

IST System End-User License Agreement

IMPORTANT—READ CAREFULLY: This End-User License Agreement (“EULA”) is a legal agreement between the purchaser/installer/operator (“the End-User”) and Inductive Signature Technologies, Inc. (“IST”) of Knoxville, Tennessee in the United States of America, the developer of the vehicle detection system (“the IST System”) including hardware, software, and/or documentation. If you have not obtained the enclosed hardware and/or software pursuant to a valid agreement with IST, you may not use or copy the enclosed hardware, software, and/or documentation.

1. Definitions.

(a) “IST System” means any apparatus provided to End-User by IST including hardware, software, and/or documentation. Hardware includes, but is not limited to, any IST detector circuitry, regardless of grade, type, or form factor, and any IST wire-loop sensor. Software includes, but is not limited to, firmware of the IST detector circuitry and any software for detecting and analyzing inductive signature information or for processing data from any IST detector circuitry into a form released for general use with the exception of applications developed under Paragraph 9.

(b) “Output Grade” means the maximum quality of detector card output allowed under this EULA for the price paid:

(i) “Standard Bivalent Output”: On-Off Output only; updated at a maximum rate of 150 samples-per-second; having a maximum large-signal bandwidth of 75Hz; output latency of no less than 100ms is allowed; may not be used with any advanced inductive sensor.

(ii) “Premium Bivalent Output”: On-Off Output only; updated at a maximum rate of 1,200 samples-per-second; having a maximum large-signal bandwidth of 150Hz; bivalent output latency of no less than 100ms is allowed; may be used with any advanced inductive sensor.

(iii) “Standard Signature Output”: Signature Output plus Premium Bivalent Output; both updated at a maximum rate of 1,200 samples-per-second; having a maximum large-signal bandwidth of 150Hz; output latency of no less than 100ms is allowed; may not be used with any advanced inductive sensor.

(iv) “Premium Signature Output”: Signature Output plus Premium Bivalent Output; both updated at a maximum rate of 40,000 samples-per-second; having a maximum large-signal bandwidth of 20kHz; output latency of no less than 100ms is allowed; may be used with any advanced inductive sensor.

(v) “Special Application Output”: Any of the above listed detector outputs are allowed; they may further be used to trigger auxiliary equipment (such as cameras); output latency of 15ms or more is allowed.

(c) “General Use” means the use of data obtained from the IST System to detect, identify, classify, or categorize vehicles on free-access public roads or highways, to track vehicular traffic flow and patterns on free-access public roads or highways, or to other similar traffic management or vehicular identification activities on free-access public roads or highways. “General Use” does not include the use of the IST System or data therefrom obtained from locations other than free-access public road or highways, for example, toll-roads, parking lots, airport runways, or race tracks.

(d) “IST System data” means any data obtained from the IST System that is in a form released for general use and data derived therefrom.

(e) “Inductive Signature” shall mean the relative expression level for any vehicle detected using the IST System and comprises all data points in the array that represents the change in inductance induced by the vehicle.

2. Scope of License. Licensor grants End-User a nonexclusive right and license to use the IST System for the End-User’s own benefit, internal use, or non-commercial public use to obtain data in a form released for general use. This limited license permits only the use of the particular product(s) that End-User has obtained from IST pursuant to the terms of this Agreement. End-User agrees not to exceed the scope of any license granted herein. No implied license is granted herein. Commercial use of the IST System and data obtained or derived therefrom is strictly prohibited without the express written permission of IST. The IST System is not authorized for use in life-critical applications.

3. Restriction on Transfer. End-User shall not distribute, sell, lend, lease or donate any portion of the IST System to a third party without the express written consent of IST.

4. Limitations. The IST System and any other items delivered hereunder by IST are subject to the limited license herein. End-User agrees not to improve, modify, disassemble, decompile, reverse engineer, adapt or copy any portion of the IST System or any other product provided hereinunder, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

5. Copyright. All title and intellectual property rights in and to the IST System, the accompanying printed materials, IST System data, and any copies of the IST System software, are owned by IST. No right to copy, distribute, make derivative works of, publicly display, make, have made, offer to sell, sell, or import the IST System, IST System data, or any other product provided hereunder is conveyed by the sale and/or license of the IST System or any other product provided hereunder. All rights not expressly granted under this EULA are reserved by IST.

6. Trademarks. This EULA does not grant you any rights in connection with any trademarks or service marks of IST.

7. Export Restrictions. You agree that you will not export or re-export the IST System to any country, person, or entity subject to U.S. export restrictions (Title 15 of the Code of Federal Regulations, Chapter VII, Subchapter C). You specifically agree not to export or re-export the IST System: (i) to any country to which the U.S. has embargoed or restricted the export of goods or services, which as of June 2002 include, but are not necessarily limited to Cuba, Iran, Iraq, Libya, Rwanda, and the Federal Republic of Yugoslavia (Serbia and Montenegro), or to any national of any such country, wherever located, who intends to transmit or transport the products back to such country; or (ii) to any person or entity who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government.

8. Confidentiality. End-User agrees to maintain the confidences of IST by using at least the same physical or other security measures End-User uses to maintain its own confidential information, and in no case less than reasonable care, to prevent disclosure of trade secrets of IST that are identified by written notice or embodied in the IST System or related documentation. End-User’s obligations under this

Paragraph do not apply to any portion of the IST System that is previously known to End-User or that is independently developed by End-User. End-User will not provide access to the IST System, other than End-Users' employees, without the prior written consent of IST.

9. Client-Side Application Development. End-User, including any third-party software developer, may make, use, and distribute client-side software applications in combination with the IST System subject to the following terms and conditions:
 - (a) The End-User or third-party supplied client software may not interfere with the normal operation of any part of the IST System;
 - (b) Any End-User or third-party supplied client software which processes any IST System data (other than bivalent output data which is accessed via the unmodified optically-isolated outputs on the card edge connector) may do so only via a properly licensed and IST-supplied IST Card Server program;
 - (c) Any End-User or third-party supplied client software that accesses IST System data shall be provided to IST, along with fully documented source code and documentation, and IST shall be granted a non-exclusive, worldwide license to copy, use, modify, and distribute such software without limitation; and
 - (d) Any End-User or third-party supplied client software shall not be made, used, or distributed for commercial purposes or in competition with IST.
10. Modifications. Modifications to the IST System by End-User are not permitted without the express written consent of IST. In the event that unauthorized modifications are made to the IST System, IST shall own all right, title and interest (including all associated intellectual property rights) in and to all customizations, enhancements, modifications, improvements, derivations or other changes thereto made to the IST System.
11. No Liability for Modifications. Modifications to the IST System by End-User are not permitted without the express written consent of IST. In the event that modifications are made to the IST System by End-User, IST shall not be responsible for any infringement involving or concerning any modification of the IST System or the combination of the IST System with equipment, hardware or software not supplied by IST, to the extent that such infringement solely results from such modification or combination and as not been expressly authorized by IST in writing.
12. Limited Warranty. Manufacturer warrants that (a) the IST System will perform substantially in accordance with the accompanying written materials and will be free from defects in materials and workmanship under normal use and service for a period of 1year from the date of receipt. Any implied warranties on the IST System are limited to ninety (90) days, except and only to the extent that such limitations on implied warranties are prohibited by applicable law notwithstanding this limitation.
13. Inspections. Subject to reasonable advance notification and required regulatory permission where applicable, End-User agrees to permit IST to enter the premises of End-User in order for IST to inspect the IST System during regular business hours to verify compliance with the terms of this EULA. To the extent that any electronic signal of the IST System is found to be accessible from a public place, End-User agrees to permit IST to access the IST System electronically at any time and without notice in order for IST to verify compliance with the terms of this EULA.
14. Remedies. IST's entire liability and your exclusive remedy shall be, at IST's option, either (a) return of the price paid, or (b) repair or replacement of the IST System that does not meet this Limited Warranty and which is returned to IST. This Limited Warranty is void if failure of the IST System has resulted from accident, abuse, or misapplication. Any replacement IST System will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.
15. Notice to Others. A copy of this EULA must be presented to any person who has access to any portion of the IST System or data derived therefrom.
16. Acceptance. Acceptance of the IST System shall occur upon receipt.
17. Rejection of EULA. In the event that End-User declines to accept the terms of this Agreement, notice shall be provided to IST in writing and any and all portions of the IST System shall be promptly returned to IST.
18. No Other Warranties. To the maximum extent permitted by applicable law, IST disclaims all other warranties, either express or implied, including, but not limited to implied warranties of merchantability and fitness for a particular purpose, with regard to the IST System.
19. No Liability for Consequential Damages. To the maximum extent permitted by applicable law, in no event shall IST be liable for any damages whatsoever (including without limitation, special, incidental, consequential, or indirect damages for personal injury, loss of business profits, business interruption, loss of business information, or any other pecuniary loss) arising out of the use of or inability to use this product, even if IST has been advised of the possibility of such damages. In any case, IST's entire liability under any provision of this agreement shall be limited to the amount actually paid by End-User for the IST System, except and only to the extent that such exclusions or limitations on liability for consequential or incidental damages are prohibited by applicable law notwithstanding this limitation.
20. Choice of Law. This Agreement is to be construed in accordance with the laws of the State of Tennessee in the United States of America, as if all aspects of the Agreement were to be performed in Tennessee, provided that all questions concerning the construction or effect of patent applications and patents shall be decided in accordance with the laws of the country in which the particular patent application or patent has been filed or granted, as the case may be. End-User hereby consents to the exclusive personal jurisdiction of all courts of the State of Tennessee regarding any cause of action against the other Party arising under this Agreement or arising out of the subject matter relating to this Agreement. IST retains the right to seek enforcement of this Agreement in any court of competent jurisdiction chosen by IST.
21. Headings. The headings used in this Agreement are intended only as a convenience and shall not be used to interpret or construe its provisions.
22. Severability. Should any provision of this Agreement or the application thereof, to any extent, be found to be unenforceable by a court of competent jurisdiction, the Parties continue to be bound under the remaining provisions of this Agreement with the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular provision(s) held to be unenforceable.