

# Agreement for the Terms of Use of the TECHNICAL INFORMATION

This Agreement, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010 by and between HONDA MOTOR CO., LTD., a corporation organized and existing under the laws of Japan, and having its principal place of business at 1-1, 2-Chome, Minamiaoyama, Minato-ku, Tokyo 107-8556, Japan (hereinafter referred to as “HONDA”) and [COMPANY’s name], a (insert business entity) duly organized and existing under the laws of the [COMPANY’s Country], and having its principal place of business at [COMPANY’s Address] (hereinafter referred to as the “COMPANY”),

## WITNESSETH:

WHEREAS, HONDA is engaged in, inter alia, the business of the development, manufacture and sale of vehicles and, through experience accumulated in such business, has acquired and possesses certain know-how and TECHNICAL INFORMATION (hereinafter defined) relating to such vehicles;

WHEREAS, vehicles bearing the HONDA or Acura brand sold in the United States are manufactured directly by HONDA or by HONDA’s licensee(s) under the license agreements, and under which license agreements, such licensees are required to keep the TECHNICAL INFORMATION furnished by HONDA to such licensees confidential; and

WHEREAS, COMPANY is the COVERED PERSON as defined in subsection (c)(3) of CCR 1969 (hereinafter defined) and, desirous of obtaining and receiving the TECHNICAL INFORMATION from HONDA, and HONDA is willing to provide such TECHNICAL INFORMATION,

NOW, THEREFORE, in consideration of the foregoing premises and mutual covenants herein contained, both parties hereby agree as follows:

### **Article 1. Definitions**

1.1 Unless otherwise clearly required by the context, all capitalized terms as used in this Agreement shall have the respective meanings as defined in subsection (c) of CCR 1969 (hereinafter defined), and as defined below:

- A) The term “CCR 1969” shall mean section 1969, Article 2, of Chapter 1, Division 3, Title 13, of the California Code of Regulations in the version, No.7;
- B) The term “HONDA VEHICLES” shall mean all of California-certified 1994 and subsequent model-year passenger vehicles manufacturer by HONDA or HONDA’s licensees, and equipped with on-board diagnostic system pursuant to Title 13, of the California Code of Regulations;
- C) The term “ON-BOARD COMPUTER INITIALIZATION PROCEDURES” shall mean computer or antitheft system INITIALIZATION information and/or related tools necessary for (i) the proper installation of on-board computers on HONDA VEHICLES that employ integral vehicle security systems, or (ii) the repair or replacement of any other EMISSION-RELATED MOTOR VEHICLE PART of HONDA VEHICLES;
- D) The terms “VEHICLE REPROGRAMMING INFORMATION” shall mean information necessary to install HONDA’s software and calibration data to HONDA VEHICLES, to the extent that it is provided to HONDA’s franchised dealerships;
- E) The term “TECHNICAL INFORMATION” shall mean the following information:
  - (i) ON-BOARD COMPUTER INITIALIZATION PROCEDURES information, and
  - (ii) VEHICLE REPROGRAMMING INFORMATION.In the case COMPANY is the tool and equipment company, (iii) DATA STREAM INFORMATION, BI-DIRECTIONAL CONTROL information and diagnostic tool test mode specification for HONDA VEHICLES, and database extracted from Honda Diagnostic System for each HONDA VEHICLES shall be included in the TECHNICAL INFORMATION;
- F) The term “DIAGNOSTIC TOOLS” shall mean diagnostic tools and equipments that are developed, manufactured and sold by COMPANY by using the TECHNICAL INFORMATION; and

G) The term "TERRITORY" shall mean the United States of America, Canada and Mexico.

## **Article 2. Purpose**

- 2.1 This Agreement is made to define the terms and conditions for furnishing with the TECHNICAL INFORMATION by HONDA and using such TECHNICAL INFORMATION by COMPANY for the sole purpose of developing, manufacturing and selling and/or leasing the DIAGNOSTIC TOOLS. Any other technical information and materials required to be made available to COVERED PERSON under CCR 1969 shall not be included in the TECHNICAL INFORMATION and the terms and conditions for purchase of such information and/or materials such as applicable model(s), model-year(s) and type(s), price, delivery date and method or mode of distribution or delivery shall be separately agreed by the parties hereto.
- 2.2 Subject to the terms and conditions herein contained, HONDA hereby grants to COMPANY an indivisible and non-transferable non-exclusive right, without the right to grant a sub-license, to use the TECHNICAL INFORMATION to develop, manufacture, use and sell, distribute and/or lease the DIAGNOSTIC TOOLS within the TERRITORY during the term of this Agreement.

## **Article 3. Furnishing the TECHNICAL INFORMATION**

- 3.1 As soon as practical after receipt by HONDA of full payment of the initial fee set forth in Article 10.1 hereof, HONDA shall furnish COMPANY with the latest version of TECHNICAL INFORMATION extracted from current diagnostic system developed by HONDA, which covers 1992 and later models, to the extent HONDA deemed it necessary to do so, but not less than required under CCR 1969, by providing it in documentary form and/or physical form (including information stored in electronic data systems and/or in storage media, and/or communicated through electronic communication systems (e.g. E-mail systems and/or facsimile transmissions), and/or such other manner which HONDA and COMPANY may mutually agree.
- 3.2 HONDA shall furnish COMPANY with the TECHNICAL INFORMATION which includes updates for models introduced into commerce for one (1) year after the effective date of this Agreement, as soon as practical, but no later than One Hundred and Eighty (180) days after the start of the introduction of such additional model(s) into commerce in the TERRITORY or concurrently with its availability of such information to franchised dealership in the TERRITORY, whichever occurs first.
- 3.3 HONDA shall furnish COMPANY with the TECHNICAL INFORMATION which includes updates for models introduced into commerce after such time set forth in Article 3.2, as soon as practical, but no later than One Hundred and Eighty (180) days after the start of the introduction of such additional model(s) into commerce in the TERRITORY or concurrently with its availability of such information to franchised dealership in the TERRITORY, whichever occurs first. Such furnishing shall be subject to receipt by HONDA of full payment of the renewal fee set forth in Article 10.2 hereof in same manner as provided in Article 3.1 above or such other manner which HONDA and COMPANY may mutually agree.

## **Article 4. Technical information and materials not covered by this Agreement**

- 4.1 Nothing herein contained shall be construed to obligate HONDA to provide COMPANY with such know-how and technical information or to grant to COMPANY a license to use such intellectual property rights with respect to the DIAGNOSTIC TOOLS that belong to or are owned by any third party, including any of HONDA's collaborating companies.
- 4.2 It is expressly acknowledged, understood and agreed by COMPANY that HONDA shall not be obligated to furnish the TECHNICAL INFORMATION concerning ON-BOARD COMPUTER INITIALIZATION PROCEDURES for some or all model year of HONDA VEHICLES nor the information which HONDA believes to be a trade secret under subsection (d)(3)(B) and subsection (i) of CCR 1969.

## **Article 5. Maintenance of Secrecy**

- 5.1 The TECHNICAL INFORMATION, and any other non-public technical or business information of HONDA (the TECHNICAL INFORMATION and such other information being collectively hereinafter 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 COMPANY
- 5.2 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 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 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 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 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 DIAGNOSTIC TOOLS pursuant to this Agreement; provided, however, that 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 COMPANY which (i) is in the public domain, (ii) was already in the possession of COMPANY at the time of disclosure to COMPANY by HONDA and was not acquired from HONDA, or (iii) is rightfully acquired by COMPANY on a non-confidential basis from a third party having the right to disclose it to COMPANY.
- 5.6 COMPANY agrees that HONDA or its agents may have access to COMPANY's factories and other facilities and to make the necessary inspection in order to confirm whether COMPANY is observing its obligations under this Article 5.
- 5.7 Any and all of HONDA's rights and COMPANY's obligations under this Article 5 shall survive the expiration or any other termination of this Agreement for any reason whatsoever.
- 5.8 Company acknowledges that a breach by 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 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.

#### **Article 6. Limitation of Use, and Other Prohibition**

- 6.1 COMPANY shall not, directly or indirectly, sell, distribute, lease and/or export any DIAGNOSTIC TOOLS to any place outside the TERRITORY, nor shall COMPANY sell, distribute and/or lease any DIAGNOSTIC TOOLS to anyone in the TERRITORY who COMPANY knows or has some reason to believe intends to resell, re-distribute, re-lease and/or export such DIAGNOSTIC 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 COMPANY of any diagnostic tools that does not contain or use the TECHNICAL INFORMATION.
- 6.2 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 DIAGNOSTIC TOOLS, or for any purpose other than as expressly provided in this Agreement.
- 6.3 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 COMPANY'S customers. COMPANY shall not use the TECHNICAL INFORMATION for any other purpose whatsoever, and COMPANY shall be fully responsible for any consequences resulting from any such use.
- 6.4 COMPANY agrees that HONDA or its agents may have access to COMPANY's factories and other facilities and to make the necessary inspections to confirm whether COMPANY is observing its obligations under this Article 6.
- 6.5 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.  
COMPANY shall, at the request of HONDA, grant to HONDA a license to use such development or improvement made and disclosed by COMPANY under the terms and conditions to be mutually agreed upon between the parties.

#### **Article 7. No License Granted**

- 7.1 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. COMPANY shall not use the name of HONDA in any publicity, advertising or other form of publicity without the prior written permission of HONDA.

**Article 8. No warranty**

- 8.1 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 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. 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.

**Article 9. Hold Harmless and Claims**

- 9.1 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 liability claims, losses and/or causes of actions of any kind whatsoever regardless of legal theory that may arise out of the manufacture, use or sale by COMPANY of the DIAGNOSTIC TOOLS. COMPANY shall notify HONDA of any claim against COMPANY that is covered by this provision
- 9.2 Should there occur any claim as to the quality or performance of the DIAGNOSTIC TOOLS manufactured by COMPANY, or any other complaint regarding such DIAGNOSTIC TOOLS, COMPANY shall at its expense take proper measures to settle such claim or complaint.
- 9.3 COMPANY shall maintain a policy of liability insurance in an amount not less than five million dollars, specifically providing coverage for all acts and omissions and product liability claims and suits related to the use of the TECHNICAL INFORMATION supplied by HONDA to COMPANY. COMPANY shall name HONDA as an additional insured on its policy, and will supply a certificate of insurance annually. Such policies shall provide that they cannot be terminated or materially altered without first providing HONDA at least sixty days advance written notice.

**Article 10. Consideration**

- 10.1 In consideration of the furnishing the TECHNICAL INFORMATION by HONDA under Article 3.1 hereof, COMPANY shall pay to HONDA a lump-sum fee of Four Thousand United States Dollars (US\$ 4,000.00).
- 10.2 In consideration of the furnishing the TECHNICAL INFORMATION by HONDA under Article 3.3 hereof, COMPANY shall pay to HONDA an annual renewal fee of Four Thousand United States Dollars (US\$ 4,000.00) in a lump sum.
- 10.3 The fee by COMPANY to HONDA hereunder shall be made in United States Dollar by way of bank transfer to a bank account designated by HONDA within thirty (30) days after the receipt of invoice by COMPANY from HONDA.
- 10.4 Payments and remittances by COMPANY hereunder shall be free and clear of any deductions for taxes or other charges in the COMPANY's country, 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 COMPANY by HONDA in whole or in part for any reason whatsoever.

**Article 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 COMPANY when such charges are imposed under the laws of COMPANY's country or any political subdivision thereof.

- 11.2 In case the COMAPNY is required under the laws of COMPANY's country to deduct from any payment made to HONDA any income taxes which may be levied against HONDA, COMPANY shall, notwithstanding the provision of Article 11.1 above, be entitled to deduct such taxes, provided that COMPANY shall promptly furnish to HONDA an original receipt of tax payment evidencing the payment of such taxes to the appropriate authority.

#### **Article 12. Term**

This Agreement shall be effective as of the date first above written or March 31<sup>st</sup>, 2003, whichever is earlier, and shall continue thereafter in full force and effect until terminated by either party by providing the other party thirty (30) days prior written notice.

#### **Article 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 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.

#### **Article 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,
- A) COMPANY shall promptly discontinue (i) the manufacture, sale and other disposition of the DIAGNOSTIC TOOLS, and (ii) the use of the TECHNICAL INFORMATION furnished by HONDA under this Agreement;
  - B) COMPANY shall promptly return or destroy any and all TECHNICAL INFORMATION and copies thereof in tangible form, that it received from HONDA and 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, 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, COMPANY shall certify to HONDA, by an instrument in writing signed by an officer of COMPANY, that COMPANY has complied with the requirements of this paragraph;
  - C) 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 COMPANY's sale or anticipated sale of the DIAGNOSTIC TOOLS and/or other equipment, or on account of COMPANY's expenditures, investments or commitments made in connection with the manufacture of the DIAGNOSTIC TOOLS and/or other equipment, or on account of the establishment, development or maintenance of the goodwill or other business of 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.

#### **Article 15. Non-Assignability**

- 15.1 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.

**Article 16. Governing Law and Dispute Solution**

- 16.1 This Agreement shall be construed and enforced in accordance with the laws of State of California without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the laws of State of California to the rights and duties of the parties. In case any dispute arises out of this Agreement, before the parties resort to litigation to solve any dispute, the parties agree to schedule a mandatory “without prejudice” meeting at a mutually agreeable location, which meeting shall be attended by at least one senior manager from each party. At that meeting, each party will present its viewpoint in connection with the dispute, and the parties will enter into good faith negotiations in an attempt to resolve the dispute. In the event the dispute is not resolved, any such dispute shall be finally settled by arbitration according to the rules of conciliation and arbitration of the American Arbitration Association, by one or more arbitrators designated in conformity with those rules. The arbitration shall be conducted in Los Angeles County California, U.S.A.

**Article 17. Severability**

- 17.1 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.

**Article 18. Integration**

- 18.1 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.

**Article 19. Export Laws**

- 19.1 Each party shall comply with applicable export/import laws and regulations of Japan, the United States, Canada, Mexico, and any applicable foreign nation with respect to any technical data disclosed and received under this Agreement.

**Article 20. No Obligation to Consummate Business Relation**

- 20.1 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.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to affix their respective signatures unto two originals of this instrument the day and year first above written.

HONDA MOTOR CO., LTD.

By: \_\_\_\_\_  
Printed Name: Noritaka Naito  
Job Title: General Manager  
Customer Service Technology Division  
Date: \_\_\_\_\_

[Company]

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
Date: \_\_\_\_\_