

## **AMENDED AND RESTATED BYLAWS**

### **EQUIPMENT AND TOOL INSTITUTE**

**Effective           , 2024**

#### **DEFINITIONS**

The following definitions shall apply to these Bylaws:

“Affiliated Membership” shall mean a member of that class of members that enjoy the benefits and services of Affiliated Membership as described in Article III, Section 2.

“Associate Member” shall mean a member of that class of members that enjoy the benefits and services of Associate Membership as describe in Article III, Section 2.

“Executive Board” shall mean the Executive Board of Directors, which shall serve as the board of directors of the corporation, as defined in Article VI, Sections 1 and 2.

“ETI” shall mean the Equipment and Tool Institute, a registered Illinois not for profit corporation.

“Full Member” shall mean a member of that class of members that enjoy the benefits and services of Full Membership as described in Article III, Section 2.

“General Membership Agreement” shall mean that agreement between the members and the corporation in form attached to these Bylaws as Exhibit B.

“Institute” shall mean the Equipment and Tool Institute, a registered Illinois not for profit corporation.

“OEM” shall mean original equipment manufacturer.

“OEM Data” shall mean vehicle specifications and vehicle information required for the use of diagnosis, service and repair of vehicles, as well as data generated by the vehicle for use in diagnosis, service and repair of that vehicle.

“Probationary Membership” shall have the meaning set forth in Article III, Section 5.

“Probationary Membership Agreement” shall mean that agreement between the Probationary Members and the corporation in the form attached to these Bylaws as Exhibit B.

## ARTICLE I

### **NAME AND REGISTRATION**

Section 1. **Name and Brand** – The formal name of this corporation shall be “EQUIPMENT AND TOOL INSTITUTE,” a registered Illinois not for profit corporation (501)(c)(6)) (“ETI” or the “Institute”). The ETI staff are responsible for managing guidelines on use of the brand name and the Board-approved logo, as well as, trademark registration, approved colors, approved fonts, use of the logo and/or brand name for events, publications, and other uses. Any misuse of the name, logo, or brand identity are to be managed by the staff and reported to the Executive Board of Directors ("Executive Board").

Section 2. **Registration** – The Institute shall maintain a registered agent in Illinois, where the Institute is incorporated.

Section 3. **Operations** – The ETI staff are responsible for the day-to-day operations of the Institute.

These operations include, but are not limited to:

1. Maintaining an agent responsible for all necessary business licenses, tax filings, and other documents required to conduct the business of the Institute;
2. Maintaining business insurance for the Institute, Directors, and staff;
3. Maintaining certified financial services;
4. Maintaining certified legal services applicable to the automotive industry; and
5. Maintaining a human resources company to manage payroll, benefit management, hiring and termination, and other HR functions.

## **ARTICLE II**

### **PURPOSES**

The purpose of this Institute shall be to promote the best interests of the automotive equipment and tool industry in the United States and other regions as defined by the Executive Board. This includes, but is not limited to:

1. Promoting the evolution of a viable automotive aftermarket;
2. Protecting the financial and legal interests of its members and to promote the common business interests of the industry;
3. Protecting the intellectual property of the membership and providing a secure repository for OEM Data;
4. Providing unparalleled networking between members and OEMs in a collaborative, supportive environment;
5. Acting as technical advisor to the industry; and
6. Collaborating and cooperating with other stakeholders in the industry.

## **ARTICLE III**

### **MEMBERSHIP**

Section 1. **Members** – Any person, firm or corporation is eligible for membership if it meets the following qualifications:

1. Is engaged as a manufacturer, potential manufacturer or marketer of automotive service repair equipment, tools, information or services;
2. Has a regular physical presence in the United States or other region as defined by the Executive Board;
3. Is financially sound;
4. Has a demonstrable reputation for integrity and sound character; and
5. Meets such other uniform requirements as may be established from time to time by the Executive Board.

Section 2. **Membership Levels** – The Institute shall have 3 classes of members:

- Full Member
- Associate Member
- Affiliated Industry Member

Below is a summary of ETI member benefits and services associated with each membership class:

Benefit/Service	Full Membership	Associate Membership	Affiliated Membership
Collective process to objectively address and achieve consensus on industry issues	X	X	X
Summer Tech Week Participation	X		
ETI Website Members Section	X	X	
ETI Website Vertical Group Section	X		
Information Exchange Forums	X	Limited	Limited
Winter Tech Week Participation	X		
May hold leadership positions on Executive Board and Vertical Group	X		
Networking	X	X	X
Email News	X	X	X
Representation to present member viewpoints and concerns to legislators and regulators	X	X	

Marketing and Planning Committee participation	X	X	X
TEK-NET Library	Scan Tool Group		
Tool Tech Participation	X	X	X
Voting Privileges	X		

Only Full Members who are current on all dues and fees shall be considered to be in good standing and entitled to vote on matters presented to the members for vote. All other members are non-voting.

Section 3. **Election of Members** – Any person, firm or corporation eligible for election to membership under these Bylaws may be elected to membership upon application and approval by a majority vote of the Executive Board, in accordance with the procedures described in Sections 4 and 5 below.

Section 4. **Approval Procedure** – Applicants for membership in the Institute shall be approved and elected in accordance with the following procedure:

- Each applicant that is a firm or corporation shall appoint and certify to the President of ETI a person to be its representative in the Institute and who shall represent, vote and act for the firm or corporation in all affairs of the Institute.
- Only the designated representative or, in his/her absence, the designated alternate, shall be authorized to act as a voting representative of the firm or corporation.
- Upon receipt of a qualified application for membership, the ETI staff will review the applicant’s eligibility for membership and, if eligible, will submit the application to the President of ETI for presentation to the Advisory Board.

- Upon receipt of the application from the President of ETI, the Advisory Board shall review the application and make a recommendation to the Executive Board whether to approve or reject the application for membership. The President of ETI shall present the Advisory Board's recommendation to the Executive Board, which shall also conduct a background check on the applicant.
- Should the Executive Board have questions, during its background investigation, it will present the questions to the President of ETI who will, in turn, endeavor to obtain the appropriate answers or information and resubmit to the Executive Board.
- Once the Executive Board is satisfied that all necessary information has been received and considered, there will be a follow up vote of the Executive Board to determine whether the applicant is elected to membership in the Institute and, in the case of applicants for Full Members, whether to be admitted initially as Probationary Members. Approval and election to membership in the Institute is solely within the discretion and prerogative of the Executive Board, which may deny membership to any applicant for any or no reason.

Upon affirmative vote of majority of the Executive Board, the applicant is to be accepted into membership upon payment of all dues and fees, and execution and delivery of the General Membership Agreement in the form attached to these Bylaws as Exhibit A, as such may be amended from time to time by the Executive Board ("General Membership Agreement") or, if admitted initially as Probationary Members, the Probationary Membership Agreement in the form attached to these Bylaws as Exhibit B, as such may be amended from time to time by the Executive Board ("Probationary Membership Agreement").

Section 5. **Probationary Membership** –At the discretion of the Executive Board, some newly approved Full Members may be classified as "Probationary Members" for the first 12 months of membership. Probationary Members shall be required to execute, and be bound by, the terms and conditions set forth in the Probationary Membership Agreement. Upon conclusion of the 12-month probationary period, absent any prior termination, expulsion or resignation, the Executive Board shall, at its next regular meeting following the expiration of the 12-month

probationary period, vote whether to approve Probationary Member as a Full Member. If no vote of the Executive Board is taken on the matter at the next regular meeting of the Executive Board, the Probationary Member shall automatically, and without the need for any further Executive Board action, become a Full Member upon execution of the General Membership Agreement. If the Probationary Member is not approved as a Full Member, the Probationary Member shall no longer be a member of the Institute.

Section 6. **Duration of Membership and Resignation** – Membership in the Institute may terminate by voluntary resignation, or otherwise pursuant to these Bylaws. All rights, privileges and interest of a member in or to the Institute shall cease on the termination of membership. Any member may, by giving written notice of such intention, resign from membership. Such notice shall be presented to the Executive Board at the next succeeding meeting of the Executive Board. Resignations shall not relieve members from paying dues in full for the entire year and satisfying all other obligations for the current quarter.

Section 7. **Suspension and Expulsion** – Membership in the Institute may be suspended or terminated for cause. “Suspension” shall be a temporary cessation of all member benefits, rights, and privileges for a specified limited period of time, after which all former member benefits, rights, and privileges shall be restored. “Termination” shall mean a permanent and complete cessation of all member benefits, rights, and privileges; provided, however, that termination shall not preclude a former member from later reapplying for membership as provided in these Bylaws. Sufficient cause for such suspension or termination of membership shall be a violation of these Bylaws or any lawful rule or practice duly adopted by the Institute, breach of a member's

obligations under the Probationary Membership Agreement or the General Membership Agreement, or any other conduct prejudicial to the interests of the Institute or its members, as determined by the Executive Board. Violations may include but are not limited to:

- Misuse of any entities' intellectual property
- Sharing and/or misuse of Institute or its members' private or confidential information
- Sharing and/or misuse of OEM data or confidential information
- Violating OEM license agreements
- Offering products for the purpose of "tuning"
- Publicly criticizing ETI policy
- Openly acting in any way detrimental to the reputation, image, and workings of the Institute.

Members who become aware of member misconduct or illicit activity should report such issues to the President of ETI in writing. The President of ETI shall inform the Executive Committee. The Executive Committee shall then promptly investigate the allegations and, if the results of such an investigation substantiate the allegations, shall recommend to the Executive Board that it commence the process of Investigation, Suspension, or Expulsion described in the paragraph below.

Upon receipt of the recommendation to commence the process of investigation from the Executive Committee, the Executive Board shall send a statement of the charges by certified or registered mail to the last recorded address of the member at least thirty (30) days before any action is taken by the Executive Board on the matter. This statement shall be accompanied by a notice of the time and place of the meeting of the Executive Board at which charges shall be



considered and the member shall have the opportunity to appear in person and/or to be represented by counsel and to present any defense to such charges before action is taken by the Executive Board. Upon conclusion of the hearing, the Executive Board may, by two thirds (2/3) vote of the entire Executive Board, suspend or terminate the membership of the member if the Executive Board believes that cause has been established sufficient to warrant suspension or termination in light of the evidence and testimony presented. Prompt notice of the Executive Board's decision shall be provided to the member.

#### **ARTICLE IV**

##### **DUES OR ASSESSMENTS**

Section 1. **Dues and Assessments** – The Executive Board shall determine any fees, annual dues and assessments for members of the Institute. Payment due dates, invoicing, payment tracking and collections will be handled by the ETI staff and the status reported to the Executive Board at every quarterly Executive Board meeting.

Section 2. **Contributions** – The Institute at any time may accept and use contributions or gifts made to it by any person, firm or corporation. All contributions or gifts above nominal value, other than gifts of cash, cash equivalents, or publicly traded securities, must be approved by the Executive Board. Voluntary labor by members will not be considered a contribution or gift in relation to this section.

Section 3. **Failure to Pay** – Members who fail to pay their dues or assessments within thirty (30) days from the time they become due shall be notified at that time by the President of ETI or such other office as may be designated for such purposes by the Executive Board, if payment

arrangements are not made within the next succeeding sixty (60) days, shall, without further notice and without hearing, be terminated from membership and forfeit all rights and privileges of membership. The Executive Board may, by rule, prescribe procedures for extending the time for payment of dues and assessments and continuation of membership privileges upon request of a member and for good cause shown.

Members who elect not to renew their membership and pay the appropriate dues/fees are to be listed as inactive and not eligible for participation in ETI events, communications or activities and shall not be entitled to vote at member meetings. Should that member seek to renew its membership within 2 years of cancellation, it must pay dues in arrears, back to the time of termination. After 2 years' time, former members wishing to rejoin as members must submit a new Application for Membership and follow the procedure described in Article III.

## **ARTICLE V**

### **MEMBER MEETINGS**

Section 1. **Annual Meetings** – There shall be an annual meeting of the members of the Institute, as scheduled by the Executive Board, for the receiving of the annual reports, election of Directors and Officers, and for the transaction of other business. Notice of such meeting, sent by the President of ETI, shall occur at least thirty (30) business days before the time appointed for the meeting.

Section 2. **Special Meetings** – Special meetings of the members of the Institute may be called by the Chairman, President of ETI or the Executive Board, and shall be called by the Chairman upon the written request of fifteen (15) or more members. Notice of any special meetings shall be sent

to the last noted e-mail address of each member at least five (5) business days before the time appointed for web conference or conference call meetings and twenty (20) business days before face-to-face meetings with a statement of time and place of the meeting and information as to the subject matter to be considered.

Section 3. **Waiver of Notice** – Attendance at a meeting of members, in person or by proxy, constitutes a waiver of notice of the meeting, except when the member attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 4. **Quorum** – A majority of the voting ETI members present in person, by proxy, or by remote participation, shall constitute a quorum at any meeting of members. If a quorum is not present, the members present may adjourn the meeting, without any further notice, until a quorum is convened.

Section 5. **Procedures** – All meetings of the Institute shall be governed by parliamentary process as set forth in Robert’s Rules of Order (most recent edition) when it does not conflict with these Bylaws. Except as otherwise provided in the Articles of Incorporation, these Bylaws, or applicable law, all matters submitted to a vote of members shall be adopted only after receiving a favorable vote of more than one half (1/2) of the voting members present in person or by proxy, or participating by remote communications equipment.

Section 6. **Participation and Attendance** – A member may participate in a meeting of members by conference phone or other means of remote communication that permits all person that

participate in the meeting to communicate with all the other participants. All participants shall be advised of the means of remote communication. Participation in a meeting by conference phone or other means of remote communications that satisfies the aforementioned requirements constitutes presence in person at the meeting. At all meetings, members who are companies or firms may be represented by any officer, partner or principal, or by any members or representatives of the company or firm who the member may delegate for the purpose of member representation. Guests shall be allowed at meetings only on approval of the presiding officer.

## **ARTICLE VI**

### **BOARD OF DIRECTORS**

Section 1. **Executive Board** – The Executive Board shall constitute the Board of Directors of the Institute. Only members of the Executive Board (hereinafter “Directors”) shall have the right to vote on Executive Board matters.

Section 2. **Composition and Terms of Office of the Executive Board** – The Executive Board shall consist of the following four officers: the Chairman, the Vice Chairman, the VP of Global Growth and Strategy, and the Secretary/Treasurer (the “Officer Directors”), together with no less than three and no more than five additional Directors (the “At-Large Directors”) elected by the members at the annual meeting of the members. Of the five At-Large Directors, up to two may be elected by the members from among the European Directors. The total number of Executive Board members shall not exceed nine.

Executive Board members shall assume their roles on the first day of the month following the annual meeting. Officer Directors will serve a single two-year term on the Executive Board, and may not be re-elected for successive terms. At-Large Directors will also serve a two-year term, but may be re-appointed for successive terms.

Section 3. **Advisory Board** – The Institute shall also have an Advisory Board. The Advisory Board shall advise and be heard by the Executive Board on any question of policy involving or likely to affect the Institute or its structure. The Advisory Board is not the Board of Directors or any part of the Board of Directors of the Institute, shall have no vote on Executive Board matters, and shall neither have nor owe any fiduciary duties to the Institute. The Advisory Board shall consist of the Vice Chairman, who will serve as the Advisory Board's chair, along with a Secretary-Treasurer-Elect and a VP of Global Growth and Strategy-Elect (the “Elect Advisory Board Members”), together with no less than five and no more than nine additional Advisory Board members elected by the members (the “At-Large Advisory Board Members”). Elect Advisory Board Members shall be appointed for 2 year terms, after which they will automatically, and without the necessity of any further Executive Board or member action, succeed to the officer positions as Chairman, Secretary-Treasurer, and VP of Global Growth and Strategy, respectively, and serve as successor Officer Directors on the Executive Board.

Advisory Board members shall assume their roles on the first day of the month following their election at the annual meeting.

At-Large Advisory Board Members shall be elected to two year terms of office, and may be re-elected to successive terms of office. One of these At-Large Advisory Board Members may be

designated as the "Technical Advisor," who shall have and may exercise such authority, and shall assume such responsibilities, as may be delegated and/or assigned by the Executive Board to the Technical Advisor from time to time.

Section 4. **Board Member Limits** – No more than one individual from the same member firm or corporation is permitted to serve on the Executive Board and no more than two individuals from the same member firm or corporation are permitted to serve on the Executive Board and Advisory Board collectively. In the event the Executive Board is made aware of any situation where there are more than the permitted number of individuals from any single firm or corporation serving on the Executive Board or the Advisory Board, the Executive Board, during its next regular meeting, shall take action to remove and replace a sufficient number of the Directors or Advisory Board members in office to reduce the number of Directors or Advisory Board members, as the case may be, from any single member firm or corporation as necessary to ensure compliance with these limitations. During periods when there is more than one individual from the same member firm or corporation serving on the Executive Committee, none of the Executive Board members associated with that member firm or corporation will be eligible to vote on Executive Board matters.

Section 5. **Responsibilities and Powers of the Executive Board** – The Executive Board shall have overall supervision, control, and direction of the Institute's affairs. Within the boundaries set forth in the Bylaws, the Executive Board is responsible for establishing and modifying Institute policies. It is also tasked with actively pursuing the Institute's objectives and exercising discretion over the allocation of financial resources. The Executive Board may establish operational rules

and regulations and appoint agents as necessary for the execution of its delegated powers. In carrying out its duties, the Executive Board shall focus on the following key functions:

1. **Promotion and Representation:** Directors shall act as advocates for the Institute, promoting and representing it to key stakeholders, including Original Equipment Manufacturers (OEMs) and National Accounts.
2. **Mission and Event Promotion:** Directors shall champion the Institute's mission and actively support its events.
3. **Attendance:** Directors shall attend a minimum of four (4) board meetings annually, either in person or through teleconference, to ensure active participation and engagement.
4. **Participation in ETI-Sponsored Events and Meetings:** Directors shall participate in ETI-sponsored events and meetings to demonstrate their commitment to the Institute's activities.
5. **Nonprofit Corporate Governance:** Directors shall adhere to recognized nonprofit corporate governance practices to maintain the integrity and transparency of the Institute's operations.
6. **Additional Functions:** In addition, the Executive Board shall be responsible for the following:

**Annual Budget Approval:** The annual budget for the Institute shall be prepared by the President of ETI and presented to the Executive Board for review. No budget shall be adopted unless and until such budget has been approved by a majority vote of the Executive Board, and no expenditure shall be made unless it is authorized in a duly-approved budget except in those cases where the expenditure has been expressly approved by the Chairman.

**Major Financial Decisions:** If the President anticipates any financial transaction or commitment that would exceed 5% of the approved annual budget, the President shall promptly notify the Executive Board. In addition to the annual budget, any acquisition or disposition of real property, or any other major financial decision as determined by the Executive Board, must be reviewed

and approved by a majority vote of the Executive Board present in a meeting prior to being executed or committed to by the Institute.

**Emergency Provisions:** In cases of emergency where a decision must be made in a timeframe that does not allow for a regular Executive Board meeting, the Chairman may provisionally approve such a decision. However, this decision must be reviewed and ratified by the Executive Board at the earliest opportunity. Should the Executive Board choose not to ratify the decision, corrective actions, as deemed necessary and appropriate by the Executive Board, will be taken.

**Financial Oversight:** The Executive Board shall maintain an active role in the oversight of the Institute's financial affairs to ensure its fiscal responsibility and the long-term sustainability of its mission. As such, periodic financial reports shall be provided to the Executive Board for review by the President of ETI at intervals determined by the Executive Board.

Section 6. **Fiduciary Responsibilities** – The Executive Board collectively, and the Directors individually, owe fiduciary duties to the Institute. In essence, exercising fiduciary duties means that Directors have a duty to act with care and in the best interest of the Institute and remain loyal to its mission, as opposed to acting in their own interests, the interest of the President of ETI they supervise or in the interest of their own member firm or corporation. Directors shall exercise the following fiduciary duties:

**Duty of Care:** Each Director shall act in good faith and in a manner the Director reasonably believes to be in the best interests of the Institute. Directors should make every effort to attend Executive Board meetings, make reasonable inquiries, and provide relevant information from trustworthy sources to the Executive Board.



**Duty of Loyalty:** Directors must exercise their powers in the interest of the Institute and its members and not in their own interests or the interest of another entity or person. Directors must avoid conflicts of interest, and appropriation of Institute assets, opportunities, or funds. Directors shall treat all business of the Institute as confidential, until such time as the information has been exposed to the general public, made a matter of public record, or otherwise made common knowledge.

**Duty to Act in Good Faith:** Each Director is required to act honestly, with faithfulness to their duties and obligations, and not attempt to take advantage of the Institute, its members, or its position in the industry.

**Duty of Obedience:** Each Director must be faithful to the underlying purposes and goals of the Institute. Directors should proactively engage in establishing and executing strategic direction and Long Range Plans (LRP) for ETI that are consistent with the Mission and Vision of the Institute.

Section 7. **Meetings** – An annual meeting of the Executive Board shall take place immediately following the annual meeting of members. The Executive Board shall also meet from time to time upon the call of the Chairman and shall be called for a meeting by the Chairman upon the written request of a majority of the members of the Executive Board at such time and place as may be designated. Notice of all meetings of the Executive Board shall be sent to each member of the Executive Board at the Director’s last recorded e-mail address at least five (5) business days before the time appointed for web conference or conference call meetings and at least twenty (20) business days before face to face meetings. Meeting notice does not need to specify the business to be transacted or the purpose of the meeting.

The Advisory Board shall meet upon the call of the Vice Chairman or shall be called for a meeting by the Vice Chairman upon the written request of a majority of the members of the Advisory Board at such time and place as may be designated. Notice of all meetings of the Advisory Board members shall be sent to each member of the Advisory Board at the Advisory Board member's last recorded e-mail address at least five (5) business days before the time appointed for web conference or conference call meetings and at least twenty (20) business days before face to face meetings. The notice does not need to specify the business to be transacted or the purpose of the meeting.

Section 8. **Waiver of Notice** – Attendance of a Director or Advisory Board member at a Board meeting constitutes a waiver of notice of the meeting, except where a Director or Advisory Board member attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting was not lawfully called or convened. Unless the Executive Board determines otherwise, Executive Board meetings shall only be open to Directors and invited guests.

Section 9. **Quorum** – A majority of the entire Executive Board shall constitute a quorum at any meeting of the Executive Board. If a quorum is not present, a majority of those Directors present may adjourn the meeting, from time to time, without further notice until a quorum is present.

A majority of the entire Advisory Board shall constitute a quorum at any meeting of the Advisory Board. If a quorum is not present, a majority of those Advisory Board members present may adjourn the meeting, from time to time, without further notice until a quorum is present.

Section 10. **Meeting by Communications Equipment** – Board members, whether from the Executive Board or Advisory Board, or any committee established by these Bylaws or by the Executive Board, may participate in an Executive Board, Advisory Board, or committee meeting, as the case may be, using a conference call or similar communication tools if all individuals who are participating in the meeting can communicate with the other participants. Participation in this manner constitutes attendance in person at the meeting.

Section 11. **Action Without a Meeting** – Any action required or permitted to be taken under authorization voted at a meeting of the Executive Board, the Advisory Board, or one of the corporation’s committees may be taken without a meeting if, before or after the action, all members of the Executive Board, the Advisory Board, or the committee, as the case may be, consent to the action in writing or by electronic transmission. This written consent will be kept with the official records of the Executive Board, the Advisory Board, or the committee, as the case may be, and it will have the same effect as if the action had been approved through a formal vote at a meeting for all intents and purposes.

Section 12. **Compensation** – Directors and Advisory Board members, as such, shall not receive any stated compensation for their services as Directors or Advisory Board members; provided, however, that the Executive Board may, by resolution, authorize reimbursement of expenses incurred in the performance of their duties. Such authorization may prescribe procedures for approval and payment of such expenses by designated officers of the Institute. Nothing herein shall preclude a Director or Advisory Board member from serving the Institute in any other capacity and receiving compensation for such services.

Section 13. **Resignation or Removal** – Any Director or Advisory Board member may resign at any time by giving written notice to the Chairman, the President of ETI, or to the Executive Board. Such resignation shall take effect at the time specified therein, or if no time is specified, at the time of acceptance thereof as determined by the Chairman or the Executive Board. Any Director or Advisory Board member may be removed for cause at any time by a two-thirds (2/3) vote of the Directors present, following notice, at any duly called special meeting of the Executive Board to which the Vice President of Global Growth and Strategy – Elect and the Secretary/Treasurer – Elect would be invited to participate on a non-voting basis, or by the action of the voting members, with or without cause, at any duly called meeting of members. “Cause” for purposes of this section shall mean (1) poor or erratic attendance at Board or committee meetings; (2) breaches of fiduciary duty, where relevant; (3) in the case of an officer, the failure to perform the essential functions and responsibilities of the position; (4) any willful or deliberately harmful or offensive behavior; (5) repeated disruption of the good order of Board meetings; (6) actions that bring significant adverse or negative publicity to the Institute; (7) any criminal activity; or (8) failure to comply with the Bylaws or with any rules, procedures or policies adopted from time to time by the Executive Board. Any Director or Advisory Board member subject to removal shall be afforded an opportunity to address the Executive Board and present a defense to the allegations of cause for removal. In the event any officer, Director or Advisory Board member should become disassociated with a member firm or corporation for over ninety (90) days, he/she shall be deemed to have resigned and shall cease to hold his/her elective position.

All Directors are expected to attend all Executive Board meetings and all Advisory Board members are expected to attend all Advisory Board meetings. A Director or Advisory Board member's absence will be deemed "Excused" or "Non-Excused" by a simple majority vote of those in attendance at the meeting; provided, however, that if no vote is taken on the matter, the Director's or Advisory Board member's absence shall be deemed to have been "Excused." Having two (2) Non-Excused occurrences in the same calendar year constitutes a resignation.

Section 14. **Vacancy** – In the event of a vacancy in an Officer-Director position, the Vice Chairman shall fill any vacancy in the office of Chairman, the Vice President of Global Growth and Strategy – Elect shall fill any vacancy in the office of the Vice President of Global Growth and Strategy, and the Secretary/Treasurer – Elect shall fill any vacancy in the office of Secretary/Treasurer, each to serve until the next regular election of the membership without vacation of their existing officer positions, which they will continue to hold. In the event of a vacancy in any other Director or Advisory Board position, the vacancy shall be filled by the Nominating Committee with ratification by the Executive Board until the next regular election of the membership. The person who fills the vacancy must meet the required qualifications for the position. If the Vice Chairman is unable or unwilling to complete the vacated term of the Chairman, the Immediate past Chairman will be asked to serve as Chairman until the next regular election of the membership. In the event that a vacancy in any Officer Director position cannot be filled by the process described above, the vacancy shall be filled by the Nominating Committee, subject to ratification by the Executive Board, and shall serve until the next regular election of the membership or until his or her earlier resignation or removal. The person who fills the vacancy must meet the required qualifications for the position.

## **ARTICLE VII**

### **OFFICERS**

Section 1. **Officers** – The officers of the Institute shall be the Chairman of the Executive Board, Vice Chairman, Vice President of Global Growth and Strategy, and the Secretary/Treasurer, and such other officers as the Executive Board may be deem necessary or appropriate. Every second year, commencing on the first day of the month following the annual meeting of the members, the then-serving Vice Chairman shall become the Chairman, the then-serving Vice President of Growth and Strategy - Elect shall become the Vice President of Growth and Strategy, and the then serving Secretary/Treasurer-Elect shall become the Secretary/Treasurer, all without the necessity of any action by the Executive Board or the members. At the discretion of the Executive Board, any candidate for the office of Secretary/Treasurer or Elect Secretary/Treasurer may be required, prior to election, to pass a minimum capabilities test for confirmation of his/her financial acumen. The officers of the Institute shall also consist of the Elect Officers described in Section 9 below, each of who shall be elected by members at each second annual meeting of the members.

Section 2. **Term of Office** – Each officer shall take office the first day of the month following the annual meeting of members and shall serve for a term of two years and until the first day of the month following the most recent annual meeting of members, when his or her successor shall take office, or until his/her earlier resignation or removal.

Section 3. **Removal** – Any officer of the Institute may be removed by the members at any time and for any reason, or may be removed by the Executive Board for cause in the same manner as

that set forth for removal of a Director in Article VI, Section 13 above. Any officer facing removal for cause by the Executive Board shall be afforded the opportunity to address the Executive Board and present a defense to the allegations of cause for removal. The removal of an officer shall be deemed to constitute a concurrent removal of the person as a Director and, in the case of the Vice Chairman, a removal of the person from the Advisory Board.

Section 4. **Vacancy** –Any vacancy in an officer position shall be filled in the manner described in Article VI, Section 14 above; provided, however, that in the event of a vacancy in the office of Vice President of Global Growth and Strategy filled by the Vice President of Global Growth and Strategy – Elect, or in the case of a vacancy in the office of Secretary/Treasurer filled by the Secretary/Treasurer-Elect, the individual filling the vacancy shall continue to serve in his or her officer elect position until the next regular election of the membership.

Section 5. **Chairman** – The Chairman of the Executive Board for the Institute shall preside at meetings of the members of the Institute and of the Executive Board and the Executive Committee and shall be a member, with right to vote, on all committees except the Nominating Committee (unless randomly selected to serve as provided in Article IX, Section 3). He/she shall also, at the annual meeting of the Institute, and at such other times as he/she shall deem proper, communicate to the Institute or to the Executive Board, such matters and make such suggestions as may in his/her opinion tend to promote the welfare and increase the usefulness of the Institute, and shall perform such other duties as are necessarily incident to the office of the Chairman or as may be specified by the Executive Board. The Chairman shall be responsible for ensuring (to the best of his or her ability) the implementation of the policies of the Institute as

determined by the Executive Board. The Chairman shall supervise the activities of the Institute and the management thereof by the President of ETI. Upon expiration of his/her term as Chairman, the immediate past Chairman is eligible to be elected as an At-Large Advisory Board Member, but shall not be eligible for election as an At Large Director or as Vice Chairman, Vice President of Global Growth and Strategy – Elect or as Secretary/Treasurer-Elect until the lapse of two full years after service as Chairman.

*Key Functions/Responsibilities*

- Chairman of the Executive Board
- Represent the Institute as the Chairman
- Oversee the Executive Board meetings
- Sit as an elective officer on ETI's Executive Committee
- Attend 4 board meetings per year in person or via teleconference (unless excused by action of the Board)
- Attend ETI sponsored events and meetings
- Promote the Institute with key stakeholders (e.g. OEM's, National Accounts)
- Adhere to generally accepted nonprofit corporate governance – Directors' fiduciary responsibilities.

Section 6. **Vice Chairman** – The primary duties of the Vice Chairman are to chair the Advisory Board and the Program Committee. The Vice Chairman will work with the Executive Board and staff to create an agenda and overall plan for approval by the Executive Board at the next term's annual meeting. The Vice Chairman shall have such other duties as may be specified by the Executive Board. The Vice Chairman follows the Chairman in succession.

*Key Functions/Responsibilities*

- Succeed to the office of Chairman at such time as the office of Chairman may become vacant



- Chair the Program Committee and support the President of ETI and help plan the upcoming annual meeting including agenda and overall event planning
- Support the President of ETI in selecting a venue for the up-coming annual meeting (Tool Tech)
- Fill in for the Chairman when requested or during temporary disability situations
- Sit as an elected officer on ETI's Executive Committee
- Attend 4 board meetings per year in person or via teleconference (unless excused by the President)
- Attend ETI sponsored events and meetings
- Promote the Institute with key stakeholders (e.g. OEM's, National Accounts)
- Adhere to generally accepted nonprofit corporate governance – Directors' fiduciary responsibilities.

Section 7. **Vice President of Global Growth and Strategy** – The primary duty of the Vice President of Global Growth and Strategy is to define, develop, and implement growth strategies supporting the President of ETI. The VP of Global Growth and Strategy will work with the Executive Board and staff to support the President of the ETI in guiding the Institute's growth strategies and drive support for the Annual Meeting (Tool Tech) and Tech Week events. The VP of Global Growth and Strategy shall have such other duties as may be specified by the Executive Board.

*Key Functions/Responsibilities*

- Support the President of ETI in defining and implementing growth strategies
- Fill in for the Vice Chairman when requested or during temporary disability situations
- Promote the Institute with key stakeholders (e.g. OEM's, National Accounts)
- Promote ETI's mission and events
- Sit as an elective officer on ETI's Executive Committee

- Attend 4 board meetings per year in person or via teleconference (unless excused by the President)
- Attend ETI sponsored events and meetings
- Adhere to generally accepted nonprofit corporate governance – Directors’ fiduciary responsibilities.

Section 8. **Secretary/Treasurer** – The Secretary/Treasurer shall take minutes of all Executive Board meetings or appoint an ETI staff member to take such minutes and notes and submit them to the Executive Board after reviewing them. The Secretary/Treasurer shall review the ETI financials, including profit and loss statements, balance sheet, disbursements, and the President of ETI expense reports on a monthly basis, compare it to the budget, and report any significant deviation or concern to the Executive Board. The duties of the Secretary/Treasurer, with the approval and at the direction of the Executive Board, may be assigned in part to the President of ETI. The Secretary/Treasurer shall have such other duties as may be specified by the Executive Board.

*Key Functions/Responsibilities*

- Take minutes for all member and Executive Board meetings or appoint an ETI staff member to do so
- Review ETI’s financials on a monthly basis
- Review ETI’s performance against budget on a quarterly basis
- Approve reimbursement of expenses of the President of ETI
- Oversee the expenditures of the institute and President of ETI
- Promote the Institute with key stakeholders (e.g. OEM’s, National Accounts)
- Promote ETI’s mission and events
- Sit as an elective officer on ETI’s Executive Committee

- Attend 4 board meetings per year in person or via teleconference (unless excused by the President)
- Attend ETI sponsored events and meetings
- Adhere to generally accepted nonprofit corporate governance – Directors’ fiduciary responsibilities.

Section 9. **Elect Officers** – The Vice President of Global Growth and Strategy-Elect, and the Secretary/Treasurer-Elect (together, the “Elect Officers”) shall provide assistance to, and serve under the general supervision and direction of, the Vice President of Global Growth and Strategy and Secretary/Treasurer (who, together with the Chairman and Vice Chairman, shall constitute the “Regular Officers”), respectively, with the intent that such service provide opportunities for training to the Elect Officers to appropriately equip them to serve as successor Regular Officers upon completion of the Regular Officers’ two-year terms of service.

## **ARTICLE VIII**

### **PRESIDENT OF ETI**

Section 1. **Description and Authority** – The President of ETI is the administrator and general manager of the Institute. This shall be a salaried position employed and appointed by the Executive Board. He/she shall be responsible to the Chairman and the Executive Board. He/she shall have the authority to execute contracts on behalf of the Institute as appropriate for the position or when approved by the Executive Board. He/she shall have the title of President of ETI or such other title as the Executive Board shall from time to time designate. He/she shall employ and may terminate the employment of members of the staff necessary to carry out the work of

the Institute. He/she shall manage and direct all functions and activities of the Institute and perform such other duties as may be specified by the Executive Board.

## Section 2. Key Functions/Responsibilities

### *Leadership & Management:*

- Assure that the organization has a long-range strategy which achieves its mission, and toward which it makes consistent and timely progress. Recommend timelines and resources needed to achieve the strategic goals.
- Actively engage and energize ETI's member companies, individual volunteers, Executive Board members, committees and partnering organizations. Promote active and broad participation by volunteers in all areas of the Institute's work, especially the Institute's vertical groups.
- Maintain, and support a strong Executive Board and Advisory Board. Serve as a voting member of each committee, seek and build Executive Board member involvement with strategic direction for all ongoing activities and projects.
- Provide leadership in developing program, organizational and financial plans with the Executive Board and staff, and carry out plans and policies authorized by the Executive Board.
- Maintain official records and documents, and ensure compliance with federal, state and local regulations.
- Maintain a working knowledge of significant developments and trends in the automotive repair industry.
- Represent ETI with the Automotive Manufacturers.
- Work with the Executive Committee to select locations for all events.

### *Financial and Legal:*

- Be responsible for developing and maintaining sound financial practices.
- Work with the staff, the Finance Committee, and the Executive Board in preparing an annual budget and a three year rolling forecast; see that the Institute operates within budget guidelines.
- Ensure that adequate funds are available to permit the Institute to carry out its work.

- Jointly, with the Chairman and Secretary-Treasurer, conduct official correspondence of the Institute, and jointly, with designated officers, execute legal documents.

It is the duty of the President of ETI to inform the Executive Board within 5 business days of any of the following occurrences.

- ETI's cash reserves fall below 50% of the annual operating budget.
- A month-to-month reduction in members exceeding 20%.
- Any singular financial transaction or obligation exceeding 5% of ETI's yearly budget.
- A forecasted annual net income loss.
- Adjustments in year-over-year financial projections that predict a dip in either revenue or net income by over 10% relative to the preceding year.
- Hiring of additional Institute personnel that increase ongoing headcount.

*Communications:*

- See that the Executive Board is kept fully informed on the condition of the organization and all important factors influencing it.
- Publicize the activities of the Institute, its programs and goals.
- Establish sound working relationships and cooperative arrangements with other industry groups and organizations.
- Represent the programs and point of view of ETI to government agencies, organizations, automakers and the general public.
- Deepen and refine all aspects of communications—from web presence and social media to external relations with the goal of creating strong brand recognition.
- Use external presence and relationships to garner new opportunities.

## **ARTICLE IX**

### **COMMITTEES**

Section 1. **Appointment** – The Institute shall at all times maintain three standing committees, an Executive Committee, a Nominating Committee, and a Program Committee. The Chairman, subject to the approval of the Executive Board, may from time to time appoint such additional or special committees or subcommittees as he/she may find necessary or appropriate.

Section 2. **Executive Committee** – The Executive Committee shall be comprised of the officers of the Institute, the President of ETI, and the option of one other Director as elected by the Executive Board. The Executive Committee members may exercise the powers of the Executive Board when the Executive Board is not in session, reporting to the Executive Board at its next meeting any action taken.

Section 3. **Nominating Committee** –The Nominating Committee shall consist of a total of seven members, four of whom shall be selected from among the Executive Board and three of whom shall be selected from among the Advisory Board. Each year, at least three months prior to the annual meeting of members, the President of ETI shall, through a random selection process witnessed by the Executive Board, identify four members from among the Executive Board and three members from among the Advisory Board for positions on the Nominating Committee. The Nominating Committee as so comprised shall appoint its own chair. The responsibility of the Nominating Committee shall be to nominate candidates for elected Directors, Advisory Board members, and officers. Suggestions for nominations may be submitted by any member to the Nominating Committee provided such suggestions are received by the Nominating Committee

no later than seventy-five (75) days prior to the annual meeting of the members. The Nominating Committee shall consider all names timely submitted to it, but is not limited to those names and may consider other names as well. The Nominating Committee shall report the names of the candidates it proposes for nomination to the Chairman sixty (60) days prior to the annual meeting of the members. The Chairman will bring this slate to the Executive Committee or Executive Board for confirmation and send the confirmed slate to the President of ETI to post.

All nominees for elected office must be a member or in the active employ of a member firm or company and such nominees must have the approval of the nominee's employer prior to the time of election.

Section 4. **Program Committee** – The Program Committee will support and advise the ETI President on the location, selection, timing, agenda, and planning (including speaker identification and booking) of the annual Tooltech Meeting. The committee shall consist of the Vice Chairman, who shall serve as the committee chair, along with the President of ETI or his/her designee and four other committee members appointed by the Vice Chairman. Unless otherwise directed by the Executive Board, the President of ETI shall have sole decision-making authority as to the location and timing of the annual ETI Tooltech Meeting.

Section 5. **Quorum, Taking Action** – A majority of the voting members of the committees shall constitute a quorum for the transaction of committee business, and the vote of a majority of those committee members present where a quorum has been established shall constitute the action of the committee. Committee meetings may be called by the committee chairman or by any three committee members giving at least twenty (20) days' notice of the meeting.

Section 6. **Committee Limitations** – No committee shall exercise the powers and prerogatives of the Executive Board unless such committee shall consist exclusively of Directors of the Institute. No committee shall have the power or authority to amend the Articles of Incorporation or Bylaws of the Institute, adopt an agreement of merger or consolidation, recommend to members the sale, lease, or exchange of all or substantially all of the Institute property and assets, recommend to members a dissolution of the Institute or a revocation of a dissolution, fill vacancies in the Executive Board or Advisory Board (except that the Nominating Committee may do so subject to approval of the Executive Board), fix the compensation of Directors or Advisory Board members for serving on the Executive Board or Advisory Board or on a committee, or terminate membership.

Section 7. **Rules** – Each committee may adopt rules for its own governance not inconsistent with these bylaws or with rules adopted by the Executive Board.

## **ARTICLE X**

### **MISCELLANEOUS**

Section 1. **Membership Voting** – Whenever, in the judgment of the Executive Board, any question shall arise which it believes should be put to a vote of the membership, including the election of directors and officers and amendments to these Bylaws, and when it deems it inexpedient to call a special meeting for such purposes, the Directors may, unless otherwise required by these Bylaws, submit such a matter to the membership in writing by mail or electronic means for vote and decision. The question thus presented shall be determined within thirty (30) days after such



submission to the membership, provided that in each case, votes of at more than one half (1/2) of members must be received and more than 1/2 of those votes must concur.

Section 2. **Notices** – Whenever any written notice is required to be given under the provisions of any law, the Articles of Incorporation or by these Bylaws, it shall not be construed or interpreted to mean personal notice, unless expressly so stated, and any notice so required shall be deemed to be sufficient if given in writing by mail, by depositing the same in a post office box, postage prepaid, addressed to the person entitled thereto at his or her address as it appears in the records of the Institute. Such notice shall be deemed to have been given at the time and on the day of such mailing. When a notice or communication is permitted to be given in writing, electronic transmission is written notice. When a notice or communication is permitted by Illinois law to be transmitted electronically, the notice or communication is given when electronically transmitted to the person entitled to the notice or communication in a manner authorized by the person. All notices given in writing by mail shall also be transmitted electronically to the extent email addresses are available; provided, however, that any failure on the part of the Institute to do so shall not constitute a defect in notice where notice has otherwise been provided by mail as set forth in this Section 2.

Section 3. **Waiver of Notice** – Whenever any notice is required to be given under the provisions of any law, or the Articles of Incorporation or these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

Section 4. **Contracts** – The Executive Board may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Institute, and such authority may be general or confined to specific instances.

Section 5. **Loans** – No loans shall be contracted on behalf of the Institute, and no evidences of indebtedness shall be issued in its name, unless authorized by a resolution of the Executive Board. Such authorization may be general or confined to specific instances.

Section 6. **Checks** – All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Institute shall be signed by such officer or officers, agent or agents of the Institute and in such manner as shall from time to time be determined by resolution of the Executive Board.

Section 7. **Deposits** – All funds of the Institute, not otherwise employed, shall be deposited to the credit of the Institute in such banks, trust companies or other depositories as the Executive Board may select.

Section 8. **Fiscal Year** – The fiscal year shall be as determined by the Executive Board.

Section 9. **Regular Financial Reporting** - The President of ETI shall submit a detailed financial report to the Executive Board on a quarterly basis. The report should, at a minimum, feature: (i) a balance sheet illustrating assets, liabilities, and equity; (ii) an income statement enumerating revenues, expenses, and the resultant profit or loss; (iii) an overview of member dues and any alterations in membership figures; (iv) forecasts of potential financial risks or prospects for the ensuing quarter; (v) an analysis of how ETI's investment in staff augments value for its members.

The Executive Board is to fulfill its fiduciary responsibilities by reviewing and approving the report in a scheduled board meeting. The Executive Board may modify the requirements in this Article X, Section 9 by majority vote at any time.

Section 10. **Seal** – The Institute shall have a seal of such design as the Executive Board may adopt, and it may be used by the members in accordance with the rules as may be adopted by the Executive Board.

Section 11. **Dissolution** – The Institute shall use its funds only to accomplish the objectives and purposes specified in these bylaws and no part of its funds shall inure, or be distributed, to the members of the Institute. On dissolution of the Institute, any funds remaining shall be distributed to one or more regularly organized and qualified professional society, trade association, charitable, educational, scientific or philanthropic organizations to be selected by the Executive Board.

Section 12. **Indemnification** – The Institute shall indemnify and hold harmless each person who is now or shall hereafter serve as a Director, Advisory Board member, officer or employee of the Institute from and against any and all claims and liabilities whether the same are settled or proceed to judgment, to which such person shall have become subject, by reason of his/her having heretofore or hereafter been a Director, Advisory Board member, officer or employee of the Institute, or by reason of any action alleged to have heretofore or hereto after been taken or omitted by him as such director, Advisory Board member, officer or employee, shall reimburse each such person for all legal and other expenses (including the cost of settlement), reasonably incurred by him/her in connection with any such claim, liability, suit, action or proceedings;

provided, however, that no such person shall be indemnified against or be reimbursed for, any claims, liabilities, cost or expenses incurred in connection with any claim, liability or threat or prospect thereof, based upon or arising out of his/her own negligence or willful mis-performance of his/her duties as such Director, Advisory Board member, officer or employee. The determination of all questions as to the existence of negligence or willful misconduct, as to the right to indemnify and reimbursement hereunder and the reasonableness of such costs and expenses may be made and shall be final and conclusive if made, by the Executive Board acting at a meeting at which a quorum is unaffected by self-interest (notwithstanding that other members of the quorum present, but not voting, may be so affected). The rights accruing to any person under the provisions of this section shall not exclude any other right to which he/she may be lawfully entitled, nor shall anything herein contained restrict the right of the Institute to indemnify or reimburse such persons in any case even though not specifically provided for herein.

Section 13. **Insurance** – The Institute must purchase and maintain insurance on behalf of the Institute and any person who is or was serving the Institute as an officer, Director, Advisory Board member, committee member, agent or employee against any liability asserted against the Institute or such persons in connection with or related to the Institute matters whether or not the Institute would have power to indemnify such person(s) against such liability.

## **ARTICLE XI**

### **AMENDMENTS TO THE BYLAWS**

These Bylaws may be amended by affirmative action of a majority of the members present at any regular or special meeting, provided such proposed change is submitted by mail or electronic

means to the members at least fifteen (15) business days in advance of the meeting at which the proposal is to be considered. These Bylaws may also be amended by the affirmative vote of the majority of all the members of this Institute, by mail or electronic means provided that written or electronic notice shall be submitted to all members at least fifteen (15) business days before such ballots are due to be returned for counting.

## **ARTICLE XII**

### **TRANSITION PLAN**

Because immediate adoption of the changes contemplated by these Amended and Restated Bylaws could cause some short term disruption in governance and operations, the Institute shall, notwithstanding any other provision of these Bylaws, transition to full implementation of these Bylaws by executing the transition plan set forth in Exhibit C (the "Transition Plan"). For the duration of the Transition Plan, the terms of the Transition Plan shall supersede any contrary or conflicting provisions of these Bylaws.

22374869.11

EXHIBIT A

(FORM OF GENERAL MEMBERSHIP AGREEMENT)

## GENERAL MEMBERSHIP AGREEMENT

This General Membership Agreement (this "Agreement"), is made and entered into as of this \_\_\_, 2023, ("Effective Date"), by and between the EQUIPMENT AND TOOL INSTITUTE ("ETI"), an Illinois not-for-profit corporation with offices located at 37899 W. 12 Mile Road, Suite 220 Farmington Hills, Michigan, and "[insert member name]" a \_\_\_\_\_ with offices located at \_\_\_\_\_ ("Member"). ETI and Member may be referred to herein collectively as the "Parties."

### RECITALS

Member has been approved as a new member of ETI and in furtherance of its membership, Member enters into this Agreement, which constitutes a legal Agreement between Member and ETI.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, Member agrees to be bound as set forth below.

### AGREEMENT

1. **Membership Levels.** Consistent with ETI's bylaws, as in effect and as amended from time to time ("Bylaws"), Member agrees to the conditions set forth in this Agreement and the Bylaws as a member with the membership level identified on the signatory page of this Agreement.

2. **Membership, Dues, Fees, Term & Termination.**

(a) This Agreement is applicable for Member's membership as set forth in the Bylaws. This shall be the term beginning on the Effective Date and ending on termination, expiration or cancellation of Member's membership in ETI or any earlier termination of this Agreement by ETI as provided in this Agreement and the Bylaws ("Term"). Unless terminated as provided herein and the Bylaws, this Agreement shall remain in full force and effect, renewing annually, at the beginning of each fiscal year based upon the Effective Date of this Agreement. Member shall be obligated to pay dues, assessments, or fees which accrued prior to the effective date of termination, expiration or cancellation. This Agreement shall be terminated upon the termination of Member's ETI membership.

(b) ETI shall have the right, in its complete and sole discretion, to terminate the Agreement if Member fails to comply with the terms and conditions of the Agreement or the Bylaws. ETI shall not be responsible for a refund of any fees and charges paid by Member prior to termination of this Agreement and its membership.

3. **Payment of Dues/Fees.** Member shall pay dues, fees and other assessments applicable to Member's level of membership, as established from time to time by ETI. ETI may

establish reasonable additional fees or charges for participation in meetings or for other benefits of membership. Member shall bear its own costs and expenses for participation in ETI, such as travel, employee compensation, and incidental expenses.

4. **ETI Name and Logo.**

(a) During the Term of this Agreement, ETI grants Member a nonexclusive, non-assignable and non-transferable limited license to use the ETI name and logo only in strict compliance with ETI's Logo Use Policy found at <https://www.etoools.org/ETILogos>. Member agrees that the ETI name and logo may not be otherwise used, copied, reproduced or altered in any manner. Nothing in this Agreement, or in Member's use of the ETI name and logo, will give Member any right whatsoever in the ETI name and logo, or in any similar marks, beyond the limited right granted in this Agreement.

(b) Upon any termination, expiration, cancellation or suspension of Member's membership or the Term of this Agreement, Member shall discontinue all use of the ETI name and/or logo. Furthermore, ETI has an absolute right to terminate, cancel, suspend or withdraw Member's limited license to use the ETI name and logo at any time.

(c) The ETI name and logo contain intellectual property exclusive to ETI. All right, interest, title to, and ownership and intellectual property rights in, the ETI name and/or logo and all copies remain with ETI.

5. **Approval of Bylaws.** Member has reviewed, hereby approves and agrees to abide by the Bylaws.

6. **Antitrust Policy.** Member agrees to comply with all applicable antitrust laws pertaining to Member's participation in ETI. Nothing in this Agreement shall be construed to require or permit conduct that violates any applicable antitrust law.

7. **Confidential Information, Privacy and Security.**

(a) Member acknowledges that certain original equipment manufacturers may provide proprietary data to ETI's TEK-NET library or other repository in order for ETI's members to develop equipment and tools for their customers, and that this data is made available on condition that such data be held by ETI and its members on a confidential basis.

(b) Member agrees that the information received in connection with its membership in ETI or through ETI's TEK-NET library or other repository (collectively, "Confidential Information") is proprietary and shall be maintained in confidence with at least the same degree of care that it uses to protect its own confidential and proprietary information, but no less than a reasonable degree of care under the circumstances. ETI facilitates the exchange of Confidential Information to Member for the sole purpose of the developing, manufacturing and



selling vehicle diagnostic service tools, and performing vehicle diagnosis, and tests ("Authorized Use"). Member agrees to comply with all Data Privacy and Security Requirements set forth in Exhibit A, which is incorporated herein.

(c) Member will use the Confidential Information exclusively for the Authorized Use. Member will (i) treat as confidential the Confidential Information and protect the Confidential Information in the same manner and at a minimum with the same degree of care that Member protects its own trade secrets and other confidential business information; (ii) not alter, modify, disassemble, reverse engineer or decompile any of the Confidential Information; (iii) not, directly or indirectly, disclose, report or transfer Confidential Information to any third party without ETI's prior written consent, except as explicitly provided herein; and (iv) not, directly or indirectly, disclose, report or transfer Confidential Information to employees, directors or agents of Member, except for those employees, directors or agents who must have the information in order to accomplish the Authorized Use and who owe a duty or contractual obligation of confidentiality to Member. Member may not reproduce for distribution or use outside Member any copyrighted materials provided to Member under this Agreement without the permission of the copyright owner.

(d) Member represents and warrants that it will maintain reasonable technical, administrative and physical measures consistent with industry standards and applicable law to protect the Confidential Information from unauthorized access or disclosure and that it will promptly notify ETI of any failure to comply with law, breach of security, or unauthorized access to Confidential Information.

(e) Member shall promptly delete and deliver upon ETI's request all Confidential Information and all copies thereof to ETI at any time upon request made by ETI, on the expiration or termination of this Agreement, and at any point at which Member ceases to be a member in good standing of ETI for any reason.

(f) Notwithstanding any provision of this Agreement to the contrary, Member shall not be obliged to maintain in confidence Confidential Information required to be disclosed to government agencies or pursuant to court order, but only to the extent that such disclosures are so required. In such instances, Member shall, before making such disclosure and to the extent legally permitted, immediately provide written notice of such required disclosure to ETI in order to permit ETI to protect its interests in preserving the confidentiality of the Confidential Information.

(g) The obligations of this Section shall survive termination of this Agreement.

## 8. **Representations and Warranties.**

a. Member represents and warrants that it has the full power and authority to enter into and perform this Agreement.

b. Member represents and warrants that it will comply with all applicable laws and regulations in connection with its membership.

c. Member represents and warrants that its products, services, including all related documentation, software, and other materials do not and will not infringe upon, misappropriate, or violate any Intellectual Property Right of any third party including automotive original equipment manufacturers ("OEMs") and other ETI members. For purposes of this Agreement, Intellectual Property Right means all intellectual property rights and interests, whether registered or unregistered, including, without limitation, patents, copyrights, trademarks, trade secrets, know-how, mask works, industrial designs, trade names, service marks, domain names, goodwill, and other intellectual property rights and interests of whatsoever nature, existing or to come into existence, in any country or jurisdiction in the world.

9. **Assignment.** Member may not assign the benefits or obligations of this Agreement without the prior written approval of ETI.

10. **Limitation of Liability.** Member acknowledges that the Confidential Information provided under this Agreement is provided "as is." ETI additionally EXPRESSLY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL ETI BE LIABLE TO MEMBER OR ITS AFFILIATES FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. **Use of Name.** ETI shall have the right to include Member's name in any lists of Members published by ETI and to announce that Member has joined ETI.

12. **No Transfer.** Member may not transfer, assign or sublicense any of its rights or obligations under this Agreement without the prior written consent of ETI. Any attempted transfer in violation of this Section is null and void.

13. **Notice.** Any notice or communication permitted or required by this Agreement shall be in writing and shall become effective two business days after the mailing thereof by certified mail, return receipt requested, postage prepaid, and addressed to:

If to ETI, to:

[insert contact information]

If to Member:

[insert contact information]

14. **No Joint Liability.** Nothing in this Agreement shall be deemed to create a joint, venture, partnership or agency relationship between ETI and Member or to make the Parties jointly liable for any obligation arising out of the activities and services contemplated by this Agreement.

15. **Governing Law.**

(a) All matters relating to this Agreement, and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the internal laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule (whether of the State of Michigan or any other jurisdiction).

(b) Any legal suit, action, or proceeding arising out of, or related to, this Agreement shall be instituted exclusively in the federal courts of the United States or the courts of the State of Michigan, although ETI retains the right to bring any suit, action, or proceeding against Member for breach of this Agreement in Member's country of residence or any other relevant country. Member waives any and all objections to the exercise of jurisdiction over Member by such courts and to venue in such courts.

16. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect; and a substitute, valid, and enforceable provision most nearly reflecting the original intent shall be developed in place of the invalid provision.

17. **Integration.** This Agreement supersedes and replaces any and all prior representations, agreements and understandings relating to Member's membership in ETI, except the Bylaws. In the event of a conflict between this Agreement and the Bylaws, the terms of the Bylaws will prevail.

18. **Damages.** Upon Member's failure to pay dues or other breach of this Agreement, Member shall be subject to suspension or expulsion from membership in ETI, as well as payment of ETI's reasonable attorneys' fees and such fines and other penalties as ETI's Board of Directors may approve and as may be proven under law or equity.

19. **Defense, Indemnification, and Hold Harmless.** Member agrees to defend, indemnify, and hold harmless ETI and its directors, officers, employees, volunteers, agents, and other representatives and contractors (collectively "Indemnified Parties") against all claims, demands, actions, causes of action, losses, damages, costs, and expenses of any kind (including, without limitation, legal fees and costs), directly or indirectly resulting from, arising out of, or in any way related to Member's ETI violation of this Agreement.

20. **Waiver of Liability.** MEMBER HEREBY WAIVES ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, LOSSES, AND DAMAGES OF ANY KIND OR NATURE,

IT MAY HAVE AGAINST ETI AND/OR THE INDEMNIFIED PARTIES DIRECTLY OR INDIRECTLY RESULTING FROM, ARISING OUT OF, OR IN ANY WAY RELATED TO MEMBER'S MEMBERSHIP IN ETI OR THIS AGREEMENT. THIS WAIVER OF LIABILITY APPLIES TO ALL CLAIMS, ACTIONS, CAUSES OF ACTION, LOSSES, AND DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT, GENERAL, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, STATUTORY, CONTRACTUAL, OR DAMAGES OR LOSSES OF ANY OTHER KIND OR TYPE. THIS WAIVER OF LIABILITY APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, OR ANY OTHER BASIS AND EVEN IF ETI OR THE INDEMNIFIED PARTIES KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. THIS WAIVER OF LIABILITY SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

21. **Waiver and Severability.** No waiver by ETI of any term or condition set out in this Agreement shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of ETI to assert a right or provision under this Agreement shall not constitute a waiver of such right or provision. If any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of the Agreement will continue in full force and effect.

22. **Modifications.** No modification to this Agreement is binding, unless in writing and signed by both of the Parties.

23. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have signed this Agreement on the day and Effective Date first written above.

EQUIPMENT AND TOOL INSTITUTE:	[insert name of Member Company]: <input type="checkbox"/> Full Member <input type="checkbox"/> Associate Member
By:	By:
Print Name:	Print Name:
Title	Title
Date	Date

**EXHIBIT A**  
**Data Privacy and Security Requirements**

Member acknowledges that it is fully responsible for the confidentiality and security of the Confidential Information in its possession, custody or control and shall indemnify, defend and hold ETI harmless from any suspected or actual breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Confidential Information that Member has transmitted, stored or otherwise processed ("Data Breach"), which indemnity obligations shall, include, without limitation, direct payment and/or reimbursement of costs and expenses related to investigation, including forensic computer services or assistance.

Member shall: (a) install and maintain industry-standard data security measures for its computer and other networked systems; and (b) implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect all Confidential Information obtained from ETI, from unauthorized access, destruction, use, modification or disclosure. Member has adopted a written information security program ("WISP") to govern the protection of all Confidential Information Member receives from ETI, and Member agrees to apply the standards and requirements of all applicable data privacy and security laws to all such Confidential Information, regardless of the jurisdiction in which the subject of the Confidential Information resides. At all times while Member is a member of ETI, and for a period of three (3) years thereafter, Member shall maintain, and provide for ETI's review, from time to time, at ETI's request: (a) the Member's WISP; and (b) other applicable security program documents, including its incident response policies, encryption standards and/or other computer security protection policies or procedures, that constitute compliance with applicable data privacy and security laws.

Member represents and warrants that no Confidential Information has been collected by Member or transferred by Member to third parties in violation of any applicable data privacy or security laws, associated regulations or binding guidance issued by governmental authorities, contractual obligations, or privacy policies or terms of use maintained by Member (collectively, "Data Privacy and Security Requirements"). Member represents and warrants that Member is in compliance with all Data Privacy and Security Requirements with respect to any and all data processing activities in which Member engages. There are no notices, claims, investigations or proceedings pending, or, to the knowledge of Member, threatened, by state or federal agencies, or private parties involving notice or information to individuals that Confidential Information held or stored by ETI has been compromised, lost, taken, accessed or misused. Member has not received any notice regarding any violation of any Data Privacy and Security Requirements, and Member has no reason to believe that the security of any records collected or maintained by the Member containing Confidential Information that the Member maintains has been breached or potentially breached.

Subject to reasonable notice, the Member shall provide ETI the right to evaluate or audit the Member and its data protection and security processes, procedures, equipment and facilities, from

time to time during the Term of the Agreement, and for a period of three (3) years thereafter, to determine whether the Member complies, has complied and has the capacity to comply with Data Privacy and Security Requirements. The Member shall cooperate fully with ETI and its designated representatives to allow ETI to make such determination.

Member shall maintain security incident management policies and procedures, and shall notify ETI without undue delay (in any event, within 24 hours) upon Member becoming aware of a Data Breach. As part of and following such notice to ETI following a Data Breach, Member shall provide ETI with sufficient information as ETI reasonably requires and to allow ETI to meet any obligations to report or inform individuals or others of the Data Breach under Data Privacy and Security Requirements, including but not limited to (a) the nature of the Data Breach, including the categories of Confidential Information potentially affected and approximate number of data records concerned; (b) the status of any investigations into such Data Breach; (c) the likely consequences of the Data Breach; (d) any measures to be taken to address the Data Breach; and (e) the name and contact details of the data protection officer or other contact point where more information can be obtained. Member further agrees to provide full cooperation and assistance in identifying the cause of such Data Breach and shall take necessary action to remediate the cause. Member shall additionally provide ETI full and prompt cooperation and assistance in relation to any notifications that ETI is required to make as a result of the Data Breach.

EXHIBIT B

(FORM OF PROBATIONARY MEMBERSHIP AGREEMENT)



## **PROBATIONARY MEMBERSHIP AGREEMENT**

This Probationary Membership Agreement (this "Agreement"), is made and entered into as of \_\_\_\_\_, 2023, ("Effective Date"), by and between the EQUIPMENT AND TOOL INSTITUTE ("ETI"), an Illinois not-for-profit corporation with offices located at 37899 W. 12 Mile Road, Suite 220, Farmington Hills, Michigan, and [insert member name] a \_\_\_\_\_ with offices located at \_\_\_\_\_ ("Probationary Member"). ETI and Probationary Member may be referred to herein collectively as the "Parties."

### **RECITALS**

Probationary Member has been approved as a probationary member of ETI only as set forth in ETI's bylaws, as in effect and as amended from time to time ("Bylaws") and this Agreement ("Probationary Membership"). In furtherance of its Probationary Membership, Probationary Member enters into this Agreement, which constitutes a legal Agreement between Probationary Member and ETI.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, Probationary Member agrees to be bound as set forth below.

### **AGREEMENT**

2. **Membership.** Consistent with ETI's Bylaws, Probationary Member agrees to be bound by this Agreement and the Bylaws as a Probationary Member.

3. **Membership, Dues, Fees, Term & Termination.**

a. This Agreement is applicable for Probationary Member's Probationary Membership as set forth in this Agreement and the Bylaws. This shall be the term beginning on the Effective Date and ending one (1) year from the Effective Date or any earlier termination of this Agreement by ETI as provided in this Agreement or the Bylaws ("Term"). Probationary Member's Probationary Membership allows it to receive Full Membership privileges identified in the Bylaws during the Term so long as it complies with the terms and conditions set forth in Section 3 of this Agreement ("Terms and Conditions"). If Probationary Member satisfies these Terms and Conditions through the expiration of the Term, then Probationary Member will be granted Full Membership as stated in the Bylaws conditioned upon execution of the General Membership Agreement. ETI may immediately terminate Probationary Member's Probationary Membership at any time during the Term if Probationary Member fails to comply with the Terms and Conditions. All determinations under this Agreement as to whether Probationary Member has complied with the Terms and Conditions shall be based upon ETI's sole and unfettered discretion.

b. This Agreement shall terminate upon termination of Probationary Member's Probationary Membership. Probationary Member shall be obligated to pay dues, assessments, or fees which accrued prior to the effective date of any termination, expiration or cancellation of their Probationary Membership. ETI shall not be responsible for a refund of any fees and charges paid by Probationary Member prior to termination of this Agreement or its Probationary Membership.

4. **Probationary Membership Terms and Conditions.** Probationary Member's Probationary Membership is expressly conditioned upon its compliance with the Terms and Conditions set forth below.

a. Probationary Member shall not:

i. violate this Agreement, the Bylaws or any lawful rule or practice duly adopted by ETI or engage in any other conduct prejudicial to the interests of ETI or its members.

ii. misuse or violate any automotive original equipment manufacturers ("OEM"), ETI members or other third-party's Intellectual Property Rights. For purposes of this Agreement, Intellectual Property Right means all intellectual property rights and interests, whether registered or unregistered, including, without limitation, patents, copyrights, trademarks, trade secrets, know-how, mask works, industrial designs, trade names, service marks, domain names, goodwill, and other intellectual property rights and interests of whatsoever nature, existing or to come into existence, in any country or jurisdiction in the world.

iii. disclose and/or misuse of ETI's, its members' or OEMs' private, proprietary or Confidential Information or violate the Privacy and Security requirements set forth in Exhibit A.

iv. disclose or transmit any Confidential Information to any Affiliates unless such Affiliate is also a member of ETI. For purposes of this Agreement, Affiliates means any entity that is a parent company, subsidiary, or sister company of another entity. For purposes of this definition, "parent company" means an entity that directly or indirectly owns more than 50% of the voting securities of another entity, "subsidiary" means an entity that is more than 50% owned by another entity, and "sister company" means an entity that has the same parent company as another entity.

v. violate OEM license agreements or other similar contractual obligations.

vi. offer products for the purpose of "tuning."

vii. utilize a vehicle security gateway mechanism not validly authorized or licensed for use in the United States.

- viii. openly criticize ETI policy or actions.
- ix. act in any way detrimental to the reputation, image, and workings of ETI.

- b. Additionally, if Probationary Member develops or offers products that support key, security or immobilizer functionality, it must certify compliance and provide sufficient evidence demonstrating that it follows and abides by ETI's Vehicle Security Data Compliance Policy attached as Exhibit B. If Probationary Member is not currently able to certify and make this demonstration, it must do so before the end of the Term to be granted Full Membership into ETI.

5. **Payment of Dues/Fees.** Probationary Member shall pay dues, fees and other assessments applicable to Probationary Member's Probationary Membership, as established from time to time by ETI. ETI may establish reasonable additional fees or charges for participation in meetings or for other benefits of membership. Probationary Member shall bear its own costs and expenses for participation in ETI, such as travel, employee compensation, and incidental expenses.

6. **ETI Name and Logo.**

a. During the Term of this Agreement, ETI grants Probationary Member a nonexclusive, non-assignable and non-transferable limited license to use the ETI name and logo only in strict compliance with ETI's Logo Use Policy found at <https://www.ertools.org/ETILogos>. Probationary Member agrees that the ETI name and logo may not be otherwise used, copied, reproduced or altered in any manner. Nothing in this Agreement, or in Probationary Member's use of the ETI name and logo, will give Probationary Member any right whatsoever in the ETI name and logo, or in any similar marks, beyond the limited right granted in this Agreement.

b. Upon any termination, expiration, cancellation or suspension of Probationary Member's membership or the Term of this Agreement, Probationary Member shall discontinue all use of the ETI name and/or logo. Furthermore, ETI has an absolute right to terminate, cancel, suspend or withdraw Probationary Member's limited license to use the ETI name and logo at any time.

c. The ETI name and logo contain intellectual property exclusive to ETI. All right, interest, title to, and ownership and intellectual property rights in, the ETI name and/or logo and all copies remain with ETI.

7. **Approval of Bylaws.** Probationary Member has reviewed, hereby approves and agrees to abide by the Bylaws.

8. **Antitrust Policy.** Probationary Member agrees to comply with all applicable antitrust laws pertaining to Probationary Member's participation in ETI. Nothing in this Agreement shall be construed to require or permit conduct that violates any applicable antitrust law.

9. **Confidential Information, Privacy and Security.**

a. Probationary Member acknowledges that certain original equipment manufacturers may provide proprietary data to ETI's TEK-NET library or other repository in order for ETI's members to develop equipment and tools for their customers, and that this data is made available on condition that such data be held by ETI and its members on a confidential basis.

b. Probationary Member agrees that the information received in connection with its membership in ETI or through ETI's TEK-NET library or other repository (collectively, "Confidential Information") is proprietary and shall be maintained in confidence with at least the same degree of care that it uses to protect its own confidential and proprietary information, but no less than a reasonable degree of care under the circumstances. ETI facilitates the exchange of Confidential Information to Probationary Member for the sole purpose of the developing, manufacturing and selling vehicle diagnostic service tools, and performing vehicle diagnosis, and tests ("Authorized Use"). Probationary Member agrees to comply with all Data Privacy and Security Requirements set forth in Exhibit A, which is incorporated herein.

c. Probationary Member will use the Confidential Information exclusively for the Authorized Use. Probationary Member will (i) treat as confidential the Confidential Information and protect the Confidential Information in the same manner and at a minimum with the same degree of care that Probationary Member protects its own trade secrets and other confidential business information; (ii) not alter, modify, disassemble, reverse engineer or decompile any of the Confidential Information; (iii) not, directly or indirectly, disclose, report or transfer Confidential Information to any third party without ETI's prior written consent, except as explicitly provided herein; and (iv) not, directly or indirectly, disclose, report or transfer Confidential Information to employees, directors or agents of Probationary Member, except for those employees, directors or agents who must have the information in order to accomplish the Authorized Use and who owe a duty or contractual obligation of confidentiality to Probationary Member. Probationary Member may not reproduce for distribution or use outside Probationary Member any copyrighted materials provided to Probationary Member under this Agreement without the permission of the copyright owner.

d. Probationary Member represents and warrants that it will maintain reasonable technical, administrative and physical measures consistent with industry standards and applicable law to protect the Confidential Information from unauthorized access or disclosure and that it will promptly notify ETI of any failure to comply with law, breach of security, or unauthorized access to Confidential Information.

e. Member shall promptly delete and deliver upon ETI's request all Confidential Information and all copies thereof to ETI at any time upon request made by ETI, on the expiration or termination of this Agreement, and at any point at which Member ceases to be a member in good standing of ETI for any reason.

f. Notwithstanding any provision of this Agreement to the contrary, Probationary Member shall not be obliged to maintain in confidence Confidential Information required to be disclosed to government agencies or pursuant to court order, but only to the extent that such disclosures are so required. In such instances, Probationary Member shall, before making such disclosure and to the extent legally permitted, immediately provide written notice of such required disclosure to ETI in order to permit ETI to protect its interests in preserving the confidentiality of the Confidential Information.

g. The obligations of this Section shall survive termination of this Agreement.

10. **Representations and Warranties.**

a. Probationary Member represents and warrants that it has the full power and authority to enter into and perform this Agreement.

b. Probationary Member represents and warrants that it will comply with all applicable laws and regulations in connection with its Probationary Membership.

c. Probationary Member represents and warrants that its products, services, including all related documentation, software, and other materials do not and will not infringe upon, misappropriate, or violate any Intellectual Property Right of any third party including OEMs and other ETI members. For purposes of this Agreement, Intellectual Property Right means all intellectual property rights and interests, whether registered or unregistered, including, without limitation, patents, copyrights, trademarks, trade secrets, know-how, mask works, industrial designs, trade names, service marks, domain names, goodwill, and other intellectual property rights and interests of whatsoever nature, existing or to come into existence, in any country or jurisdiction in the world.

11. **Assignment.** Probationary Member may not assign the benefits or obligations of this Agreement without the prior written approval of ETI.

12. **Limitation of Liability.** Probationary Member acknowledges that the Confidential Information provided under this Agreement is provided "as is." ETI additionally EXPRESSLY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL ETI BE LIABLE TO PROBATIONARY MEMBER OR ITS AFFILIATES FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. **Use of Name.** ETI shall have the right to include Probationary Member's name in any lists of members published by ETI and to announce that Probationary Member has joined ETI.

14. **No Transfer.** Probationary Member may not transfer, assign or sublicense any of its rights or obligations under this Agreement without the prior written consent of ETI. Any attempted transfer in violation of this Section is null and void.

15. **Notice.** Any notice or communication permitted or required by this Agreement shall be in writing and shall become effective two business days after the mailing thereof by certified mail, return receipt requested, postage prepaid, and addressed to:

If to ETI, to:

[insert contact information]

If to Probationary Member:

[insert contact information]

16. **No Joint Liability.** Nothing in this Agreement shall be deemed to create a joint, venture, partnership or agency relationship between ETI and Probationary Member or to make the Parties jointly liable for any obligation arising out of the activities and services contemplated by this Agreement.

17. **Governing Law.**

a. All matters relating to this Agreement, and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the internal laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule (whether of the State of Michigan or any other jurisdiction).

b. Any legal suit, action, or proceeding arising out of, or related to, this Agreement shall be instituted exclusively in the federal courts of the United States or the courts of the State of Michigan, although ETI retains the right to bring any suit, action, or proceeding against Probationary Member for breach of this Agreement in Probationary Member's country of residence or any other relevant country. Probationary Member waives any and all objections to the exercise of jurisdiction over Probationary Member by such courts and to venue in such courts.

18. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect; and a substitute, valid, and enforceable provision most nearly reflecting the original intent shall be developed in place of the invalid provision.

19. **Integration.** This Agreement supersedes and replaces any and all prior representations, agreements and understandings relating to Probationary Member's membership in ETI, except the Bylaws. In the event of a conflict between this Agreement and the Bylaws, the terms of the Bylaws will prevail.

20. **Damages.** Upon Probationary Member's failure to pay dues or other breach of this Agreement, Probationary Member shall be subject to suspension or expulsion from membership

in ETI, as well as payment of ETI's reasonable attorneys' fees and such fines and other penalties as ETI's Board of Directors may approve and as may be proven under law or equity.

21. **Defense, Indemnification, and Hold Harmless.** Probationary Member agrees to defend, indemnify, and hold harmless ETI and its directors, officers, employees, volunteers, agents, and other representatives and contractors (collectively "Indemnified Parties") against all claims, demands, actions, causes of action, losses, damages, costs, and expenses of any kind (including, without limitation, legal fees and costs), directly or indirectly resulting from, arising out of, or in any way related to Probationary Member's violation of this Agreement.

22. **Waiver of Liability.** PROBATIONARY MEMBER HEREBY WAIVES ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, LOSSES, AND DAMAGES OF ANY KIND OR NATURE, IT MAY HAVE AGAINST ETI AND/OR THE INDEMNIFIED PARTIES DIRECTLY OR INDIRECTLY RESULTING FROM, ARISING OUT OF, OR IN ANY WAY RELATED TO PROBATIONARY MEMBER'S MEMBERSHIP IN ETI OR THIS AGREEMENT. THIS WAIVER OF LIABILITY APPLIES TO ALL CLAIMS, ACTIONS, CAUSES OF ACTION, LOSSES, AND DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT, GENERAL, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, STATUTORY, CONTRACTUAL, OR DAMAGES OR LOSSES OF ANY OTHER KIND OR TYPE. THIS WAIVER OF LIABILITY APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, OR ANY OTHER BASIS AND EVEN IF ETI OR THE INDEMNIFIED PARTIES KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. THIS WAIVER OF LIABILITY SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

23. **Waiver and Severability.** No waiver by ETI of any term or condition set out in this Agreement shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of ETI to assert a right or provision under this Agreement shall not constitute a waiver of such right or provision. If any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of the Agreement will continue in full force and effect.

24. **Modifications.** No modification to this Agreement is binding, unless in writing and signed by both of the Parties.

25. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have signed this Agreement on the day and Effective Date first written above.

EQUIPMENT AND TOOL INSTITUTE:	[insert name of Probationary Member Company]:
By:	By:
Print Name:	Print Name:
Title	Title
Date	Date



**Exhibit A**  
**Data Privacy and Security Requirements**

Probationary Member acknowledges that it is fully responsible for the confidentiality and security of the Confidential Information in its possession, custody or control and shall indemnify, defend and hold ETI harmless from any suspected or actual breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Confidential Information that Probationary Member has transmitted, stored or otherwise processed ("Data Breach"), which indemnity obligations shall, include, without limitation, direct payment and/or reimbursement of costs and expenses related to investigation, including forensic computer services or assistance.

Probationary Member shall: (a) install and maintain industry-standard data security measures for its computer and other networked systems; and (b) implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect all Confidential Information obtained from ETI, from unauthorized access, destruction, use, modification or disclosure. Probationary Member has adopted a written information security program ("WISP") to govern the protection of all Confidential Information Probationary Member receives from ETI, and Probationary Member agrees to apply the standards and requirements of all applicable data privacy and security laws to all such Confidential Information, regardless of the jurisdiction in which the subject of the Confidential Information resides. At all times while Probationary Member is a member of ETI, and for a period of three (3) years thereafter, Probationary Member shall maintain, and provide for ETI's review, from time to time, at ETI's request: (a) the Probationary Member's WISP; and (b) other applicable security program documents, including its incident response policies, encryption standards and/or other computer security protection policies or procedures, that constitute compliance with applicable data privacy and security laws.

Probationary Member represents and warrants that no Confidential Information has been collected by Probationary Member or transferred by Probationary Member to third parties in violation of any applicable data privacy or security laws, associated regulations or binding guidance issued by governmental authorities, contractual obligations, or privacy policies or terms of use maintained by Probationary Member (collectively, "Data Privacy and Security Requirements"). Probationary Member represents and warrants that Probationary Member is in compliance with all Data Privacy and Security Requirements with respect to any and all data processing activities in which Probationary Member engages. There are no notices, claims, investigations or proceedings pending, or, to the knowledge of Probationary Member, threatened, by state or federal agencies, or private parties involving notice or information to individuals that Confidential Information held or stored by ETI has been compromised, lost, taken, accessed or misused. Probationary Member has not received any notice regarding any violation of any Data Privacy and Security Requirements, and Probationary Member has no reason to believe that the security of any records collected or maintained by the Probationary Member containing Confidential Information that the Probationary Member maintains has been breached or potentially breached.

Subject to reasonable notice, the Probationary Member shall provide ETI the right to evaluate or audit the Probationary Member and its data protection and security processes, procedures, equipment and facilities, from time to time during the Term of the Agreement, and for a period of three (3) years thereafter, to determine whether the Probationary Member complies, has complied and has the capacity to comply with Data Privacy and Security Requirements. The Probationary Member shall cooperate fully with ETI and its designated representatives to allow ETI to make such determination.

Probationary Member shall maintain security incident management policies and procedures, and shall notify ETI without undue delay (in any event, within 24 hours) upon Probationary Member becoming aware of a Data Breach. As part of and following such notice to ETI following a Data Breach, Probationary Member shall provide ETI with sufficient information as ETI reasonably requires and to allow ETI to meet any obligations to report or inform individuals or others of the Data Breach under Data Privacy and Security Requirements, including but not limited to (a) the nature of the Data Breach, including the categories of Confidential Information potentially affected and approximate number of data records concerned; (b) the status of any investigations into such Data Breach; (c) the likely consequences of the Data Breach; (d) any measures to be taken to address the Data Breach; and (e) the name and contact details of the data protection officer or other contact point where more information can be obtained. Probationary Member further agrees to provide full cooperation and assistance in identifying the cause of such Data Breach and shall take necessary action to remediate the cause. Probationary Member shall additionally provide ETI full and prompt cooperation and assistance in relation to any notifications that ETI is required to make as a result of the Data Breach.

**Exhibit B**  
**Vehicle Security Data Compliance Policy of ETI**  
**[To be inserted]**

EXHIBIT C  
(TRANSITION PLAN)

# Transition Plan

		2024-2025	2025-2026	2026-2027	2027-2028	2028-2029	2029-2030	2030-2031
Annual Meeting		2024	2025	2026	2027	2028	2029	2030
Past President	Exec Board	David Rich	Bob Augustine	Chris Bahlman	Eri Muca			
President	Exec Board	Bob Augustine	Chris Bahlman	Eri Muca	VC promoted to Chairman	2nd year	VC promoted to Chairman	2nd year
VP Programs	Exec Board	Chris Bahlman	Eri Muca	Vice Chairman election	New Vice Chairman Elected	2nd year	New Vice Chairman Elected	2nd year
VP Marketing	Exec Board	Eri Muca	VP Global Growth and Strategy Election	2nd year	Newly elected VP Global Growth and Strategy	2nd year	New VP Global Growth and Strategy	2nd year
Secretary/ Treasurer	Exec Board	interim election	interim role	interim role	New Secretary/ Treasurer	2nd year	New Secretary Treasurer	2nd year
<b>Current Board Full Transition</b>								
		Election year	Election year	Election year	Election year		Election Year	
Vice Chairman				Elect	Elect	2nd year	Elect	2nd year
VP Global Growth and Strategy - Elect					Elect	2nd year	Elect	2nd year
Secretary/ Treasurer-Elect				Elect	Elect	2nd year	Elect	2nd year
At -Large	Advisory Board				Elect	2nd year	Elect	2nd year
At -Large	Exec Board				Elect	2nd year	Elect	2nd year
					Executive Board Implemented			
					Advisory Board Implemented			

This Transition Plan describes the transition from the current board structure and director nomination and election process to those described in the amended and restructured bylaws.

1. All current Board members will continue their current term until the term ends.
2. With the election of Board Members at the annual general meeting in 2024, nominees will be sought for all positions with varying terms from 1 to 3 years.
3. In 2024 the election of a Secretary / Treasurer
  - a. This elected director will **not** follow the current progression path to VP of Marketing, then VP of Programs and finally President. The interim term for this position will be 3 years.
4. In 2025 there will be an election of the VP of Global Growth and Strategy. This person will fill the current position of VP of Marketing.
  - b. This elected director will serve a term of 2 years in that position.
5. In 2026 there will be an election of a Vice Chairman. This person will fill the current position of VP of Programs. The term of this role will be 1 year. This person will be promoted to Chairman in 2027 with a term of 2 years.
6. In 2026 there will be an election of a Secretary / Treasurer-Elect. This person will sit on the Executive Board without voting powers. This person will be promoted to Secretary / Treasurer in 2027.
7. In 2027 there will be an election of the VP of Global Growth and Strategy.
8. In 2027 the following roles will be elected:
  - c. VP of Global Growth and Strategy - Elect
  - d. Vice Chairman
  - e. Secretary/Treasurer-Elect
  - f. At Large members of the Advisory Board
  - g. At Large members of the Executive Board
9. In 2027 the newly reconstituted Executive Board and Advisory Board will be in place.