

BOMAG Connect License Agreement

THIS CLOUD SERVICES/TELEMATICS AGREEMENT (“AGREEMENT”) GOVERNS YOUR USE OF BOMAG AMERICAS, LLC (“BOMAG”) SERVICES AND APPS, AS DESCRIBED BELOW.

IF THIS AGREEMENT IS BEING AGREED TO BY A COMPANY OR OTHER LEGAL ENTITY, THEN THE PERSON AGREEING TO THIS AGREEMENT ON BEHALF OF THAT COMPANY OR ENTITY REPRESENTS AND WARRANTS THAT HE OR SHE IS AUTHORIZED AND LAWFULLY ABLE TO BIND THAT COMPANY OR ENTITY TO THIS AGREEMENT. IN THAT CASE, ALL REFERENCES TO “YOU” REFER TO YOUR EMPLOYER

YOU SHOULD PRINT AND RETAIN A COPY OF THIS AGREEMENT FOR YOUR RECORDS BY USING THE PRINT FUNCTIONALITY IN YOUR BROWSER.

1. **Term.** This Agreement will become effective on the Effective Date and continue thereafter for the period set forth in the order document (the “**Order**”) between the parties (the “**Initial Term**”), unless earlier terminated as provided herein. Thereafter, the Agreement will automatically renew for successive periods of the same length (each a “**Renewal Term**”), unless either party gives notice to the other of its intent not to renew at least thirty (30) days prior to the expiration of the then current term. The Initial Term and any Renewal Terms are referred to, collectively, as the “**Term.**”

2. **Services.** Subject to the terms and conditions of this Agreement and Your payment of all relevant fees, BOMAG grants You and your End Users (as defined below) a non-exclusive, non-transferable license to access and use BOMAG’s hosted services, as identified in the Order, (the “**Services**”) solely for Your internal business purposes. Use of the Services may be subject to additional restrictions and usage limitations, as set forth in the Order. For purposes of this Agreement, “**End Users**” means Your employees, contractors and representatives who are authorized to access the Services on Your behalf.

3. **Mobile App.** In connection with the Services, BOMAG may make available various mobile applications (the “**Apps**”), currently available through the Google Playstore. Use of the Apps is subject to the accompanying end user license agreement provided with the App. All Apps may only be used in support of Your use of the Services and for no other purpose.

Restrictions. You and your End Users may only use the Services as described in this Agreement and in the then current documentation made generally available by BOMAG to its customers regarding use of the Services (the “**Documentation**”). You are responsible for ensuring your End Users comply with all relevant terms of this Agreement and any failure to comply will constitute a breach by You. Except as expressly authorized by this Agreement, You will not, and will not allow any End User or

other third party to, (i) permit any third party to access or use the Services other than an End Users; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to derive the trade secrets embodied in the Services, except to the extent expressly permitted by applicable law; (iii) use the Services or any BOMAG Confidential Information to develop a competing product or service; (iv) use any Service, or allow the transfer, transmission, export, or re-export of any Service or portion thereof, in violation of any export control laws or regulations administered by the U.S. Commerce Department or any other government agency; or (v) remove any copyright, trademark, proprietary rights, disclaimer, or warning notice included on or embedded in any part of the Documentation and Service, including any screen displays, etc., or any other products or materials provided by BOMAG hereunder. Under no circumstances will BOMAG be liable or responsible for any use, or any results obtained by the use, of the Services in conjunction with any services, software, or hardware not conforming to any specifications provided by BOMAG or furnished by BOMAG.. All such use will be at Your sole risk and liability.

4. **Availability.** BOMAG will use commercially reasonable efforts to make the Services available for remote access 99% of the time each calendar month of the Term, excluding Excused Outages (as defined below) (“**Availability**”). Downtime as a result of any causes beyond the control of BOMAG or that are not reasonably foreseeable by BOMAG, including, without limitation by any of the events noted below are excluded from the Availability calculations (collectively, “**Excused Outages**”):

a. your environment issues affecting connectivity or interfering with the Services, including without limitation, your telecommunications connection or any other, your software or equipment, your web sites, your firewall software, hardware or security settings, your configuration of anti-virus software or anti-spamware or malware software, or operator error;

b. any third-party software, hardware, or telecommunication failures, including Internet slow-downs or failures;

c. force majeure events, including, without limitation fire, flood, earthquake, elements of nature or acts of God; third party labor disruptions, acts of war, terrorism, riots, civil disorders, rebellions or revolutions; quarantines, embargoes and other similar governmental action; or any other similar cause beyond the reasonable control of BOMAG;

d. issues related to third party domain name system (DNS) errors or failures;

e. scheduled maintenance of the Services, conducted on a regular basis, of which BOMAG will give You a minimum of twenty-four (24) hours advanced notice by email or other pre-approved notification; and

f. emergency maintenance of the Services, not to exceed four (4) hours in any month, for which You may not receive advanced notice.

BOMAG Connect License Agreement

In the event BOMAG fails to achieve the Availability requirement, BOMAG will use commercially reasonable efforts to correct the interruption as promptly as practicable. In the event BOMAG fails to achieve the Availability requirement in two consecutive months during the term of this Agreement, You may terminate this Agreement within thirty (30) days of the end of the second consecutive month, without further obligation and receive a prorated refund of any pre-paid, unused recurring fees. The refund will constitute Your sole and exclusive remedy and BOMAG's sole and exclusive liability for failure to achieve the Availability requirement.

5. Connectivity. You and End Users are solely responsible for all telecommunication or Internet connections required to access the Services, as well as all hardware and software at Your site. In addition to other third-party costs that may apply, You agree to pay for all telecommunications costs, fees and services required for and dedicated to Your access to the Services.

6. Proprietary Rights. You acknowledge and agree that (i) all Services, including Support Services, are protected by intellectual property rights, as applicable, of BOMAG and its vendors/licensors and that You have no right to transfer or reproduce any of the foregoing or any software provided with the Services or prepare any derivative works with respect to, or disclose Confidential Information (as defined in Section 13 (Confidentiality)) pertaining to, any Services, including Support Services, or any part of them and (ii) that BOMAG owns all right, title, and interest in and to the Services, including Support Services, including any changes or modifications made to the Services performed in connection with this Agreement, together with all ideas, architecture, algorithms, models, processes, techniques, user interfaces, database design and architecture, and "know-how" embodying the Services, including Support Services. Under no circumstances will You be deemed to receive title to any portion of the Services, including Support Services, title to which at all times will vest exclusively in BOMAG. This is not a "work made for hire" agreement, as that term is defined in Section 101 of Title 17 of the United States Code. You will preserve all Services from any liens, encumbrances, and claims of any individual or entity. You will not use any Confidential Information disclosed by BOMAG to You in connection with this Agreement to contest the validity of any intellectual property rights of BOMAG or its licensors. Any such use of BOMAG's Confidential Information will constitute a material, non-curable breach of this Agreement.

7. Your Data. You grant BOMAG a non-exclusive, world-wide, royalty-free license to use all data and other information uploaded or input to the Services, either directly or through the Apps or equipment/hardware purchased from BOMAG or its distributors (the "Data") for purposes of performing this Agreement. You will be responsible for obtaining all rights, permissions, licenses, and authorizations to provide the Data to BOMAG for use as contemplated under this Agreement. The Data will constitute Your Confidential Information. You grant BOMAG a non-exclusive, perpetual, irrevocable, fully-paid-up, royalty free

license to use, copy, distribute, and otherwise exploit statistical and other aggregated data derived from You and your End Users' use of Services and Apps (the "Aggregated Data") for BOMAG's business purposes, including the provision of products and services to BOMAG's customers; provided the Aggregated Data does not include (directly or by inference) any information identifying You or any identifiable individual.

8. Feedback. You may provide suggestions, comments or other feedback (collectively, "Feedback") to BOMAG with respect to its products and services, including the Services. Feedback is voluntary. BOMAG may use Feedback for any purpose without obligation of any kind. To the extent a license is required under Your intellectual property rights to make use of the Feedback, You grant BOMAG an irrevocable, non-exclusive, perpetual, fully-paid-up, royalty-free license to use the Feedback in connection with BOMAG's business, including the enhancement of the Services.

9. Support and Maintenance. During the Term, BOMAG will provide you with reasonable telephone support for the Services during BOMAG's then current business hours. BOMAG will provide Service updates and bug fixes that BOMAG in its sole discretion makes generally available to its other similarly situated licensees at no charge. However, you shall not be entitled to receive updates or new releases that include new or different functionality for which BOMAG imposes an additional charge to its other customers. Such new or different functionality may be purchased by You, in its discretion, at BOMAG's then current pricing. BOMAG will use commercially reasonable efforts to correct reproducible failures of the Service to perform in substantial accordance with their then current Documentation. The support and maintenance services described in this Section may be referred to, collectively, as the "Support Services."

10. Fees.

10.1. In general. You will pay BOMAG the fees for the Services set forth in the Order. Except as provided in Sections 11.2, and 15, all fees are non-refundable. You will pay all invoices within thirty (30) days of invoice date. Payments not made within that time period will be subject to late charges equal to the lesser of (a) one and one-half percent (1.5%) per month of the overdue amount or (b) the maximum amount permitted under applicable law. In the event an invoice remains unpaid forty-five (45) or more days from the invoice date, BOMAG may, in its discretion, suspend the Services until the invoice is paid in full. Following the initial year of the Term, on thirty (30) days or one month prior notice to You, BOMAG may, at its discretion, adjust any or all fees due hereunder. You may terminate this Agreement on written notice to BOMAG within thirty (30) days of its receipt of notice from BOMAG to adjust the fees; provided, however, that if You fail to object to such adjustment in writing within the foregoing thirty (30) days then You will be deemed to have agreed to the adjustment.

10.2. Taxes. In addition to any other payments due under this Agreement, You agree to pay, indemnify and hold BOMAG

BOMAP Connect License Agreement

harmless from any sales, use, transfer, privilege, tariffs, excise, and all other taxes and all duties, whether international, national, state, or local, however designated, which are levied or imposed by reason of the performance of the Services under this Agreement; excluding, however, income taxes on profits which may be levied against BOMAG.

11. Warranties.

11.1. Your Warranty. You represent and warrants that (a) you have full power, capacity, and authority to enter into this Agreement and to grant the license set forth in Section 7 (Your Data); (b) any Data provided by You to BOMAG for use in connection with the Services does not and will not infringe the intellectual property, publicity, or privacy rights of any person and is not defamatory, obscene, or in violation of applicable foreign, federal, state and local laws, rules and regulations (including but not limited to applicable policies and laws related to spamming, privacy, and consumer protection) (collectively, “Applicable Law”); and (c) your use of the Services will be in compliance with all Applicable Law.

11.2. BOMAG Warranty. During the Term, BOMAG represents and warrants (i) the Services will substantially comply with the Documentation; (ii) it shall use commercially reasonable efforts to screen the Services for viruses, Trojan horses, worms, and other similar intentionally harmful or destructive code; and (iii) it shall comply with Applicable Law in performing this Agreement. In the event of a breach of the warranty in Section 11.2(i), BOMAG’s sole and exclusive liability and Your sole and exclusive remedy will be to perform the defective Service. In the event BOMAG is unable through reasonable efforts to correct the defective Service within thirty (30) days from receipt of notice from You of the breach, You may elect to terminate this Agreement and receive a pro-rated refund of any pre-paid, unused recurring fees for the non-conforming Services.

11.3. Disclaimer of Warranties. EXCEPT AS PROVIDED IN SECTION 11.2 (BOMAG WARRANTY), THE SERVICES AND SUPPORT SERVICES ARE PROVIDED “AS IS” AND “AS-AVAILABLE,” WITH ALL FAULTS, AND WITHOUT WARRANTIES OF ANY KIND. BOMAG AND ITS VENDORS AND LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND TITLE/NON-INFRINGEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY BOMAG OR ITS AUTHORIZED REPRESENTATIVES WILL CREATE ANY OTHER WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF BOMAG’S OBLIGATIONS HEREUNDER. THE SERVICES MAY BE USED TO ACCESS AND TRANSFER INFORMATION OVER THE INTERNET. YOU ACKNOWLEDGES AND AGREES THAT BOMAG AND ITS VENDORS AND LICENSORS DO NOT OPERATE OR CONTROL THE INTERNET AND THAT: (I) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIRABLE

DATA OR SOFTWARE; OR (II) UNAUTHORIZED PERSONS (E.G., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE YOUR DATA, WEB-SITES, COMPUTERS, OR NETWORKS. BOMAG WILL NOT BE RESPONSIBLE FOR SUCH ACTIVITIES. YOU ARE RESPONSIBLE FOR PRESERVING AND MAKING ADEQUATE BACKUPS OF YOUR DATA.

12. Your Indemnity. You will defend and indemnify BOMAG and hold it harmless from any and all claims, losses, deficiencies, damages, liabilities, costs, and expenses (including but not limited to reasonable attorneys’ fees) incurred by BOMAG as a result of any claim by a third party arising from (i) Your use of the Services in breach of this Agreement or (ii) Your breach of your warranties or representations herein.

13. Confidentiality. During the course of this Agreement, each party may disclose to the other certain non-public information or materials relating to a party’s products, intellectual property, business, marketing programs and efforts, and other confidential information and trade secrets (“**Confidential Information**”). For the avoidance of doubt, the Services and Documentation are the Confidential Information of BOMAG and the Your Data is the Confidential Information of You. Notwithstanding the foregoing, Confidential Information does not include information that: (a) is or becomes publicly available through no breach by the receiving party of this Agreement; (b) was previously known to the receiving party prior to the date of disclosure, as evidenced by contemporaneous written records; (c) was acquired from a third party without any breach of any obligation of confidentiality; (d) was independently developed by a party hereto without reference to Confidential Information of the other party; or (e) is required to be disclosed pursuant to a subpoena or other similar order of any court or government agency, provided, however, that party receiving such subpoena or order shall promptly inform the other party in writing and provide a copy thereof, and shall only disclose that Confidential Information necessary to comply with such subpoena or order. Except as expressly provided herein, the receiving party will not use or disclose any Confidential Information of the disclosing party without the disclosing party’s prior written consent, except disclosure to and subsequent uses by the receiving party’s employees or consultants on a need-to-know basis, provided that such employees or consultants have executed written agreements restricting use or disclosure of such Confidential Information that are at least as restrictive as the receiving party’s obligations under this Section. Subject to the foregoing nondisclosure and non-use obligations, the receiving party agrees to use at least the same care and precaution in protecting such Confidential Information as the receiving party uses to protect the receiving party’s own Confidential Information and trade secrets, and in no event less than reasonable care. Each party acknowledges that due to the unique nature of the other party’s Confidential Information, the disclosing party will not have an adequate remedy in money or damages in the event of any unauthorized use or disclosure of its Confidential Information. In addition to any other remedies that may be available in law, in equity or otherwise, the disclosing party shall

BOMAP Connect License Agreement

be entitled to seek injunctive relief to prevent such unauthorized use or disclosure. Neither party shall remove or alter any proprietary markings (e.g., copyright and trademark notices) on the other party's Confidential Information.

14. Limitation of Liability and Damages. NEITHER BOMAG NOR ITS AFFILIATES OR THEIR VENDORS AND LICENSORS WILL HAVE ANY LIABILITY TO YOU OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, SALES, TRADING LOSSES, BUSINESS, DATA, OR OTHER INCIDENTAL, CONSEQUENTIAL, OR SPECIAL LOSS OR DAMAGE, INCLUDING EXEMPLARY AND PUNITIVE, OF ANY KIND OR NATURE RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, INCLUDING USE OF OR INABILITY TO USE THE SERVICES AND SUPPORT SERVICES. THE TOTAL LIABILITY OF BOMAG AND ITS AFFILAITES AND THEIR VENDORS AND LICENSORS TO YOU OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT OR THE SERVICES AND SUPPORT SERVICES IN CONNECTION WITH ANY CLAIM OR TYPE OF DAMAGE (WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE) WILL NOT EXCEED THE TOTAL FEES PAID HEREUNDER BY YOU DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. THIS LIMITATION OF LIABILITY WILL APPLY EVEN IF THE EXPRESS WARRANTIES SET FORTH ABOVE FAIL OF THEIR ESSENTIAL PURPOSE.

15. Termination.

15.1. Termination. This Agreement will terminate (a) on the thirtieth (30th) day after either party gives the other written notice of a breach by the other of any material term or condition of this Agreement, unless the breach is cured before that day; or (b) upon written notice by either party, immediately, if (i) a receiver is appointed for the other party or its property; (ii) the other party becomes insolvent or unable to pay its debts as they mature in the ordinary course of business or makes a general assignment for the benefit of its creditors; or (iii) any proceedings (whether voluntary or involuntary) are commenced against the other party under any bankruptcy or similar law and such proceedings are not vacated or set aside within sixty (60) days from the date of commencement thereof.

15.2. Suspension of Services. Notwithstanding any other provision of this Agreement, BOMAG may, in its sole discretion, suspend Your access to the Services for any of the following reasons (a) to prevent damages or risk to, or degradation of, the Services; (b) to comply with any law, regulation, court order, or other governmental request; (c) to otherwise protect BOMAG from potential legal liability; or (d) in the event an invoice remains unpaid for more than forty-five (45) or more days from the invoice date. BOMAG will use reasonable efforts to provide You with notice prior to or promptly following any suspension of the Services. BOMAG will promptly restore access to the Services as soon as the event giving rise to suspension has been

resolved. This Section will not be construed as imposing any obligation or duty on BOMAG to monitor use of the Services.

15.3. Effect of Termination. Upon termination of this Agreement or termination of a particular Service for any reason: (a) Your and all End User's access to and use of the Services will cease as of the effective date of termination; (b) You will pay to BOMAG all undisputed sums due to BOMAG for Services through the effective date of such expiration or termination (prorated as appropriate); and (c) at BOMAG's standard time and materials rates, BOMAG will reasonably cooperate with You in transitioning the Data back to You. The following provisions will survive termination or expiration of this Agreement: 6 (Proprietary Rights), 11.3 (Disclaimer of Warranties), 12 (You Indemnity) (for claims accruing prior to termination), 13 (Confidentiality), 14 (Limitation of Liability and Damages), 15 (Termination), and 16 (General Provisions).

16. Publicity. BOMAG may identify You as a customer in its listings, web sites, and other promotional materials. In addition, BOMAG may issue a press release regarding the parties' new relationship under this Agreement.

17. Force Majeure. Except for the payment of money as described in Section 10 (Fees) of this Agreement, neither party will be liable for any failure or delay in performance under this Agreement which is due to any event beyond the reasonable control of such party, including without limitation, fire, explosion, unavailability of utilities or raw materials, Internet delays and failures, telecommunications failures, unavailability of components, labor difficulties, war, riot, act of God, export control regulation, laws, judgments or government instructions.

18. General Provisions. Nothing in this Agreement will create in either party any right or authority to incur any obligations on behalf of, or to bind in any respect, the other party and nothing in this Agreement shall be construed to create any agency, joint venture or partnership. This Agreement constitutes the entire understanding and agreement between the Parties with respect to the transactions contemplated in this Agreement and supersedes all prior or contemporaneous oral or written communications with respect to the subject matter of this Agreement, all of which are merged in this Agreement. This Agreement may not be modified, amended or in any way altered except by written amendment signed by authorized representatives of both Parties. Any waiver, in whole or in part, of any provision of this Agreement will not be considered to be a waiver of any other provision. In the event that any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree, the remainder of this Agreement will remain valid and enforceable according to its terms. This Agreement is governed by and construed in accordance with the laws of the State of Delaware, as applied to agreements entered into and wholly performed within Delaware between Delaware residents. Any action or proceeding brought by either party hereto shall be brought only in a state or federal court of competent jurisdiction located in Delaware and the Parties submit to the in personam jurisdiction of such courts for purposes of any action or proceeding. All headings used in this Agreement

BOMAP Connect License Agreement

are for reference purposes only and are not part of this Agreement. This Agreement is the result of arm's length negotiations between the Parties and shall be construed to have been drafted by all Parties such that any ambiguities in this Agreement shall not be construed against either party.

19. Electronic Execution. This Agreement and Orders may be accepted in electronic form (e.g., by an electronic or digital signature or other means of demonstrating assent) and either party's acceptance will be deemed binding between the parties. Each party acknowledges and agrees it will not contest the validity or enforceability of this Agreement and related documents, including under any applicable statute of frauds, because they were accepted and/or signed in electronic form.