

**MERITOR EV DIAGNOSTIC TOOL™ END USER LICENSE  
AGREEMENT**

**IF YOU DO NOT HAVE AND MAINTAIN AN INTERNET CONNECTION ON A CUSTOMER COMPUTER, YOU ARE PROHIBITED FROM INSTALLING AND USING THE LICENSED SOFTWARE ON THAT CUSTOMER COMPUTER AND YOU MUST SELECT THE “I DISAGREE”/ “CANCEL” BUTTON.**

**THIS END USER LICENSE AGREEMENT (“EULA”) IS A LEGAL AGREEMENT BETWEEN CUSTOMER AND MERITOR ELECTRIC VEHICLES, LLC (“LICENSOR”). USE OF THE LICENSED SOFTWARE IS EXPRESSLY CONDITIONED UPON ACCEPTANCE OF THIS EULA. IF AND ONLY IF AFTER HAVING CAREFULLY READ THIS EULA AND ACCEPTING ALL OF ITS TERMS AND CONDITIONS ON BEHALF OF YOURSELF OR CUSTOMER, AS APPLICABLE, YOU MAY PROCEED WITH INSTALLATION OF THE LICENSED SOFTWARE BY CLICKING THE “I AGREE” BUTTON. IF YOU CHOOSE NOT TO ACCEPT ALL OF THE TERMS IN THIS EULA ON BEHALF OF YOURSELF OR CUSTOMER, AS APPLICABLE, OR IF YOU DO NOT HAVE THE LEGAL AUTHORITY TO DO SO, THEN YOU ARE PROHIBITED FROM INSTALLING AND USING THE LICENSED SOFTWARE AND MUST SELECT THE “I DISAGREE”/ “CANCEL” BUTTON.**

**1. DEFINITIONS.**

1.1 “Activation” means a revocable right, subject to the terms and conditions of this EULA, to Use during the Term one (1) copy of the Licensed Software on one (1) Customer Computer under an Activation Code issued by Licensor. Unless (i) subscribed to by Customer or otherwise provided by Licensor and (ii) memorialized in a separate writing issued to Customer, Customer shall receive one (1) Activation per Activation Code issued by Licensor.

1.2 “Activation Code” means the alpha-numeric license identification code and corresponding alpha-numeric password issued by Licensor which facilitates the execution of one or more Activations subscribed to by Customer or otherwise provided by Licensor.

1.3 “Customer” means you, the company (e.g. a corporation, limited liability company, partnership or other business or legal entity) licensing the Licensed Software from Licensor for its own internal business purposes (whether that company is your employer or a company of which you are an authorized representative), and the employees, representatives, successors, and assigns of the foregoing.

1.4 “Customer Computer” means a single desktop or portable computer owned or leased by Customer on which Customer Uses the Licensed Software.

1.5 “Derivatives” means any and all modifications, improvements or derivatives of, or to, the Licensed Software, including Software Updates and New Releases.

1.6 “License” means the limited license granted by Licensor to Customer in Section 2.1.

1.7 “License Fee” means the total non-refundable license fee payable by Customer to Licensor for the License as determined by Licensor in its sole discretion.

1.8 “Licensed Software” means the version of the Meritor EV Diagnostic Tool™ software application accompanying this EULA in its machine-readable, object code form, together with the Activation Code and any and all (a) Derivatives of the Licensed Software, (b) screens or images generated by the Licensed Software, (c) User Manuals, and (d) copies of the foregoing.

1.9 “New Release” means a version of the Licensed Software or another software application that, in Licensor’s sole discretion and determination, contains substantially new or different functions or features relative to the version of the Licensed Software licensed to Customer under this EULA or that Licensor may from time to time

introduce and market generally as a licensed product distinct from the Licensed Software pursuant to separate terms and conditions.

1.10 “Software Update” means an updated version of the Licensed Software, other than a New Release, with a limited number of new, enhanced or modified functions or features to the extent not provided by Licensor under separate terms and conditions.

1.11 “Support & Maintenance Period” means the one (1) year period commencing upon Customer’s purchase of the Licensed Software.

1.12 “Term” means the one (1) year period commencing upon Customer’s purchase of the Licensed Software.

1.13 “Use” means the ability to install, run, execute and display the Licensed Software in its machine-readable, object code form, to the exclusion of all other uses.

1.14 “User Manual” means the user manuals, technical manuals and any other materials or documentation provided (or to be provided) by Licensor in connection with the Licensed Software, whether printed or in electronic form, and whether embedded within the Licensed Software or provided separately, that describe the installation, operation, and technical specifications of the Licensed Software.

## **2. GRANT OF LICENSED SOFTWARE LICENSE, ACTIVATION AND LIMITATIONS.**

2.1 License Grant. The Licensed Software is licensed, not sold. Subject to full payment of the applicable License Fee and the terms and conditions of this EULA (including corresponding Software Updates released pursuant to Section 3.2 hereof), Licensor grants Customer a limited, revocable, non-exclusive and non-assignable license, without rights to sublicense, to Use during the Term one (1) copy of the Licensed Software with the corresponding Activation Code in machine-readable, object code form on one (1) Customer Computer per Activation subscribed to by Customer or otherwise provided by Licensor for its own internal business purposes in a manner consistent with, and subject to the limitations described in, the User Manual. The Licensed Software may not be used by more than one (1) processor at any time on any single Customer Computer per Activation.

2.2 Activation and License Fee. Customer must activate the Licensed Software on each Customer Computer. Customer must subscribe to, or otherwise obtain from Licensor, a separate Activation to Use the Licensed Software on each Customer Computer. Customer agrees that Licensor may use the Licensed Software, the Customer Computer, and Customer’s Internet connection, as required, to communicate over the Internet with authentication servers from time to time, without notice to Customer, to authenticate the validity of Customer’s Activation Code or Customer’s right to Use the Licensed Software on a given Customer Computer under an Activation Code. Customer acknowledges and agrees that the License Fee is non-refundable.

### **2.3 License Limitations.**

(a) Scope of Use. Customer will not use the Licensed Software other than as permitted by this EULA. Customer will not remove, disable, or otherwise create or implement any workaround to, any security features contained in the Licensed Software, including the Activation Code.

(b) No Modification, Derivatives, Reverse Engineering, Decompilation, Disassembly, Translation. Customer will not modify, create Derivatives of, reverse engineer, decompile, disassemble, translate or otherwise attempt to discover any source code or underlying ideas or algorithms of the Licensed Software, except to the extent the foregoing restriction is prohibited by applicable law. Customer will not integrate the Licensed Software with any other software without the prior written consent of Licensor. Any violation of this Section 2.3(b) will result in immediate revocation of the License and termination of this EULA and will subject Customer to a claim for indemnification by Licensor under Section 6.

(c) Transfers. Customer may transfer the Licensed Software in machine-readable, object code form from one Customer Computer to another with the prior written consent of Licensor, provided that only one (1) copy

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(d) Network Usage Prohibited. Customer will not distribute or make the Licensed Software available over a network where it could be used by multiple devices (including Customer Computers) or users at the same time or otherwise Use, provide or allow others to use the Licensed Software for the benefit of any third party without the prior written consent of Licensor.

### **3. TECHNICAL SUPPORT, SOFTWARE UPDATES AND NEW RELEASES.**

3.1 Technical Support. In consideration of the License Fee, Licensor will provide Customer with a reasonable amount of technical support for the Licensed Software during the Support & Maintenance Period; provided, however, the amount of the technical support in all cases will be in Licensor's sole discretion. Technical Support beyond the Support & Maintenance Period may be acquired by Customer for an additional fee and under separate terms and conditions as determined by Licensor in its sole discretion. Licensor will provide technical support solely via telephone, e-mail, or electronic remote access (using TeamViewer), the selection of which will be in Licensor's sole discretion. To initiate technical support via e-mail, Customer may contact Licensor at [ontrac@meritor.com](mailto:ontrac@meritor.com). To initiate technical support via telephone, Customer may contact Licensor at 866-668-7221. Licensor will provide technical support from 7:30 a.m. to 10:00 p.m. Eastern Standard Time on Monday through Friday and 9:00a.m. to 6:00 p.m. Eastern Standard Time on Saturday of each week except on holidays or non-business days as determined by Licensor in its sole discretion. If remote access is provided by Licensor, such remote access is provided without any warranties, express or implied, including but not limited to any warranties of merchantability, non-infringement and fitness for particular purpose, which are each specifically disclaimed. you agree, individually and on behalf of the organization that employs you ("company"), that MERITOR ELECTRIC VEHICLES, LLC is not liable for any damage, loss or expense of any kind whatsoever arising out of or resulting from remote access regardless of whether such damage, loss or expense is based in tort, contract or otherwise. you and company further agree to indemnify and hold harmless MERITOR ELECTRIC VEHICLES, LLC, and its respective employees, directors, agents and representatives (each, an "indemnitee") for any damage, loss or expense that an indemnitee incurs arising out of or resulting from such remote access.

3.2 Software Updates. In consideration of the License Fee, Licensor will provide or otherwise make available Software Updates to Customer for the Licensed Software during the Support & Maintenance Period; provided, however, (i) the necessity, timing, frequency, extent, content and designation of any Software Update will be in Licensor's sole discretion, and (ii) Licensor may in its sole discretion discontinue providing Software Updates for any Licensed Software at any time and without notice. Software Updates beyond the Support & Maintenance Period may be acquired by Customer for an additional fee and under separate terms and conditions as determined by Licensor in its sole discretion. Except as provided or made available by Licensor under separate terms and conditions (as determined by Licensor in its sole discretion), any Software Update will be subject to this EULA upon receipt by Customer to the same extent as the original Licensed Software.

3.3 New Releases. Notwithstanding anything to the contrary contained in this EULA, nothing in this EULA will give, or be construed to give, Customer any right to any New Release during the Support & Maintenance Period or thereafter. New Releases may be acquired by Customer for an additional fee and under separate terms and conditions as determined by Licensor in its sole discretion.

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**6. LIMITATION OF LIABILITY AND INDEMNIFICATION. AS AN EXPRESS CONDITION TO USING THE LICENSED SOFTWARE, CUSTOMER ACKNOWLEDGES AND AGREES THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR OR ITS AFFILIATES OR REPRESENTATIVES BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING DAMAGES FOR LOST OR CORRUPTED DATA, LOSS OF PROFITS, PRIVACY, USE, BUSINESS, OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY OR PROPERTY DAMAGE, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR RELATED TO CUSTOMER'S USE OR INABILITY TO USE THE LICENSED SOFTWARE, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, SOFTWARE, AND RELATED CONTENT THROUGH THE LICENSED SOFTWARE OR OTHERWISE ARISING OUT OF THE USE OF THE LICENSED SOFTWARE, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS EULA, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE FOREGOING LIMITATION OF LIABILITY, SO THAT LIMITATION MAY NOT FULLY APPLY. NOTWITHSTANDING ANY DAMAGES THAT CUSTOMER MIGHT INCUR FOR ANY**

REASON WHATSOEVER (INCLUDING ALL DAMAGES REFERENCED IN THIS EULA AND ALL DIRECT OR GENERAL DAMAGES IN CONTRACT, TORT, OR ANYTHING ELSE), THE ENTIRE LIABILITY OF LICENSOR AND ITS AFFILIATES AND REPRESENTATIVES UNDER ANY PROVISION OF THIS EULA AND CUSTOMER'S EXCLUSIVE REMEDY UNDER THIS EULA WILL BE LIMITED TO THE PAYMENT OF THE GREATER OF THE DIRECT DAMAGES INCURRED IN REASONABLE RELIANCE ON THE LICENSED SOFTWARE UP TO THE ACTUAL LICENSE FEE PAID OR U.S. \$5.00. IN NO EVENT WILL THE TOTAL LIABILITY OF LICENSOR AND ITS AFFILIATES AND REPRESENTATIVES FOR ALL DAMAGES EXCEED THE AMOUNT OF THE LICENSE FEE PAID TO USE THE LICENSED SOFTWARE. AS AN EXPRESS CONDITION TO USING THE LICENSED SOFTWARE, CUSTOMER AGREES TO INDEMNIFY LICENSOR AND ITS AFFILIATES AND REPRESENTATIVES FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIMS AND DAMAGES INCURRED BY LICENSOR, INCLUDING REASONABLE ATTORNEYS' FEES, ARISING FROM OR RELATED TO THE AUTHORIZED OR UNAUTHORIZED USE OR MISUSE OR OPERATION OF THE LICENSED SOFTWARE BY CUSTOMER OR BY ANYONE TO WHOM CUSTOMER PROVIDED THE LICENSED SOFTWARE.

7. **TERMINATION.** Licensor may revoke the License and terminate this EULA immediately and without notice if Customer fails to comply with any term of this EULA. In the event of a revocation or termination, Customer must delete or destroy, as applicable, all copies of the Licensed Software from all Customer Computers on which it is installed, and all related materials and documentation (including any and all User Manuals), and will, at the request of Licensor, provide Licensor written certification that all copies of the Licensed Software were deleted or destroyed in accordance with this Section 7.

## 8. GENERAL PROVISIONS.

8.1 Applicable Law, Venue, Jurisdiction. This EULA and all matters arising out of or relating to this EULA will be governed by and construed in accordance with the internal laws of the State of Michigan, without regard to its conflicts of law principles and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). Any suit, action or proceeding arising out of or related to this EULA or any matter arising out of or relating to this EULA (including Customer's use of the Licensed Software) will be brought and maintained exclusively in, and Customer consents to submit to the personal jurisdiction of, the courts of the State of Michigan located in Oakland County or in the United States District Court for the Eastern District of Michigan. **Customer irrevocably and unconditionally waives any objection to the laying of venue in any suit, action or proceeding in the courts of the State of Michigan located in Oakland County or in the United States District Court for the Eastern District of Michigan and irrevocably waives and agrees not to plead or claim in any of those courts that any suit, action or proceeding brought in any of those courts has been brought in an inconvenient forum.**

8.2 Invalid Provision. If any term or condition of this EULA is determined to be invalid, illegal or unenforceable in any jurisdiction, the invalidity, illegality or unenforceability of that term or condition will not affect any other term or condition of this EULA or invalidate or render unenforceable that term or condition in any other jurisdiction.

8.3 Entire Agreement, Amendment, Successors and Assigns, Headings, Interpretation. This EULA constitutes the sole and entire agreement of Licensor and Customer with respect to the subject matter contained in this EULA, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to the subject matter contained in this EULA. Customer's additional or different terms and conditions (including those appearing on the reverse side of, or as an attachment to, a purchase order or other documents) will not apply and will be null and void. In the event of a conflict between the terms of this EULA and those contained in any purchase order or other document between Licensor and Customer, this EULA will control. This EULA may not be amended, modified or supplemented except in writing, signed by Licensor and Customer. This EULA will be binding upon and will inure to the benefit of Licensor and Customer and their respective permitted successors and permitted assigns. The headings in this EULA are for reference only and will not affect the interpretation of this EULA. For purposes of this EULA, unless a clear contrary intention appears: (i) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding that term; (ii) "or" is used in the inclusive sense of "and/or"; and (iii) references to Sections refer to Sections of this EULA.

8.4 Waiver, Cumulative Remedies. No waiver by Licensor of any of the terms or provisions of this EULA will be effective unless explicitly set forth in writing and signed by Licensor. No waiver by Licensor will operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by that written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from or related to this EULA by Licensor will operate or be construed as a waiver of that right, remedy, power or privilege; nor will any single or partial exercise of any right, remedy, power or privilege under this EULA by Licensor preclude an other or further exercise of that right, remedy, power or privilege or the exercise of any other right, remedy, power or privilege. The rights and remedies of Licensor under this EULA are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise available to Licensor.

8.5 Export Laws. Customer agrees not to ship, transfer or export the Licensed Software into any country or use Licensed Software in any manner prohibited by the United States Export Control Reform Act or prohibited by any other export laws, restrictions or regulations.

8.6 Use by U.S. Government. The Licensed Software and related documentation are “Commercial Items,” as that term is defined at 48 C.F.R. § 2.101, as amended, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation,” as those 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 of this EULA. Unpublished rights are reserved under the United States Copyrights Laws.

8.7 Equitable Remedies. Customer agrees that irreparable damage would occur if any provision of this EULA were not performed in accordance with the terms and conditions of this EULA (including Section 2.3(b)) and that Licensor will be entitled to equitable relief, including injunctive relief or specific performance and the terms and conditions of this EULA, in addition to any other remedy to which they are entitled at law or in equity.