

Electronic Application Terms of Service

1. GENERAL

- 1.1 The following terms and conditions govern your use of this Application (as defined below). **Your installation or use of any aspect of the Application indicates your understanding of and agreement to these terms and conditions (the "Agreement"). If you do not agree, you are not authorized to use the Application.** Please email us at Acceleratoolsupport@cummins.com if you have any questions about the Application or about these Terms of Service.

2. DEFINITIONS

- 2.1 The "Application" means the software and services provided by Cummins Inc., its subsidiaries, divisions, related companies, successors and assigns ("Accelera by Cummins ") to you hereunder, and downloaded or used by you to offer you information, services and products, along with any updates and upgrades provided to you from time to time, and any other software or documentation from Accelera by Cummins that enables installation or use of any of the foregoing. The latter are also subject to this Agreement unless they are accompanied by a separate license agreement, in which case the terms of that separate license agreement will govern.

3. DATA COLLECTION AND PRIVACY

- 3.1 You represent and warrant to Accelera by Cummins that (1) you have the legal right and authorization to provide all Data to Accelera by Cummins for the purposes and Accelera by Cummins' use as set forth herein, and (2) if you are not the owner of the equipment, you have obtained written authorization and consent from the equipment owner to provide the Data to Accelera by Cummins for the purposes and Accelera by Cummins' use as set forth herein. You agreed to defend, indemnify, and hold Accelera by Cummins harmless from and against all third party claims, damages, and expenses (including reasonable attorneys' fees) against or incurred by Accelera by Cummins arising out of (a) your breach of any terms and conditions of this Section 3, and (b) any Data you provide to Accelera by Cummins or otherwise collect or process using the Application.
- 3.2 You acknowledge and agree that Accelera by Cummins may, from time to time, collect, use and maintain on its servers certain technical, diagnostic, GPS location and other information about or from any equipment that you are monitoring through the Application. The data collected by Accelera by Cummins through the Application includes powertrain data, powertrain parameters, , fault codes, serial numbers, performance data, services levels and the make, model, serial number and equipment identification number. All data collected by Accelera by Cummins through the Application is collectively referred to herein as "Data".
- 3.3 Accelera by Cummins may use the Data before and after the term of this Agreement to facilitate the provision of software updates, product support,

and other products and services related to the Application to you and other customers. Accelera by Cummins may also use the Data before and after the term of this Agreement for any other commercial purpose as permitted by applicable law. You further agree and acknowledge that Accelera by Cummins may, without restriction, transmit Data to Accelera by Cummins third party designees and you authorize release of information for Accelera by Cummins third party designees to contact you to discuss additional product offers. Accelera by Cummins reserves the right to modify the Data and such modified, data shall be owned by Accelera by Cummins.

- 3.4 We may collect personal information that can be used to identify you, such as your name and address. For mobile application, if you would like to disable the Application's ability to collect GPS location, you can turn off the "Share Location" setting under the "Settings" window. For web based access to the Application, please email us at Acceleratoolsupport@cummins.com to request disabling GPS location functionality.

4. PROPRIETARY RIGHTS AND LICENSE; CONDITIONS

- 4.1 All trademarks, copyright, database rights, and other intellectual property rights of any nature in the Application that are now existing or that hereafter come into existence, together with those of the underlying software code and information provided or generated by the Application are owned either directly by Accelera by Cummins or its licensors.
- 4.2 Subject to the conditions set forth below and your payment of all fees (if any), Accelera by Cummins hereby grants you a non-exclusive, royalty-free, non-transferable, non sublicensable, personal license to download and use, on a compatible Apple iOS or Android OS personal device that you own or control, the Application and information provided for your personal use in accordance with this Agreement. All other rights are reserved by Accelera by Cummins and its licensors. No other express or implied licenses or ownership rights are granted to you.
- 4.3 You will not, nor allow third parties on your behalf, nor are you granted any right to, (i) make or distribute copies of the Application, rent, lease, sell, or otherwise transfer the Application; (ii) attempt to copy, reproduce, alter, modify, reverse engineer, disassemble, decompile, transfer, or translate the Application (except to the extent that any of the foregoing restrictions is expressly prohibited by law); or (iii) create derivative works of the Application. If you sell your mobile device to a third party, you must remove the Application from it before doing so.

5. CHANGES; MOBILE PROVIDERS; AVAILABILITY

- 5.1 Accelera by Cummins reserves the right to change or withdraw the Application, the form and content of the information provided, and/or this Agreement at any time and for any reason without prior notice except to

the extent directly prohibited by the applicable app store through which you purchase or download the Application, including, without limitation, Google Play and iTunes (the "App Store").

- 5.2 You acknowledge that the terms of your contract with your respective mobile network provider ('Mobile Provider') will continue to apply when using the Application. As a result, you may be charged by the Mobile Provider for access to network connection services for the duration of the connection while accessing the Application or any such third party charges as may arise. You accept responsibility for any such charges that arise. Moreover, additional terms, conditions and policies of the App Store may also apply. It is your responsibility to read and comply with them.
- 5.3 If you are not the bill payer for the mobile telephone or handheld device being used to access the Application, you represent and warrant that you have received permission from the bill payer for using the Application.
- 5.4 The Application is provided over the internet and mobile networks and so the quality and availability of the Application may be affected by factors beyond Accelerera by Cummins' control. Moreover, neither Accelerera by Cummins nor any of its subsidiaries and affiliates has any responsibility for the availability or unavailability of the Application or information therefrom due to interruption of service, difficulty or inability to download or access content, any bug or virus, or any communication system failure or any factors beyond Accelerera by Cummins' control.

6. LAWFUL AND PROPER USE; INDEMNIFICATION

- 6.1 You represent and warrant that you will only use the Application for lawful purposes in accordance with all applicable Federal, State, international, and local laws and regulations, and that in the case of Applications that you use to monitor equipment, that you have the right and authority to connect the Application to such equipment and monitor it.
- 6.2 This application is intended to be launched and used only while the user of the Application is not operating equipment. You agree to use the Application responsibly, and to avoid any interaction with the Application while operating equipment.
- 6.3 The Application may interact with a Bluetooth adapter through use of a generic password. You acknowledge and agree that it is possible for third parties to bypass the security or otherwise hack into the device for so long as the adapter is attached to the equipment or other equipment. Accordingly, you acknowledge and agree that you will use the device responsibly, and you are solely responsible for the security of the device while in your possession custody or control.
- 6.4 You agree to indemnify and hold harmless Accelerera by Cummins, Cummins Inc. and its affiliates and its and their officers, directors, employees and agents from any and all claims and losses imposed on, incurred by or asserted as a result of or related to your noncompliance with this

Agreement or the inaccuracy of any of your representations and warranties in this Agreement.

7. SYSTEM REQUIREMENTS

- 7.1 In order to use the Application, you are required to have, maintain and update at your sole expense computer equipment, a compatible mobile telephone, or handheld device, internet access, and the necessary ports, adapters, dongles, or other equipment, all of which must meet the minimum specifications prescribed by Accelera by Cummins from time to time.
- 7.2 The version of the Application software may be updated or upgraded from time to time to add or change support for new functions and services. Your failure to use an updated or upgraded version could result in a lower quality experience or loss of functionality or access to data.

8. TERMINATION

- 8.1 Accelera by Cummins may terminate, modify, or suspend all or part of the Application and related services or your access at any time for any reason without notice and without any liability to you, except that if it does so without cause solely for convenience and you are paying recurring license fees to Accelera by Cummins, Accelera by Cummins will provide you a pro-rata refund of any such license fees to account for any pre-paid usage for the remainder of the applicable billing term. Otherwise, you will remain liable for all amounts due through the date of termination.
- 8.2 Upon any termination, the rights and licenses granted to you herein shall terminate; and you must cease all use of the Application immediately.
- 8.3 Notwithstanding Section 8.2, in the event of termination Accelera by Cummins may continue to use Data acquired through this Agreement indefinitely, and Data will not be returned to you. Personal information collected pursuant to Section 3.4 may be destroyed or returned to you upon written request or as required by law.

9. EXCLUSION OF DAMAGES; LIMITATION OF LIABILITY

9.1 TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL, CUMMINS INC. OR ANY OF ITS SUBSIDIARIES, AFFILIATES, SUPPLIERS OR LICENSORS, OR ITS OR THEIR OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM OR IN CONNECTION WITH THE USE OF OR ACCESS TO THE APPLICATION OR ANY INFORMATION PROVIDED, GENERATED OR TRANSMITTED THROUGH IT, OR ANY FAILURE THEREOF, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, PROFIT, GOODWILL, SALES, SERVICE, TIME, OR THE LIKE, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF NOTIFIED OF THE POSSIBILITY OF A CLAIM FOR SUCH DAMAGES.

9.2 Cummins Inc. is not liable for any damage or alteration to equipment including but not limited to computer equipment, handheld device, or mobile telephones as a result of the installation or use or update of the Application.

9.3 TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL CUMMINS INC. OR

ITS SUPPLIERS OR LICENSORS TOTAL LIABILITY TO YOU FOR ALL DAMAGES OR COSTS ARISING FROM OR IN CONNECTION WITH THE USE OF OR ACCESS TO THE APPLICATION OR ANY INFORMATION PROVIDED, GENERATED OR TRANSMITTED THROUGH IT, OR THE FAILURE THEREOF EXCEED AN AMOUNT EQUAL TO THE GREATER OF (A) ALL LICENSE OR SIMILAR FEES PAID BY YOU TO CUMMINS INC. FOR THE USE OF THE APPLICATION DURING THE 12 MONTHS PRIOR TO WHEN THE CAUSE OF ACTION AROSE; OR (B) FIFTY DOLLARS (\$50.00). THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

9.4 YOUR WIRELESS CARRIER, INTERNET SERVICE PROVIDER, THE MANUFACTURER

AND RETAILER OF YOUR MOBILE DEVICE OR COMPUTING EQUIPMENT, THE DEVELOPER OF THE OPERATING SYSTEM FOR YOUR MOBILE DEVICE, AND THE OPERATOR OF ANY APPLICATION STORE OR SIMILAR SERVICE THROUGH WHICH YOU OBTAIN THE APPLICATION (COLLECTIVELY, THE "THIRD PARTIES") ARE NOT PARTIES TO THIS AGREEMENT AND THEY DO NOT OWN AND ARE NOT RESPONSIBLE FOR THE APPLICATION. YOU AGREE (I) THE THIRD PARTIES DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, WITH RESPECT TO THE APPLICATION, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND FITNESS FOR A PARTICULAR PURPOSE; (II) IN NO EVENT WILL THE THIRD PARTIES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) ARISING OUT OF THIS AGREEMENT OR THE APPLICATION, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES; (III) IN ANY EVENT, THE MAXIMUM LIABILITY OF ANY THIRD PARTY FOR ALL CLAIMS (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) OF EVERY KIND WILL IN NOT EXCEED FIVE DOLLARS (\$5.00); AND (IV) YOU WAIVE ANY AND ALL CLAIMS, NOW KNOWN OR LATER DISCOVERED, THAT YOU MAY HAVE AGAINST THE THIRD PARTIES ARISING OUT OF THE APPLICATION AND THIS AGREEMENT.

10. WARRANTY DISCLAIMER

10.1 THE APPLICATION AND THE INFORMATION PROVIDED, GENERATED OR

TRANSMITTED THROUGH IT ARE MADE AVAILABLE "AS IS" AND WITH ALL FAULTS AND DEFECTS. CUMMINS INC. DOES NOT WARRANT THE ACCURACY OF THE INFORMATION PROVIDED OR THAT YOUR USE WILL BE UNINTERRUPTED

OR ERROR-FREE OR THAT ALL ERRORS WILL BE CORRECTED. CUMMINS INC. AND ITS SUBSIDIARIES AND AFFILIATES DISCLAIM ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, WITH REGARD THERETO, INCLUDING ANY WARRANTIES AGAINST INFRINGEMENT OR OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THE ABOVE EXCLUSION OF IMPLIED WARRANTIES MAY NOT APPLY TO YOU.

10.2 Third Party Warranties. Third-party equipment, software and peripheral products are covered by the warranties provided by the original manufacturer or the seller of the product. Third party warranties may vary from product to product. It is your responsibility to consult the applicable product documentation for specific warranty information. In addition, you acknowledge that certain third party equipment or software warranties may limit or void the remedies that they offer if unauthorized persons perform support service on the equipment or software. It is your responsibility to ensure that any impact that Accelera by Cummins' delivery of the Application might have on third party warranties is acceptable to you.

11. EXPORT

You may not use or otherwise export or re-export the Application except as authorized by United States law and the laws of the jurisdiction in which the Application was obtained. In particular, but without limitation, the Application may not be exported or reexported (a) into any U.S.-embargoed countries or (b) to anyone on the U.S. Treasury Department's Specially Designated Nationals List or the U.S. Department of Commerce Denied Persons List or Entity List. By using the Application, you represent and warrant that you are not located in any such country or on any such list. Without limiting the generality of Section 6.1, you agree that you will not use the Application for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture, or production of nuclear, missile, or chemical or biological weapons.

12. GOVERNMENT USE

The Application and related documentation are "Commercial Items", as that term is defined at 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 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

13. GOVERNING LAW; VENUE; ARBITRATION; CLASS ACTION WAIVER

13.1 Except to the extent otherwise required by the agreements and policies of the App Store from which you download the Application, the laws of the State of Indiana, excluding its conflicts of law rules, govern this Agreement. Your use of the Application may also be subject to other local, national, or international laws.

13.2 Except to the extent otherwise required by the agreements and policies of the App Store from which you download the Application or to the extent prohibited by law, any legal action arising out of or relating to this Agreement may be filed only in the state court located in Bartholomew County, Indiana. You irrevocably consent and submit to the exclusive personal jurisdiction of those courts for the purpose of litigating any such action, and you waive any jurisdictional, venue, or inconvenient forum objections to such court.

13.3 Binding Arbitration and Class Action Waiver

- (a) Application. This Section applies to a dispute initiated under Section 9.3 EXCEPT IT DOES NOT INCLUDE A DISPUTE RELATING TO COPYRIGHT INFRINGEMENT, OR TO THE ENFORCEMENT OR VALIDITY OF YOUR, CUMMINS, OR ANY OF CUMMINS' LICENSORS' INTELLECTUAL PROPERTY RIGHTS. Dispute means any dispute, action, or other controversy between You and Cummins, other than the exception listed above concerning the Software (including its price) or this EULA, whether in contract, warranty, tort, statute, regulation, ordinance, or any other legal or equitable basis.
- (b) Notice of Dispute. In the event of a Dispute, You or Cummins must give the other a "Notice of Dispute", which is a written statement of the name, address, and contact information of the party giving it, the facts giving rise to the dispute, and the relief requested. You and Cummins will attempt to resolve any dispute through informal negotiation within 60 days from the date the Notice of Dispute is sent. After 60 days, you or Cummins may commence arbitration.
- (c) Small claims court. You may also litigate any dispute in small claims court in your county of residence or Cummins Inc. principal place of business, if the dispute meets all requirements to be heard in the small claims court. You may litigate in small claims court whether or not You negotiated informally first.
- (d) Binding arbitration. If You and Cummins Inc., do not resolve any dispute by informal negotiation or in small claims court, any other effort to resolve the dispute will be conducted exclusively by binding arbitration. You are giving up the right to litigate (or participate in as a party or class member) all disputes in court before a judge or jury. Instead, all disputes will be resolved before a neutral arbitrator, whose decision will be final except for a limited right of appeal under the Federal Arbitration Act. Any court with jurisdiction over the parties may enforce the arbitrator's award.
- (e) Class action waiver. Any proceedings to resolve or litigate any dispute in any forum will be conducted solely on an individual basis. Neither You nor Cummins Inc., will seek to have any dispute heard as a class action, as a private attorney general action, or in any other proceeding in which any party acts or proposes to act in a representative capacity. No arbitration or other proceeding will be combined with another without the prior written consent of all parties to all affected arbitrations or proceedings.
- (f) Arbitration procedure. Any arbitration will be conducted by the American Arbitration Association (the "AAA"), under its Commercial Arbitration Rules. If You are an individual and use the SOFTWARE for personal or Product use, or if the value of the dispute is \$75,000 or less whether or not You are

an individual or how You use the SOFTWARE, the AAA Supplementary Procedures for Consumer-Related Disputes will also apply. To commence arbitration, submit a Commercial Arbitration Rules Demand for Arbitration form to the AAA. You may request a telephonic or in-person hearing by following the AAA rules. In a dispute involving \$10,000 or less, any hearing will be telephonic unless the arbitrator finds good cause to hold an in-person hearing instead. For more information, see adr.org or call 1-800-778-7879. You agree to commence arbitration only in your county of residence or Cummins' principal place of business. The arbitrator may award the same damages to You individually as a court could. The arbitrator may award declaratory or injunctive relief only to You individually, and only to the extent required to satisfy Your individual claim.

(g) Arbitration fees and incentives.

Disputes involving \$75,000 or less. If you reject Cummins last written settlement offer made before the arbitrator was appointed ("last written offer"), your dispute goes all the way to an arbitrator's decision (called an "award"), and the arbitrator awards you more than the last written offer, Cummins will give you two incentives: (1) pay the greater of the award or \$7,000; and (3) reimburse any expenses (including expert witness fees and costs) that your attorney reasonably accrues for investigating, preparing, and pursuing your claim in arbitration. The arbitrator will determine the amounts.

i. Disputes involving more than \$75,000. The AAA rules will govern payment of filing fees and the AAA's and arbitrator's fees and expenses.

ii. Disputes involving any amount. In any arbitration You commence, Cummins Inc. will seek its AAA or arbitrator's fees and expenses, or Your filing fees if reimbursed, only if the arbitrator finds the arbitration frivolous or brought for an improper purpose. In any arbitration Cummins commences, it will pay all filing, AAA, and arbitrator's fees and expenses. It will not seek its attorney's fees or expenses from you in any arbitration. Fees and expenses are not counted in determining how much a dispute involves.

(h) Claims or disputes must be filed within one year. To the extent permitted by law, any claim or dispute under this EULA to which this Section applies must be filed within one year in small claims court (Section c) or in arbitration (Section d). The one-year period begins when the claim or dispute first could be filed. If such a claim or dispute is not filed within one year, it is permanently barred .

(i) Severability. If the class action waiver (Section e) is found to be illegal or unenforceable as to all or some parts of a dispute, then that portion of Section e will not apply to those parts. Instead, those parts will be severed and proceed in a court of law, with the remaining parts proceeding in arbitration. If any other provision of that portion Section e is found to be illegal or unenforceable, that provision will be severed with the remainder of Section e remaining in full force and effect

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14. RELATIONSHIP

This Agreement does not create any agency, distributorship, employee-employer, partnership, joint venture, or similar business relationship between you and Accelera by Cummins.

15. SEVERABILITY; LANGUAGE

15.1 The provisions of this Agreement shall be severable and independent of each other. In the event that any provision shall be determined to be

unenforceable in a particular jurisdiction by a court of competent jurisdiction, such determination shall not be deemed to affect the enforceability of any other provision, and any court making such a determination is hereby requested and empowered to modify such provision and to substitute such limitation or provision of a maximum scope as it then deems reasonable and judicially enforceable, and the parties agree that such substitute provision shall be as enforceable in such jurisdiction.

- 15.2** In the event that a translation of this Agreement is provided to you, the English language version shall be the official version and shall govern if there is a conflict between the two.

16. ENTIRE AGREEMENT; CHANGES

This Agreement contains the entire agreement between the parties with respect to its subject matter, other than any additional terms and conditions required by the applicable App Store, and it supersedes all prior writings or agreements thereto. Accelerata by Cummins reserves the right at any time to modify this Agreement and to impose new or additional terms or conditions on your use of the Application. Such modifications and additional terms and conditions will be effective immediately and incorporated into this Agreement. Your continued use of the Application will be deemed acceptance thereof.

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