

AGREEMENT ON FURNISHING OF DIAGNOSTIC REPAIR INFORMATION

THIS AGREEMENT ON FURNISHING OF DIAGNOSTIC REPAIR INFORMATION (this "Agreement") is entered into between the parties referenced below. It takes effect on the Effective Date below.

Effective Date		Reference ID	SAMPLE
Parties to this Agreement			
Honda Motor Co., Ltd. ("Honda")		("Company")	
_____ By (Signature) Typed Name: Toru CHIBA Title: General Manager, Service Technology Development		_____ By (Signature) Typed Name: Title:	
Notice and Contact Information			
Honda Contact Information: 25-3, Shirako 2-chome, Wako-shi, Saitama 351-0101, JAPAN Attn: Yoshinobu TADA Tel: +81-48-464-2457 Fax:+81-48-466-3875 Email: Yoshinobu_Tada@hm.honda.co.jp <i>With copy to:</i>		Company Contact Information: Attn: Tel: Fax: Email: <i>With copy to:</i>	
Purposes			
The Company is engaged in, <i>inter alia</i> , the business of manufacturing and selling diagnostic repair tools used for servicing motor vehicles sold in the Territory (as defined hereinbelow), and wish to make use of Honda's certain technical information necessary for developing, manufacturing and selling and/or leasing aftermarket diagnostic repair tools having the equivalent servicing capabilities that Honda makes available to its franchised dealership or authorized service networks. On those purposes, certain diagnostic repair information will be furnished or made available to the Company by Honda, subject to the terms and conditions set out in this Agreement.			
Territory	United States of America, Canada and Mexico		
Covered Model Years and Classes of Products	All Honda and Acura branded vehicles of 1996 and subsequent model year		
Consideration			
Initial Fee (Section 10.1)	US\$ 10,600.00 as a lump sum	payable in a one-time payment in U.S. dollars	
Renewal Fee (Section 10.2)	US\$ 10,600.00 per annum	payable in a one-time payment in U.S. dollars	
Remarks			

The additional terms and conditions set forth in the following page(s) are a part of this Agreement.

Terms and Conditions

This Agreement is entered into as of the Effective Date indicated on the face of this instrument by and between the parties named thereon.

For good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions:

Unless otherwise clearly required by the context, the following terms as used in this Agreement shall have the respective meanings as defined below:

(1) The term "Products" shall mean any Honda and/or Acura branded automotive products certified in the territory indicated on the face of this instrument (the "Territory") and equipped with on-board diagnostic (OBD) systems in compliance with applicable laws and regulations in the Territory, the model years and classes of which are to be from time to time specified by Honda separately;

(2) The term "Generic Scan Tools" shall mean any aftermarket diagnostic repair tools that can access and display standardized codes from vehicle on-board computers, and which can be used for service or repair on a number of different automotive products manufactured by different manufacturers;

(3) The term "Technical Information" shall mean the diagnostic repair information, including the following, which (a) is directly related to Honda's on-board diagnostic systems and indispensable for developing diagnostic repair tools for servicing the Products, and (b) is either owned by Honda at the time of execution of this Agreement or from time to time during the term of this Agreement, the particularity of which is to be reasonably specified by Honda:

(a) Digitally encoded signals used for representing a status of communication signals transmitted on board, such as diagnostic trouble codes, data communication specification and format specific to the Products;

(b) Specifications and testing mode parameters of diagnostic repair tools for servicing the Products, as well as procedures for the proper installation and initialization of on-board computers on the Products;

(c) Diagnostic threshold parameters or failure detection criteria on the on-board diagnostic systems of the Products; and

(d) Any such other information as may be required to be made available for purchase to the Company from time to time by the applicable laws and regulations then in effect in the Territory in connection with the

purposes specified on the face of this instrument (the "Purposes"), the particularity of which is to be reasonably specified by Honda.

For clarity, the scope of the Technical Information to be provided to the Company by Honda under this Agreement shall be limited (a) to the one that is actually extractable from the on-board diagnostic systems developed by Honda, and (b) to the extent made available to Honda's franchised dealerships or authorized service networks for the Products in the Territory, and shall not include any other information that is not related to the Purposes.

2. Use of Technical Information:

Subject to the terms and conditions herein contained, Honda hereby grants to the Company an indivisible and non-exclusive right, without the right to grant a sub-license, to use the Technical Information within the Territory solely in connection with the Purposes.

3. Furnishing of Technical Information

3.1 As soon as practical after receipt by Honda of full payment of the initial fee set forth in Section 10.1 hereof, Honda shall furnish the Company with the latest version of the Technical Information, to the extent Honda deems it necessary to do so, by providing it in any tangible form (including one stored in electronic data systems and/or in storage media), through any electronic communication systems (including fax message or electronic mail service), or by any other means of transmission that both parties may agree.

3.2 Subject to the full payment of the annual renewal fee set forth in Section 10.2 hereof, Honda shall furnish the Company with the Technical Information incorporating any updates for the subsequent model year Products no later than 180 days after the introduction of the said Product into commerce or concurrently with its availability to Honda's franchised dealerships or authorized service networks for the Products in the Territory, whichever occurs first. The furnishing of updates of the Technical Information shall be made in the same manner as is prescribed in Section 3.1 above.

4. Technical Information Not Covered by This Agreement

4.1 Nothing herein contained shall be construed to obligate Honda to provide the Company with such know-how and technical information or to grant to the Company a license to use such intellectual property rights with respect to any diagnostic repair tools that belong to or are owned by any third party.

4.2 It is expressly acknowledged, understood and

agreed by the Company that Honda shall not be obligated to disclose any technical information regarding on-board computer initialization procedures for the Products of certain model year, or that is considered to be a trade secret by it, to the extent it is legally permissible.

5. Maintenance of Secrecy

5.1 The Technical Information, and any other non-public technical or business information of Honda (hereinafter collectively referred to as the "Information") shall remain the sole and exclusive property of Honda, and shall be held in trust and confidence for Honda by the Company.

5.2 The Company agrees that it shall not, either during the term of this Agreement or thereafter, make known, divulge or communicate any Information in any way or manner whatsoever to any person or entity, except as set forth in Section 5.4.

5.3 The Company further agrees that it shall take all necessary precautions to keep the Information secret and confidential, and to restrict its use as provided for in Article 6 hereof and, for that purpose, shall establish and maintain internal regulations and procedures for protection of the secrecy, recognizing that the Company shall use at least the same degree of precautions as it takes to protect its own confidential information (but not less than reasonable care), and the Company agrees that it shall be prohibited from making any copies or translations of the documents or any other materials embodying the Information without the prior written consent of Honda.

5.4 The Company may disclose the Information to the directors, employees and other persons of it, to whom disclosure is reasonably necessary for the purpose of having such directors, employees and other persons who manufacture the Generic Scan Tools pursuant to this Agreement; provided, however, that the Company shall obtain from each of such directors, employees and other persons a written promise to treat all the Information as secret and confidential and to restrict the use thereof, in the manner and fashion provided for in this Article 5 and shall, if so requested by Honda, submit a copy of the written promise to Honda.

5.5 Nothing contained in this Article 5 shall be construed as restricting, or creating any liability for, the disclosure, communication or use of the Information by the Company which (i) is in the public domain, (ii) was already in the possession of the Company at the time of disclosure to the Company by Honda and was not acquired from Honda, or (iii) is rightfully acquired by the Company on a non-confidential basis from a third party having the right to disclose it to the Company.

5.6 The Company agrees that Honda or its agents may have access to the Company's factories and other

facilities and to make the necessary inspection in order to confirm whether the Company is observing its obligations under this Article 5.

5.7 Any and all of Honda's rights and the Company's obligations under this Article 5 shall survive the expiration or any other termination of this Agreement for any reason whatsoever.

5.8 The Company acknowledges that a breach by the Company of any of its obligations hereunder will result in irreparable and continuing injury to Honda which may not be fully compensated by monetary damages, Honda shall, in seeking enforcement of any of such obligations, be entitled to seek injunctive and other relief to prevent or restrain the breach of this Article 5 and in addition, be entitled to claim from the Company payment of all damages, costs and expenses suffered or incurred by Honda due to such breach or in enforcing the provisions of this Article 5.

6. Limitation of Use and Other Prohibition

6.1 The Company shall not, directly or indirectly, sell, distribute, lease and/or export any Generic Scan Tools to any place outside the Territory, nor shall the Company sell, distribute and/or lease any Generic Scan Tools to anyone in the Territory who the Company knows or has some reason to believe intends to resell, re-distribute, re-lease and/or export such Generic Scan Tools outside the Territory. For the avoidance of doubt, this provision shall not be construed as restricting the selling, distributing, leasing and/or exporting by the Company of any diagnostic repair tools that does not contain or use the Technical Information.

6.2 The Company shall not use, or cause or permit third party to use, the Technical Information provided hereunder in the manufacture, assembly, servicing, sale or other disposition of any goods other than the Generic Scan Tools, or for any purposes other than as expressly provided in this Agreement.

6.3 The Company shall use the Technical Information provided hereunder fully in accordance with the purposes enumerated in this Agreement and agree that any other use, even if unintended, may result in serious damage and/or injury to Honda's or the Company's customers. The Company shall not use the Technical Information for any other purposes whatsoever, and the Company shall be fully responsible for any consequences resulting from any such use.

6.4 The Company agrees that Honda or its agents may have access to the Company's factories and other facilities and to make the necessary inspections to confirm whether the Company is observing its obligations under this Article.

6.5 The Company shall promptly inform of any development or improvements made or acquired by it

in connection with the Technical Information and disclose details of such development or improvements. The Company shall, at the request of Honda, grant to Honda a license to use such development or improvement made and disclosed by the Company under the terms and conditions to be mutually agreed upon between the parties.

7. No License Granted

It is expressly agreed by the parties hereto that no rights or obligations other than those expressly recited herein are to be implied from this Agreement. In particular, no licenses are hereby granted either directly or indirectly under any patents, trademarks, copyrights or know-how now held by, or which may be obtained by, or which is or may be licensable by Honda. The Company shall not use the name of Honda in any publicity, advertising or other form of publicity without the prior written permission of Honda.

8. No Warranty

ANY TECHNICAL INFORMATION PROVIDED BY HONDA PURSUANT TO THIS AGREEMENT IS ON AN 'AS IS' BASIS. UNLESS OTHERWISE SPECIFICALLY PROVIDED FOR IN THIS AGREEMENT, HONDA MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, AS TO ANY MATTER INCLUDING, BUT NOT LIMITED TO, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, EXCLUSIVITY OR RESULTS OBTAINED FROM ANY TECHNICAL INFORMATION, NOR SHALL HONDA BE LIABLE TO THE COMPANY FOR INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES SUCH AS LOSS OF PROFITS OR INABILITY TO USE SAID TECHNICAL INFORMATION. HONDA DOES NOT MAKE ANY WARRANTY OF ANY KIND WITH RESPECT TO FREEDOM FROM PATENT, TRADEMARK, OR COPYRIGHT INFRINGEMENT, AND DOES NOT ASSUME ANY LIABILITY HEREUNDER FOR ANY INFRINGEMENT OF ANY PATENT, TRADEMARK, OR COPYRIGHT ARISING FROM THE USE OF THE TECHNICAL INFORMATION PROVIDED BY IT HEREUNDER. THE COMPANY AGREES THAT IT WILL NOT MAKE ANY WARRANTY ON BEHALF OF HONDA, EXPRESSED OR IMPLIED, TO ANY PERSON CONCERNING THE APPLICATION OF OR THE RESULTS TO BE OBTAINED WITH THE TECHNICAL INFORMATION PROVIDED UNDER THIS AGREEMENT.

9. Hold Harmless and Claims

The Company shall defend, indemnify and hold harmless Honda, its subsidiaries and affiliated companies and each of their respective directors, officers, employees and agents from and against any and all claims, losses and/or actions of any kind whatsoever that may arise out of the manufacture, use or sale by the Company of, or other dealings by the Company in, the Generic Scan Tools under this Agreement.

9.2 Should there occur any claim as to the quality or performance of the Generic Scan Tools manufactured

by the Company, or any other complaint regarding such Generic Scan Tools, the Company shall at its expense take proper measures to settle such claim or complaint.

9.3 The Company shall maintain a policy of liability insurance in such amount as enough for cover for all acts and omissions and product liability claims and suits related to the use of the Technical Information provided by Honda to the Company. The Company shall name Honda as an additional insured on its policy, and will supply a copy of the certificate of insurance upon request of Honda. Such policies shall provide that they cannot be terminated or materially altered without first providing Honda at least sixty (60) days advance written notice.

10. Consideration

10.1 In consideration of the furnishing the Technical Information by Honda under Section 3.1 hereof, the Company shall pay to Honda an initial fee, the amount of which is set forth on the face of this instrument.

10.2 The Company shall pay to Honda a renewal fee for the furnishing of each of the annual updates included in the Technical Information for the subsequent model year Products under Section 3.2 hereof in the amount set forth on the face of this instrument.

10.3 The fees by the Company to Honda hereunder shall be made in the currency specified on the face of this instrument by way of bank transfer to a bank account designated by HONDA within thirty (30) days after the receipt of invoice by the Company from Honda.

10.4 Payments and remittances by the Company hereunder shall be free and clear of any deductions for taxes or other charges in the country where the Company locates, except for the taxes and other governmental charges set forth in Article 11 hereof. Receipt by Honda of any payment tendered hereunder shall not constitute Honda's acceptance of any account, schedule or figure on which such payment is based. All payments shall be non-refundable to the Company by Honda in whole or in part for any reason whatsoever.

11. Taxes and Other Charges

11.1 Except as otherwise specifically provided in this Agreement, all taxes and other governmental charges of any nature whatsoever relating to or arising out of this Agreement or any other agreement contemplated hereby shall be borne and paid, to the extent the designated party may legally do so, (i) by Honda when such charges are imposed under the laws of Japan or any political subdivision thereof, and (ii) by the Company when such charges are imposed under the laws of the country where the Company locates or any political subdivision thereof.

11.2 In case the Company is required under the laws of the country where it locates to deduct from any payment made to Honda any income taxes which may be levied against Honda, the Company shall, notwithstanding the provision of Section 11.1 above, be entitled to deduct such taxes, provided that the Company shall promptly furnish to Honda an original receipt of tax payment evidencing the payment of such taxes to the appropriate authority.

12. Term

This Agreement shall become effective from the Effective Date set forth on the face of this instrument, and shall continue to be effective until terminated by either party by providing the other party thirty (30) days prior written notice.

13. Earlier Termination

13.1 If either party defaults in the performance of any of its obligations under this Agreement and does not cure such default within thirty (30) days following the giving of notice in writing by the other party requesting that party in default to cure the default, then the party giving such notice may forthwith terminate this Agreement by giving the party in default a written notice to that effect; provided, however, that if within thirty (30) days following such notice the other party shall fulfill its obligation, this Agreement shall continue in full force and effect.

13.2 If the Company should (i) transfer the whole or an important part of its business, (ii) go into liquidation, (iii) merge with any other company, (iv) become bankrupt or insolvent, (v) become controlled directly or indirectly by any other company or entity reasonably not agreeable to Honda, or (vi) change significantly in its management or financial conditions, then Honda shall have the right to terminate this Agreement forthwith.

14. Effect of Expiration or Termination

14.1 In the event of the expiration or any other termination of this Agreement for any reason whatsoever,

(1) The Company shall promptly discontinue (i) the manufacture, sale and other disposition of the Generic Scan Tools, and (ii) the use of the Technical Information furnished by Honda under this Agreement. For the avoidance of doubt, this provision shall not be construed as restricting the selling, distributing, leasing and/or exporting by the Company of any diagnostic repair tools that does not contain or use the Technical Information;

(2) The Company shall promptly return or destroy any and all Technical Information and copies thereof in tangible form, which it received from Honda, and the Company shall delete or erase all such Technical

Information from its computer systems and all other computer systems that have obtained the information from Honda or its directors, officers, agents, consultants or attorney. However, the Company may retain one archival copy of the Technical Information, which it may use only in case of a dispute concerning this Agreement. Upon request of Honda, the Company shall certify to Honda, by an instrument in writing signed by an officer of the Company, that it has complied with the requirements of this paragraph;

(3) The Company shall not be entitled to recover from Honda, for the reason of the expiration or termination of this Agreement or the failure to renew or extend it, any damages, reimbursements or other payments on account of the current or prospective profits on the Company's sale or anticipated sale of the Generic Scan Tools and/or other equipment, or on account of the Company's expenditures, investments or commitments made in connection with the manufacture of the Generic Scan Tools and/or other equipment, or on account of the establishment, development or maintenance of the goodwill or other business of the Company, or on account of any other cause or thing whatsoever.

14.2 Upon expiration or any other termination of this Agreement, as provided herein, or by operation of law or otherwise, all rights and obligations hereunder shall terminate forthwith except the provisions under Article 5 through Article 9 hereof.

15. Non-Assignability

Neither this Agreement nor any rights or duties under this Agreement shall be assignable, delegable or transferable, directly or indirectly, by either party without the prior written consent of the other party; provided, however, that Honda may assign, delegate or transfer this Agreement or any rights or duties thereunder to any of its wholly-owned subsidiaries.

16. Governing Law and Dispute Solution

16.1 This Agreement shall be governed by and interpreted according to the laws of Japan.

16.2 In the event that any dispute arises between the parties hereto in connection with this Agreement, the construction of any provision of this Agreement or the rights, obligations or liabilities of any party hereunder, the relevant parties shall conduct negotiations in good faith in order to resolve such dispute. If no agreement is reached between the relevant parties on the dispute within 60 (sixty) days after the commencement of such negotiation, they shall be free to refer it to arbitration as set forth below. All disputes which shall not have been settled through their mutual negotiation as set forth above, shall be finally settled by arbitration pursuant to the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one (1) or more arbitrators appointed in accordance with the said Rules, shall be

held in the English language in London, by which each party shall be bound.

17. Severability

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, this Agreement shall be construed as if not containing the particular provision or provisions hereof held to be invalid or unenforceable, and the rights and obligations of the parties shall be construed and enforced accordingly.

18. Integration

This Agreement constitutes the entire agreement between the parties hereto regarding the subject matter hereof and terminates, supersedes and cancels any and all prior or contemporaneous written and/or oral communications, understandings, agreements, proposals, representations or promises with respect to the subject matter hereof. All amendments or modifications of this Agreement shall be invalid unless made in writing and signed by the parties hereto.

19. No Obligation to Consummate Business Relation

Nothing in this Agreement shall impose any obligation upon any of the parties to consummate any business transaction and/or services arrangement between the parties hereto.

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