “Licensor”), shall enable the Device to act as a Wi-Fi enabled remote control device for heavy trailers fitted with iTAP hardware.

### **§ 1 Agreement Overview**

This Agreement is a legally valid contract between you (hereinafter: “Licensee”) and the Licensor. Licensee accepts the Agreement by downloading, installing or otherwise using the Licensed Product. The Licensee is not authorized to use the Licensed Product if he/she is not willing to accept the terms and conditions of this Agreement.

### **§ 2 Performance of the Licensor**

#### **(1) Granting of Rights**

The Licensor shall grant to the Licensee a non-exclusive, non-transferable, non-sub licensable, fully-paid up right and license to use the Licensed Product and the related documentation for the term of this Agreement.

#### **(2) Rights in the Licensed Product**

The license entitles a Licensee to connect to a trailer containing iTAP hardware with the Device equipped with the Licensed Product. Other than such copying of the Licensed Product solely for the permitted use under this Agreement Licensee may not distribute or make the Licensed Product available over a network where it could be used by multiple mobile devices at the same time. Licensee may not rent, lease, lend, sell, redistribute or sublicense the Licensed Product to any third party, including third-party fleets and dealers, without the prior written consent of Licensor, which consent may be withheld by Licensor in its sole and absolute discretion. Licensee may not copy (except as expressly permitted by this License), decompile, reverse engineer, disassemble, attempt to derive source code of, modify, or create deviation works of the Licensed Product, any updates or any part thereof (unless the foregoing restriction is prohibited by applicable law or permitted). In addition, any commercial copying or distribution, publication or exploitation of any content, software, code, data or materials are strictly prohibited unless Licensee has received express prior written permission from Licensor. Licensee shall not use or permit the use of the Licensed Product for commercial purposes on any vehicles not directly owned or leased by Licensee. The Licensee shall ensure that the Device is correctly secured into the vehicle in such manner that does not cause obstruction of the driver’s view, vehicle controls, or cause harm to the occupants of the vehicle. The Licensee shall not use the Device and Licensed Product in any manner that is in conflict with any federal, state or local law governing the operation of a motor vehicle.

#### **(3) Reservation of Rights**

The rights granted to Licensee hereunder shall not affect the exclusive ownership by Licensor of any trademark, copy write, patents or common law property rights of Licensor to the iTAP software or documentation. The license granted in this Agreement shall not be construed expressly, by implication or estoppel, as the grant of a license under any trademark, patent or other intellectual property of Licensor.

Licensor reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Licensed Products (or any part thereof) with or without notice. Licensee agrees that Licensor shall not be liable to Licensee or to any third party for any modification, suspension or discontinuance of the Licensed Product. Licensor reserves the right to change, limit usage of, change or discontinue usage of, and/or discontinue any service at any point in time.

Licensee shall not use or permit the use of the Licensed Product for commercial purposes on any vehicles not directly owned or leased by Licensee.

### **§ 3 Ownership**

The Licensed Product, all copies thereof and all intellectual property rights of whatever nature in and to the Licensed Product, including derivative works, are and shall remain the sole property of Licensor. The Licensed Product provided by Licensor to Licensee shall constitute solely the grant of a limited right and license to use the Licensed Product in strict accordance with the provisions of this Agreement and shall not constitute a sale or transfer of the title or any other rights of the Licensed Product by Licensor.

### **§ 4 Documentation; Updates**

This license entitles Licensee to all upgrades and updates to the Licensed Product as they are developed and made available for distribution by Licensor and all technical service information, including technical bulletins, service manuals and publications relating to the Licensed Product as available.

## **§ 5 Warranties and Liability**

The Licensed Product and Documentation is provided on an “AS IS” basis, without warranty of any kind. Except as otherwise set forth in this Agreement, Licensor does not warrant that the Licensed Product will be uninterrupted or error-free in all circumstances and LICENSOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED PRODUCT INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

The entire risk as to the quality and performance of the Licensed Product is borne by Licensee. Should the Licensed Product prove defective, Licensee and not Licensor shall assume the entire cost of any service and repair. This disclaimer of warranty constitutes an essential part of the Agreement.

## **§ 6 Limitation of Liability**

IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER OR DEVICE FAILURE OR ANY AND ALL OTHER COMMERCIAL DAMAGES AND LOSSES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR LICENSEE’S USE OF OR INABILITY TO USE THE LICENSED PRODUCT, WHETHER OR NOT THE DAMAGES WERE FORESEEABLE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LICENSOR’S AGGREGATE LIABILITY TO LICENSEE, WHETHER UNDER CONTRACT, TORT, STATUTE OR OTHERWISE SHALL NOT EXCEED THE AMOUNT OF TEN U.S. DOLLARS (\$10.00). THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE

## **§ 7 Confidentiality**

(1) Licensee agrees to treat the Licensed Product and Documentation as confidential proprietary information of Licensor and to use the same degree of care with such Licensor proprietary information as it uses to protect its own proprietary information, but in no event less than a reasonable standard of care. The Licensee shall not use the Licensed Product and the related know-how in order to produce or to use a competing product.

(2) The Licensor shall not collect personal information from the Licensed Product. Diagnostic Information for the improvement of the Licensed Product may be collected and sent to the Licensor by email at the request of the Licensee.

## **§ 8 Duration of the Agreement**

The limited right and license granted to Licensee hereunder shall be perpetual, unless otherwise terminated by Licensor or as provided in this Agreement.

## **§ 9 Termination**

This license will terminate automatically if Licensee fails to comply with the limitations described herein. Upon such termination, Licensee shall immediately cease all use of and delete and/or destroy all Licensed Products and related documentation, together with all copies thereof, in Licensee’s possession or control.

## **§ 10 Entire Agreement**

This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof, and the delivery and use of Licensed Products shall not create any obligations or rights except as expressly set forth in this Agreement.

## **§ 11 Severability**

Each and every provision of this Agreement is completely severable, and the invalidity of any one or more such provisions shall not in any way affect the validity of this Agreement or any of the other provisions thereof.

## **§ 12 Governing Law**

Any and all matters of dispute between the parties hereto shall be governed by, and accordance with, the laws of the State of Ohio, regardless of the legal theory upon which such matter is asserted. Any litigation will be brought exclusively in Cleveland, Ohio, and the parties consent to the jurisdiction of the state and federal courts located therein, submit to the jurisdiction thereof, and waive the right to change venue. The application of the UN Sales Convention (CISG) is explicitly excluded. The Licensor reserves the right to amend this EULA or the App at any time, with or without notice. If you do not agree to, or cannot comply with the EULA as amended, you must stop using the App. You will be deemed to have accepted the EULA as amended if you continue to use the App after any amendments have been made to the EULA.

The information contained herein is subject to change without notice and therefore may not be the latest release. Note: If service work is carried out on a vehicle based on information provided herein, it is the responsibility of the repair facility to ensure the vehicle is fully tested and in full functional order before the vehicle is returned into service. Bendix CVS accepts no liability for problems caused as a result of appropriate tests not being carried out.

