

## MEMBERSHIP AGREEMENT

This Membership Agreement (this "Agreement"), is made and entered into as of this July \_\_, 2020, ("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

WHEREAS, this Agreement 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 a member of ETI on the terms and conditions set forth below.

### AGREEMENT

1. **Membership Levels, Qualifications, Dues & Fees.** Based upon its class of membership (i.e., full or associate member), Member shall be entitled to the benefits provided in this Agreement, ETI's corporate bylaws, as in effect and as amended from time to time ("Bylaws") and as set forth in <https://www.ertools.org/ETIFullMembership> or <https://www.ertools.org/ETIAssociateMembership> as may be updated at any time by ETI. Subject to the terms and conditions of this Agreement and the Bylaws, Member agrees to be a Member of ETI in the class designated on the signature page of this Agreement.

2. **Membership Term & Termination.**

(a) This Agreement is applicable for the term of Member's membership. 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 ("Term"). Unless terminated as provided herein, 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 suspended upon the suspension 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 and as such, breach this Agreement. ETI shall not be responsible for a refund of any fees and charges paid by Member prior to termination of this Agreement.

(c) ETI shall have the right, in its complete and sole discretion, to terminate the Agreement for convenience five business days after provision of written notice, provided however, that in the event of an exercise of this right, ETI shall refund any annual dues previously paid by Member at a prorated rate based upon the termination date of this Agreement.

(d) Member may terminate this Agreement at any time. ETI shall not be responsible for a refund of any fees and charges paid by Member prior to termination of this Agreement. The expiration or termination of this Agreement, for any reason, shall not release Member from any obligation or liability to ETI, including any payment obligation that has already accrued thereunder.

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 in order for ETI's members to develop equipment and tools for servicing their vehicles, 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 (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").

(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 or its affiliates, 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 not disclose the Confidential Information to any supplier, consultant or other third party unless that party agrees in writing to be bound by this Section and other provisions of this Agreement. Member shall at all times be responsible for any unauthorized creation, collection, receipt, transmission, access, storage, disposal or use by its suppliers, consultants and third parties.

(f) Member shall deliver 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. Notwithstanding the foregoing, Member shall not be required to destroy, delete or modify any backup tapes or other media made pursuant to automated archival processes in the ordinary course of business provided any such Confidential Information retained shall remain subject to the confidentiality obligations of this Agreement for so long as such Confidential Information is retained.

(g) 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.

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

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

9. **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.

10. **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.

11. **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.

12. **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:

Equipment and Tool Institute  
Attn: Brian Plott  
37899 W. 12 Mile Rd. Suite 220  
Farmington Hills, MI 48331

If to Member:

[insert contact information]

13. **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.

14. **Compliance with Laws.** Member agrees to comply with all laws, present and future, of any government having jurisdiction over the Parties, pertaining to Member's participation in ETI.

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. **Authority.** Member represents and warrants that it is authorized to enter into this Agreement. The undersigned person represents and warrants that he/she is authorized to sign this Agreement on behalf of Member.

20. **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 membership or this Agreement.

21. **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.

22. **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.

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

24. **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:	<b>[insert name of Member Company]:</b> <input type="checkbox"/> Full Member <input type="checkbox"/> Associate Member
By:	By:
Print Name:	Print Name:
Title	Title
Date	Date