

Data License Agreement

This Data License Agreement (this "**Agreement**"), dated and effective as of the ____ day of _____ month, 202____ (the "**Effective Date**"), is made and entered into by and between [INSERT FULL LEGAL NAME OF LICENSEE], _____ a [INSERT CORRECT STATE] _____ [corporation/LLC/OTHER] ("**Company**"), and Nissan North America, Inc., a Delaware corporation ("**Nissan**") (each, a "**Party**" and collectively, the "**Parties**"). For purposes of this Agreement, Contractor acknowledges and agrees that all rights granted to Nissan under this Agreement shall also be deemed to include all entities directly or indirectly controlled by, controlling, or under common control with Nissan or its affiliates ("**Affiliates**"). As used in this Agreement, all references to "include" or "including" mean inclusive by way of example, and do not mean restrictive by way of limitation.

WHEREAS, Nissan owns or maintains Nissan Data (defined herein) and/or Nissan Materials (defined herein);

WHEREAS, Nissan desires to license certain Nissan Data and/or Nissan Materials related to vehicle diagnostics to Company under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the fees and mutual promises herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree:

1. **Definitions** – As used herein:

- (a) "**License Schedule**" means a mutually executed copy of the license schedule form attached hereto as **Exhibit A**, setting forth specific details related to each particular data license arrangement. In the event of a conflict between the terms of a License Schedule and the terms of this Agreement, the terms of this Agreement shall govern unless the terms of the License Schedule indicate, by express section reference, an intent to supersede the conflicting terms of this Agreement.
- (b) "**Marketing Elements**" means the Company Marks and Nissan Marks (defined herein), any creative material (including, but not limited to, graphics, photos, videos, sounds, animations, drawings, taglines, text), licensed for use by each other as set forth in this Agreement.
- (c) "**Nissan Data**" means any and all data that is owned, licensed, leased, or developed by or on behalf of Nissan, whether provided to Company by Nissan or provided by a third party to Company in connection with or relating to this Agreement, including any such data that is stored or processed by Company. Any derivative works of, based on, derived from, or otherwise using any Nissan Data are themselves considered to be Nissan Data other than for permitted Derivative Works identified on the License Schedule. In addition to the foregoing, Nissan Data includes data described in the applicable License Schedule.
- (d) "**Nissan Materials**" means literary works or other works of authorship, such as programs, program listings, programming tools, methodology, user manuals, reports, drawings, and other written documentation and machine-readable text and files provided or made accessible by Nissan under this Agreement. In addition to the foregoing, Nissan Materials are as described in the applicable License Schedule.
- (e) "**Permitted Use**" means the permitted use of the Nissan Data and Nissan Materials by Company as set forth in the applicable License Schedule.
- (f) "**Personal Data**" means any Nissan Data that can be used, alone or in combination with other data, to identify any individual person or as otherwise prescribed by applicable law. Personal Data includes name, address, date of birth, social security number, email address, vehicle identification number (VIN), credit card information, mother's maiden name, and other information used to authenticate identity, biometric records, educational information, financial information and employment information.
- (g) "**Territory**" means the territory set forth in the applicable License Schedule.

2. **License Grant.** Nissan hereby grants to Company a limited, non-exclusive, revocable, non-transferable, non-sublicensable, license to use the Nissan Data and Nissan Materials described in the applicable License Schedule (the "License"). This License is granted solely for the Permitted Use in the Territory during the Term. The License shall expire upon the expiration or termination of this Agreement. Except for the express License granted herein, no other licenses are granted by implication, estoppel, or otherwise. Nissan may revoke the License with respect to particular specified Nissan Data or Nissan Materials by notice in writing to Company without termination of this Agreement.

3. **Delivery of Nissan Data, Nissan Materials, and Reports.**

- (a) Nissan shall deliver or make available to Company Nissan Data and Nissan Materials in the form and method set forth in the applicable License Schedule.
- (b) Company shall prepare and present to Nissan such reports, presentations, documentation and deliverables related to Company's use of the Nissan Data and/or Nissan Materials as reasonably requested by Nissan. Nissan shall have sole authority to determine the content, form, and submission or presentation schedule of all such reports, presentations, documentation, and deliverables.

4. Restrictions.

- (a) Company shall not use the Nissan Data or Nissan Materials except for the Permitted Use in the Territory. Nissan Data and Nissan Materials shall only be stored and maintained within the United States and shall not be transferred or used outside of the United States. Except as expressly allowed by the Permitted Use, Company will not: (a) sublicense, resell, rent, lease, transfer, assign, time share, broadcast, republish, modify, distribute, or otherwise commercially exploit or make the Nissan Data or Nissan Materials available to any third party; (b) other than as expressly agreed between the Parties, modify, adapt, or hack the Nissan Materials to, or otherwise attempt to gain unauthorized access to the Nissan Data, Nissan Materials, or any Nissan networks; (c) remove any proprietary notices, attributions of Nissan, or third party providers, users, or otherwise, or remove any labels from the Nissan Data or Nissan Materials; or (d) publish, enhance, or display any compilation or directory based upon information derived from the Nissan Data or Nissan Materials. In addition to the foregoing, Company shall not: (i) use the Nissan Data or Nissan Materials in any unlawful manner or in violation of any third party rights, or (ii) reverse engineer the Nissan Data or Nissan Materials, or attempt to do so, in a manner that allows identification of any vehicle or natural person.
- (b) Company shall adhere to other restrictions included in the applicable License Schedule.
- (c) Company shall not request or attempt to obtain or process any Personal Data except as set forth under this Agreement. If Company receives any Personal Data from Nissan outside the scope of this Agreement, Company will promptly notify Nissan and delete any such Personal Data from Company's systems.

5. Fees; Taxes.

- (a) The applicable License Schedule sets forth the fees to be paid to Nissan in exchange for the license granted hereby. Fees shall be paid without offset or deduction within [30 days] of Nissan's issuance of an invoice. The applicable License Schedule or the Purchase Order also designates Nissan's authorized representative for purposes of this Agreement.
- (b) Nissan and Company shall each be responsible for any personal property taxes or other similar taxes on property it owns or leases for its own use, for franchise and privilege taxes on its business, and for taxes based on its net income or gross receipts.
- (c) Nissan shall be responsible for any sales, use, excise, value-added, goods and services, consumption, withholding, and other similar taxes and duties that are imposed by law on Company in connection with: (1) the provision of ; (2) the provision of any particular Service; (3) any property, materials, or other resources provided or used in connection with the Services; and (4) the sale of any goods related to the provision of any particular Service. Company shall be responsible for such taxes whether those taxes exist as of the Effective Date or, during the term of the Agreement, go into effect or increase.
- (d) Nissan shall be responsible for any sales, use, excise, value-added, goods and services, consumption, withholding, and other similar taxes and duties that are imposed by law on Nissan in connection with: (1) the consumption of the Services as a whole; (2) the consumption of any particular Service; (3) any property, materials or other resources consumed or used in connection with the Services; and (4) the purchase of any goods related to the provision of any particular Service. Nissan shall be responsible for such taxes whether those taxes exist as of the Effective Date or, during the term of the Agreement, go into effect or increase.
- (e) Nissan and Company shall work together as necessary to classify and segregate payments under this Agreement into two payment streams, one for those payments that are taxable and the other for those payments that are nontaxable, for Services, goods, property, materials, and other resources for any sales, use, excise, value added, goods and services, consumption, withholding or other similar taxes or duties are imposed on either party or both parties in connection with: (1) the provision or consumption of the Services as a whole; (2) the provision or consumption of any particular Service; (3) any property, materials, or other

resources provided or consumed or used in connection the Services; or (4) the sale or purchase of any goods related to the provision of any particular Service

- (f) Nissan and Company shall cooperate with each other to enable each to more accurately determine its own tax or duty liability and to minimize such liability to the extent legally permissible.
 - (g) Company's invoices shall state the amounts of any taxes Company is collecting from Nissan, and Company shall remit such taxes to the appropriate taxing authorities. Nissan and Company shall provide and make available to each other any information reasonably requested by the other party, including: (1) resale and exemption certificates; (2) applicable withholding tax forms, including federal forms W-9, W8-BEN, and W8-ECI; (3) information regarding out-of-state or out-of-country provision or consumption of Services; and (4) information regarding out-of-state or out-of-country provision or consumption of property, materials, or other resources.
 - (h) Nissan and Company shall promptly notify each other of, and coordinate with each other regarding the response to and any settlement of, any claim for taxes asserted by applicable taxing authorities. It is understood that the party against whom such claim is asserted shall have the right to control the response to and settlement of such claim, but the other party shall have the right to participate in any response or settlement that involves its own potential responsibilities or liabilities. If Nissan requests Company to challenge the imposition of any tax, Nissan shall reimburse Company for Company's resulting reasonable legal fees and expenses. Nissan shall be entitled to any tax refunds or rebates granted to the extent such refunds or rebates were of taxes paid by Nissan. With respect to any such claim, the parties agree that Section 13 (Indemnification) of this Agreement shall apply together with this Section 2.8, with Section 2.8 prevailing in the event of any conflict between the two.
 - (i) Arrangements, costs, and regulatory obligations associated with the cross-border movement of Company's goods or property, if any, whether or not title has transferred to Nissan or its subsidiaries, shall be the sole responsibility of Company, including export packing, licensing, forwarding, import brokerage, duty, broker and/or forwarder fees, indirect taxes, filing of export and/or import declarations, entries in Company's name, and all other responsibilities identified in the Agreement.
6. **Term and Termination.**
- (a) The Term shall begin on the Effective Date and will continue for a Term of one (1) year or unless terminated sooner as provided herein.
 - (b) Nissan may terminate this Agreement for its convenience upon thirty (30) days' notice to Company.
 - (c) In addition to other termination rights expressly set forth in this Agreement, either party may terminate this Agreement effective upon written notice to the other if the other party violates any covenant, agreement, representation, or warranty contained herein in any material respect or defaults or fails to perform any of its obligations or agreements hereunder in any material respect, which violation, default or failure is not cured within thirty (30) days after notice thereof from the non-defaulting party stating its intention to terminate this Agreement by reason thereof. Material breach by Company includes: (i) breach of any restrictions or otherwise infringing Nissan's proprietary rights by Company or third parties; (ii) violation of the license grants; (iii) nonpayment of fees; (iv) attempts to assign this Agreement; or (vii) breach of confidentiality obligations.
 - (d) If underpayment or nonpayment of the Fees occurs more than two (2) times, then Nissan will have the right to terminate this Agreement immediately for cause and Company shall have no right to cure.
 - (e) Either may terminate this Agreement by delivering written notice to the other party upon the occurrence of any of the following events: (i) a receiver is appointed for either party or its property; (ii) either makes a general assignment for the benefit of its creditors; (iii) either party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, which proceedings are not dismissed within sixty (60) days; or (iv) either party is liquidated or dissolved.
 - (f) Nissan may terminate this Agreement to the extent any continued performance by the Company is deemed to be unlawful, as determined in Nissan's sole reasonable discretion.

- (g) Any provision in this Agreement that, in order to give proper effect to its intent, would or should survive any expiration or termination of this Agreement shall so survive.
7. **Effect of Termination.** Upon the conclusion of the Term (and any time upon request of Nissan) Company will delete the Nissan Data and Nissan Materials, and will provide written certification of such deletion to Nissan. Paper, film, or other hard copy media shall be shredded or destroyed such that the information contained thereon cannot be read or reconstructed. Electronic media shall be cleared, purged or destroyed consistent with the most current revision of NIST Special Publication 800-88, Guidelines for Media Sanitization, such that the Nissan Materials cannot be retrieved.
8. **Intellectual Property Rights.** Nissan shall retain all right, title and interest in and to the Nissan Data and Nissan Materials and all derivative works thereof, including all analog, digital, or other works that are created from and/or based in any way on the Nissan Data or Nissan Materials. Nothing herein shall be deemed to grant, transfer, assign, or set over unto Company any other right, title, interest, or ownership in or of the Nissan Materials, all of which rights, title, interest, and ownership are hereby expressly reserved by Nissan.
9. **Confidential Information.** "Confidential Information" means any proprietary information, software and know-how disclosed or made available by either party or its (as applicable) Affiliates or affiliates (the "Disclosing Party") to the other party (the "Receiving Party") hereunder, including, but not limited to, Nissan Data, Nissan Materials, financial, marketing, technical, engineering, design or other information. The Receiving Party shall: (i) not use the Disclosing Party's Confidential Information except for the exercise of its rights or performance of its obligations hereunder; (ii) not disclose such Confidential Information to any party, other than its employees and consultants who have a "need to know" for the Receiving Party to exercise its rights or perform its obligations hereunder; and (iii) use at least reasonable measures to protect the confidentiality of such Confidential Information. Further, the provisions of this Agreement shall be deemed Confidential Information of both Parties, and the Nissan Materials shall be deemed Nissan's Confidential Information. If the Receiving Party is required by law to make any disclosure of such Confidential Information, the Receiving Party shall first give written notice of such requirement to the Disclosing Party and shall permit the Disclosing Party to intervene in any relevant proceedings to protect its interests in the Confidential Information and provide full cooperation to the Disclosing Party in seeking to obtain such protection. Information will not be deemed Confidential Information hereunder if such information: (1) is known or becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party prior to receipt from the Disclosing Party from a source other than one having an obligation of confidentiality to the Disclosing Party; (2) becomes publicly known, except through a breach hereof by the Receiving Party; or (3) is independently developed by the Receiving Party without any use of the Disclosing Party's Confidential Information. Company acknowledges and agrees that Nissan (a) is actively involved in evaluating potential transactions and business opportunities with many third parties and may consider or enter into a transaction with a third party in the same or similar business as the Company; and (b) may currently or in the future be developing information internally, or receiving information from other parties, that is similar to the Company's Confidential Information. Accordingly, provided that Nissan complies with the provisions of this Agreement regarding the use and disclosure of Confidential Information, this Agreement shall not in any manner (1) preclude, limit or affect Nissan's present or future business activities of any nature, including business activities which are or could be competitive with the business activities of the Company; or (2) be construed as a representation or agreement that Nissan is not in the process of, will not develop or have developed for it or for its use products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in such Confidential Information. Nissan shall be free to use for any purpose the residuals resulting from access to or work with the Company's Confidential Information; provided, that Nissan shall not disclose the Confidential Information of the Company except as expressly permitted pursuant to the terms of this Agreement. The term "residuals" means information which is retained in memory by persons who have had access to Confidential Information, including ideas, concepts, know-how or techniques contained therein (if any). Nissan shall not have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. The terms of this Agreement will be treated as confidential by Company. The provisions of this Section shall survive the expiration or termination of this Agreement for any reason.
10. **Compliance with Laws:** Company shall at all times comply with all laws applicable to the use of the Nissan Data and Materials.
11. **Disclaimer of Warranties:** NISSAN DATA AND NISSAN MATERIALS ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND. NISSAN DISCLAIMS ANY AND ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS RELATING TO THE NISSAN MATERIALS, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT

NOT LIMITED TO, ANY REPRESENTATION, WARRANTY, OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE WITH RESPECT TO THE NISSAN DATA AND NISSAN MATERIALS.

12. **Limitation of Liability:** EXCEPT FOR LIABILITY ARISING FROM A BREACH OF SECTIONS 2, 4, 8, 9, AND/OR 14 OR WITH RESPECT TO OR ARISING OUT OF COMPANY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT WILL EITHER PARTY BE LIABLE HEREUNDER FOR (A) LOSS OF PROFITS, REVENUE, OR LOSS OR INACCURACY OF DATA, OR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, OR (B) EXCEPT WITH RESPECT TO FEES AND INTEREST OWED, ANY OTHER AMOUNTS IN EXCESS OF THE FEES PAID DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY, IN EACH CASE EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
13. **Indemnity.** Company shall indemnify, defend and hold Nissan, its officers, directors, employees, parent, subsidiaries, and Affiliates, harmless from and against any and all third party claims, demands, losses, liabilities, costs and expenses, including attorneys' fees (collectively, "Claims"), to the extent arising from or alleged to arise from: (a) a breach of Section 4, Section 9, Section 10, or Section 14 by Company, its employees, agents, permitted subcontractors, or representatives; (b) Company's use of subcontractors in connection with this Agreement; or (d) any claims or allegations by a third party that its copyrights, patent rights (including applications for patent protection); publicity rights, trade secret rights; registered or otherwise protected trademarks, trade names and service marks or other contractual right or obligation or other industrial or proprietary right held of claimed by such third party have been infringed by the use or receipt of Nissan Data or Nissan Materials to the extent such claim would not exist but for Company's use of the same. Company shall defend any Claim at its expense and shall pay all settlements approved by Nissan and any judgments which shall be finally awarded. With respect to any Claim, Company shall defend the claim at its expense, shall control the defense (subject to the right of Nissan to hire counsel at its own expense to assist in the defense of the claim), and shall pay all settlements that are approved in advance by Nissan and any judgments that are finally awarded. Company shall settle no Claim without the prior approval of Nissan. With respect to any tax claim asserted as described in Section 2.8 of this Agreement, the parties agree that Section 5(h) of this Agreement shall apply together with this Section 13 with Section 5(h) prevailing in the event of any conflict between the two. Company waives all rights of subrogation with respect to the indemnity obligations in this Section 13. The provisions of this Section 13 shall survive the expiration or earlier termination of this Agreement.
14. **Safeguarding Data and Security of Systems.** Contractor shall abide by all policies and procedures provided by Nissan applicable to Contractor's provision of the Services, as determined by Nissan, including without limitation all policies and procedures governing access to Nissan's facilities or information security. Contractor shall establish and maintain safeguards against the disclosure, destruction, loss, copying or alteration of Nissan's Confidential Information in the possession or control of Contractor in compliance with all applicable laws and which are no less rigorous than those maintained by Nissan, or provided to Contractor in writing by Nissan. In the event of any loss, destruction or alteration of Confidential Information by Contractor, Contractor agrees to promptly correct any errors or inaccuracies in the Confidential Information and restore any losses of any Confidential Information. Nissan shall have the right to establish backup security for Confidential Information in the possession or control of Contractor. Nissan shall also have the right to audit Contractor's or its agents' use of Confidential Information to assure compliance with the terms of this Agreement and applicable laws and Contractor agrees to provide Nissan full cooperation in connection with such audits.
15. **Subcontracting.** Company shall ensure that the Nissan Data and Nissan Materials are accessed only by employees or approved contractors of Company and used only by such employees or contractors with the scope of the Permitted Use in furtherance of Company's carrying out of this Agreement. If Company plans to use any independent contractors, subcontractors, or agents in connection with this Agreement, Company shall provide Nissan with advance written notice listing the independent contractors, subcontractors, or agents whom Contractor plans to so engage. Nissan shall have the right to disapprove any such subcontractor, independent contractor, or agent. Company shall ensure that each its employees and subcontractors complies with all terms and conditions of this Agreement. Company shall be responsible for, and liable to Nissan for, any failure by any of Company's employees or subcontractors to adhere to or comply with the provisions of this Agreement, and for any breach of the terms of this Agreement. In each such case, Company shall promptly notify Nissan upon discovery of any actual, suspected, or threatened breach of this Agreement, and Company shall cooperate with Nissan in every reasonable way to assist Nissan with respect to such breach. Company shall in all cases remain responsible for obligations, services, and/or functions performed by subcontractors to the same extent as if such obligations, services, and/or functions were performed by Company or Company's employees, and for purposes of this Agreement all such work performed by any subcontractor shall be deemed work performed by Company.

16. **Records, Right to Inspect, Electronic Discovery.** During the term of this Agreement and for two (2) years thereafter, Company shall retain all data, books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to this Agreement (collectively "**Records**"). [For the avoidance of doubt, Records shall not include Nissan Data or Nissan Materials.] The Records shall be maintained in accordance with recognized accounting practices and in such a manner that they may be readily audited. The Records shall be available for direct inspection and copying by Nissan, or its designated representatives, during normal business hours upon Nissan's request while this Agreement remains in force and for two (2) years after its expiration or termination. Nissan or its designated representatives may use general audit software and other reporting tools against data files or databases. Company shall cooperate with Nissan, or its designated representatives, in the conduct of such inspection. Company shall impose comparable obligations on all subcontractors. If Nissan's audit reveals that Company has underpaid the License Fee, then in all cases Company shall promptly pay the amounts necessary to rectify such underpayment, together with interest in accordance with this Agreement, and reimburse Nissan for the costs of the audit. All information provided or reviewed under any audit shall be considered Confidential Information of Company under this Agreement. In the event Nissan requires information in electronic format from Company in connection with a discovery process, lawful search warrant, court order, subpoena, or other valid legal, regulatory or administrative process, Company agrees to take reasonable and immediate steps to meet Nissan's requirements at Company's expense. Nissan's Records Management Program (the "Program") is an affiliate-wide program that involves and concerns all Nissan employees, and all of Nissan's contractors, vendors, and suppliers. The Program encompasses records in both electronic and paper form on all types of media ("Nissan Records") and includes an annual records training and review process. If Company (a) is notified by Nissan as an "Office of Record" or as a "Custodian-of Record", or (b) otherwise maintains confidential and/or proprietary Nissan Records, then, in either case, Company agrees to and shall maintain those records in compliance with current approved Nissan Records Management Policies and Procedures and the current Nissan Records Retention Schedules (collectively, the referenced policies, procedures, and schedules constitute the "Policy"). In furtherance of the Program, Company's employees, subcontractors, and/or other agents who manage Nissan Records shall (i) participate in Nissan Annual Records Management Training as scheduled by Nissan and (ii) review Nissan Records annually, maintaining or deleting records in accordance with the Policy.
17. **Notices.** In addition to notice requirements under Section 14, All notices and correspondence pertaining to this Agreement will be delivered by hand or certified mail, return receipt requested and postage prepaid, or by a nationally recognized courier service, and be addressed as follows:

If to Nissan:

Nissan North America, Inc.
One Nissan Way
Franklin, TN 37067
Attention: Mgr, Technical Information & Serviceability-Dealer Support

with a copy to:

Nissan North America, Inc.
One Nissan Way
Franklin, TN 37067
Attention: Legal Department

If to Company:

Attention: _____

Notice will be effective only upon receipt by the party being served, except that notice will be deemed received 72 hours after posting by the United States Post Office, by the method described above. Confirmation of receipt of any facsimile sent must be received in order to presume that the transmission was received. Each party is responsible for informing the other of any changes in his/her or its address by sending proper notice.

18. **Assignment.** Company may not assign its rights or delegate its obligations hereunder, either in whole or in part, whether by operation of law or otherwise, without the prior written consent of Nissan. Any attempted assignment or delegation without Nissan's written consent will be void. The rights and liabilities of the parties under this Agreement will bind and inure to the benefit of the parties' respective successors and permitted assigns. For purposes of this Section 18, a reorganization, merger, asset or stock sale, statutory conversion, or a change in control shall constitute an assignment.
- (a) **Publicity/Trademarks.** Other than as expressly permitted under Section 20, neither Party will use any trademark, servicemark, logo or other identifying mark of the other Party, or make any public reference to the other Party in connection with this Agreement, without the prior written consent of a duly authorized representative of the other Party in each instance.
19. **Marketing and Use of Materials.**
- (a) License to Nissan. Company grants to Nissan a non-exclusive, paid-up, and royalty-free license to use, reproduce, distribute, and publicly display Company's trademarks, service marks, trade names, logos, designs, and other designations and identifiers specified in the applicable License Schedule (collectively, "Company Marks") and other Marketing Elements, solely in connection with the Permitted Use and specific marketing instructions, including any branding guidelines and marketing restrictions.
- (b) License to Company. Nissan grants to Company a non-exclusive, paid-up, and royalty-free license to use, reproduce, distribute, and publicly display Nissan's trademarks, service marks, trade names, logos, designs, and other designations and identifiers as specified in the applicable License Schedule (collectively, "Nissan Marks") and other Marketing Elements, solely in connection with the Permitted Use and specific marketing instructions, including any branding guidelines and marketing restrictions.
- (c) Goodwill. Nothing in this Agreement shall provide the licensing Party any rights with respect to the owning Party's Marks or Marketing Elements except as expressly set forth herein. All goodwill and reputational benefit arising from the use of each of the owning Party's Marks or Marketing Elements made pursuant to this Agreement shall inure to the exclusive benefit of such Party.
- (d) Approval Required. Each licensing Party shall obtain the owning Party's written approval prior to public display or distribution of the approving Party's Marks or Marketing Elements pursuant to this Agreement. The approving Party shall not unreasonably withhold or delay approval. Following the owning Party's written approval of the first instance of each unique use, no further approval will be required for substantially similar uses in connection with this Agreement. The approving Party shall have ten (10) business days to approve, disapprove, or comment on any material submitted by the other Party and five (5) business days for any resubmissions of such materials.
20. **Miscellaneous.** For all purposes under this Agreement each Party shall be and shall act as an independent contractor and shall not bind nor attempt to bind the other to any contract. The validity, interpretation and construction of this Agreement, and all other matters related to this Agreement, will be governed and interpreted by the laws of the State of Tennessee. Any litigation pertaining to the interpretation or enforcement of this Agreement will be filed in and heard by the state or federal court with jurisdiction to hear such disputes in Williamson County, Tennessee, and Company hereby submits to the jurisdiction of such courts. Should either Party institute or participate in a legal or equitable proceeding against the other to enforce or interpret this Agreement, the non-prevailing Party shall pay the prevailing Party's costs, expert and professional fees, attorneys' fees, including in-house counsel expenses, and all other costs incurred by the prevailing party in preparation for the proceeding. Upon a party's breach or default hereunder, the other party's failure, whether single or repeated, to exercise a right hereunder will not be deemed to be a waiver of that right as to any future breach or default. In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be limited or eliminated so that this Agreement shall otherwise remain in full force and effect and enforceable. The failure of either Party to exercise or enforce any right or provision of this Agreement shall not be a waiver of that right. No provision of this Agreement will inure to the benefit of any third parties so as to constitute any such person a third-party beneficiary of this Agreement. This Agreement, together with its attached Exhibits and Appendices (which are incorporated herein and made a part hereof), constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes any and all prior expressions, whether written or oral

ACCEPTED AND AGREED:

[INSERT NAME OF COMPANY HERE]:

NISSAN NORTH AMERICA, INC.:

By: _____
Name:
Title:

By: _____
Name:
Title:

Exhibit A

Capitalized terms used but not defined in this Exhibit A have the meaning given to those terms in the Agreement.

- A. **DESCRIPTION OF NISSAN DATA:** Data for transmission between a scan tool and an electronic control unit ("ECU") on-board a Nissan or Infiniti vehicle for the purposes of performing diagnosis, analysis, tests and repairs of Nissan vehicles. Includes without limitation: (I) ECU specifications with application charts that identify diagnostic protocol used (II) bi-directional control information (III) live data parameters (IV) read only, data stream information (V) special diagnostic test routine requirements (VI) vehicle application information. Nissan data shall not be used to development or produce of a tool that modifies or enhances any ECU software outside of Nissan authorized parameters.
- B. **METHOD OF DELIVERY OF NISSAN DATA:**
- C. **DESCRIPTION OF REPORTS; METHOD AND TIMING OF DELIVERY:**
- D. **PERMITTED USE(S):** Company is permitted to use and distribute the Nissan Data solely in connection with the use and distribution of a Compliant Diagnostic Tool (a defined below), and solely for the purposes of exchanging electronic messages with an ECU on-board a Nissan or Infiniti vehicle for the sole purposes of performing diagnosis, test and repair of such.
- E. **FEES:** The Fees are as set forth below:
- a. **License Fee.** "License Fee" is defined as \$12,500 U.S. Dollars per year
 - b. **Payment Period.** Company shall pay the License Fee due within twenty (20) days of invoice receipt to be issued to Nissan's Nominee identified below. Payments under this subsection may be made by electronic funds transfer to an account specified by Nissan or by its designated representative in writing to Company. If payments are not made via electronic funds transfer, the payments shall be made payable in U.S funds to:

The Equipment and Tool Institute ("Nominee")
378899 W. 12 Mile Rd., Suite 220
Farmington Hills, MI. 48331
- F. **AUTHORIZED REPRESENTATIVES:**
- G. **TERRITORY:**

