LICENSE AGREEMENT

This License Agreement is by and between Toyota Motor North America, Inc., a California corporation, with offices at 6565 Headquarters Drive, Plano, Texas, 75024 (“**TMNA**”), and the company identified below in the signature block of this Agreement (“**Licensee**”), and is effective as of the later of the two dated signatures below (“**Effective Date**”).

TMNA is in the business of importing, marketing and distributing Toyota and Lexus brand, and historically, Scion brand, motor vehicles (the “**Vehicles**”).

TMNA has developed Toyota Diagnostic Data (as defined below), which is useful in scan tools.

Pursuant to the ETI Agreement (as defined below), TMNA has authorized ETI to distribute certain Toyota Diagnostic Data to authorized members of ETI who have entered into an Non-Disclosure Agreement and License Agreement with TMNA.

Licensee desires to obtain Licensed Data (as defined below) for use by Licensee as permitted herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

1. **Definitions**.
   1. “**Annual Data License**” means an annual license which includes all new quarterly releases of the Toyota Diagnostic Data received for the duration of the license.
   2. “**Comprehensive Data License**” means an annual license which includes all quarterly releases of the Toyota Diagnostic Data from the initial v1.0 release to the present version in one comprehensive package, and any new quarterly data releases for the duration of the license.
   3. “**ETI**” means Equipment and Tool Institute, an Illinois non-profit corporation with offices at 37899 W 12 Mile Rd, Suite 220, Farmington Hills, Michigan, 48331.
   4. “**ETI Agreement**” means the Services Agreement between ETI and TMNA, as may be amended from time to time.
   5. “**Licensed Data**” means the Toyota Diagnostic Data that is provided to Licensee by ETI, pursuant to the ETI Agreement.
   6. “**Non-Disclosure Agreement**” means the Non-Disclosure Agreement by and between Licensee and TMNA, entered into on or before the Effective Date of this Agreement.
   7. “**Scan Tool**” means a scan tool as described on Exhibit A of this Agreement.
   8. “**Toyota Diagnostic Data**” mean electronic messages transmitted between a scan tool and an electronic control unit (“**ECU**”) on-board a Vehicle for the purposes of performing diagnosis, tests and repairs of the Vehicle, and includes without limitation: (i) read only, data stream information (e.g. sensor values, I/O switch states, etc.); (ii) bi-directional control, data stream information (e.g., operation of actuators, initiation of self-checks, etc.); (iii) special diagnostic test routine requirements (e.g. VIN initialization, cylinder balance test, etc.); (iv) Vehicle data communication requirements (e.g. physical layer definitions, etc.); (v) ECU data communication requirements (e.g. diagnostic protocols, data link layer definitions, etc.); and (vi) Vehicle application information (e.g. ECU information charts, etc.) For avoidance of doubt, Toyota Diagnostic Data shall not include flash reprogramming software, e.g., the J2534 software, the files that are flashed into a memory of a controller in a Vehicle when the controller is reprogrammed, security algorithms, and the like.
2. **License**. Subject to the terms and conditions of this Agreement (including the payment terms set forth in Section 7), TMNA grants to Licensee, while this Agreement is in effect, a limited non-transferable, non-exclusive, non-sublicensable license, under TMNA’s intellectual property rights in the Licensed Data, to reproduce and use the Licensed Data solely for purposes of incorporating the Licensed Data into the Scan Tools and to distribute the Licensed Data solely as incorporated into the Scan Tools. TMNA does not grant Licensee any other license or right under this Agreement.
3. **Ownership, Restrictions**.
   1. Licensee acknowledges and agrees that all Toyota Diagnostic Data, and all intellectual property rights therein, are and shall remain the property of TMNA or its licensors, and that Licensee has no rights with respect to the Toyota Diagnostic Data other than the right to the Licensed Data expressly granted hereunder.
   2. Licensee shall not use any Toyota Diagnostic Data, except for use of the Licensed Data permitted by the license granted in Section 2 of this Agreement. Except to sell or distribute Scan Tools that include Licensed Data pursuant to Section 2, Licensee shall not market, distribute or otherwise provide any Toyota Diagnostic Data to any third party.
   3. Licensee shall not alter any of the Licensed Data. The Scan Tools must not provide any capability beyond that described in Exhibit A. TMNA has the right to require Licensee to cease making, selling or otherwise distributing any Scan Tool using any Toyota Diagnostic Data that TMNA determines provides any capability beyond that described in Exhibit A.
   4. Without limiting the foregoing, except as may be expressly permitted under this Agreement with respect to Licensed Data, Licensee shall not (and shall not permit any third party to): (i) transfer, publish, disclose, distribute, sell, resell, license, sublicense, or rent the Toyota Diagnostic Data, in whole or in part; (ii) remove or modify any proprietary markings or restrictive legends placed on the Toyota Diagnostic Data; (iii) use the Toyota Diagnostic Data in violation of any applicable law; (iv) allow any person to access or use the Toyota Diagnostic Data other than Licensee’s employees; or (v) allow or enable any end user of the Scan Tools to extract the Licensed Data from the Scan Tool. Licensee agrees to notify TMNA promptly in writing of any unauthorized access to or use of the Toyota Diagnostic Data of which Licensee becomes aware and to provide all reasonably requested information and cooperation in connection with causing the cessation of such unauthorized access or use.
   5. No Toyota Diagnostic Data shall be provided to Licensee until Licensee has paid the License Fee and shall not be provided to Licensee for any subsequent year for which this Agreement has been renewed as provided hereunder until Licensee has paid the Licensee Fee the subsequent year.
4. **Confidentiality.** 
   1. For purposes of this Agreement, the term “**Confidential Information**” shall be deemed to include all information and materials furnished by or on behalf of TMNA to Licensee (or any of its representatives), including all information transmitted in writing, orally, visually (i.e., video terminal display) or on magnetic media, and including all financial and credit information, product plans and technologies, trade secrets, know-how, ideas, concepts, designs, drawings, sketches, flow charts, blue prints, diagrams, manufacturing and test data, computer programs, progress reports, methods, research and any other personal or intellectual property relating, as appropriate, to TMNA or any of its affiliates. The term Confidential Information shall include the subject matter and terms and conditions of this Agreement, unless otherwise agreed upon by TMNA. For the avoidance of doubt, the Confidential Information shall include in part the Licensed Data, this Agreement, and the amounts paid or payable hereunder.
   2. The term Confidential Information shall not include information that: (i) is or becomes available in the public domain through no wrongful act, directly or indirectly, of Licensee (or any of its representatives); provided that specific Confidential Information shall not be deemed to be within the foregoing exception merely because (A) it is embraced by more general information in the public domain or by more general information in the possession of Licensee, or (B) all individual parts of such information are in the public domain or in the possession of Licensee; (ii) is already in Licensee’s possession prior to the commencement of performance under this Agreement without an obligation of confidentiality; or (iii) is independently developed by Licensee as established by documentary evidence, without access or reference to or use of, in whole or in part, any of the Confidential Information. Notwithstanding the foregoing, information that becomes available in the public domain because of a cybersecurity incident sustained by Licensee (or any of its representatives) shall remain Confidential Information of TMNA even if known to the public.
   3. All Confidential Information shall remain the property of TMNA at all times. Licensee shall use such Confidential Information only for the purpose, and to the extent necessary, to fulfill its obligations under this Agreement. In any event, Licensee shall promptly return to TMNA or destroy all Confidential Information as directed by TMNA.
   4. Licensee agrees and acknowledges on behalf of Licensee and all of its representatives that they shall have no proprietary interest in the Confidential Information and shall not disclose, communicate or publish the nature or content of such Confidential Information to any person or entity, or use, except as authorized in writing by TMNA, any of the Confidential Information Licensee (or any of its representatives) produces, receives, acquires or obtains from TMNA or as a result or arising from this Agreement. Licensee shall take (and cause the its representatives to take) all necessary steps to ensure that the Confidential Information is securely maintained. Licensee (and each of its representatives’) obligations set forth herein shall survive the termination or expiration of this Agreement.
   5. The parties acknowledge and agree that any remedy at law for a breach or threatened breach of any of the provisions under this Section 4 or Section 5 would be inadequate and, in recognition of this fact, in the event of a breach or threatened breach by Licensee (or any of its representatives) of any of the provisions contained in this Section 4 or Section 5, TMNA, without posting any bond, shall be entitled to obtain provisional equitable relief in the form of preliminary restraining order or temporary injunction or any other provisional equitable remedy which may then be available, and Licensee for and on behalf of itself and its representatives hereby agrees not to contest same. Nothing in this Agreement shall be construed as prohibiting TMNA (from pursuing any other remedies available to it from such breach or threatened breach. Pursuit of any remedy at law or in equity shall not be deemed as an election of remedies.
5. **Governmental or Judicial Request**. In the event Licensee (or any of its representatives) becomes legally compelled to disclose any of the Confidential Information, Licensee shall provide TMNA with prompt notice thereof and shall not divulge any information until TMNA has had the opportunity to seek a protective order or other appropriate remedy to curtail such disclosure. If such actions by TMNA are unsuccessful, or TMNA otherwise waives its right to seek such remedies, Licensee (or its applicable representative) shall disclose only that portion of the Confidential Information which Licensee (or its applicable representative) is legally required to disclose. Notwithstanding the foregoing, (i) if and to the extent Confidential Information is required to be disclosed pursuant to any final and non-appealable order of a court or agency of competent jurisdiction served on Licensee (or any of its representatives), provided that Licensee gives TMNA written notice within two (2) days of receipt of such order and at least thirty (30) days prior to the production or disclosure of any such Confidential Information, Licensee (or its applicable representative) may disclose only that information that is necessary to comply with such order, subject to any protective seal; and (b) if Licensee (or its applicable representative) is required to file Confidential Information with any public agency as part of obtaining permits or approvals required for performance under this Agreement, provided that Licensee (or its applicable representative) gives TMNA at least thirty (30) days’ prior written notice of the disclosure of such information, then Licensee (or its applicable representative) may disclose only that information that is necessary to obtain such permit or approval (and, if available, to do so under protective seal or other restrictive access).
6. **Disclaimers, Limitation of Liability**. LICENSEE ASSUMES THE ENTIRE RISK OF USING THE TOYOTA DIAGNOSTIC DATA. THE TOYOTA DIAGNOSTIC DATA IS LICENSED AND PROVIDED “AS IS” WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE TOYOTA DIAGNOSTIC DATA IS NOT WARRANTED TO BE DEFECT FREE. TMNA IS NOT LIABLE FOR ANY DAMAGES IN CONNECTION WITH THE LICENSE GRANTED OR THE USE OF THE TOYOTA DIAGNOSTIC DATA, INCLUDING WITHOUT LIMITATION, ANY DIRECT, INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH, RELATED TO, OR ARISING OUT OF USE OF THE TOYOTA DIAGNOSTIC DATA OR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, EVEN IF TMNA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. TMNA’S LIABILITY FOR DAMAGES, REGARDLESS OF THE FORM OF ACTION, SHALL NOT EXCEED THE ANNUAL LICENSEE FEE PAID BY LICENSEE UNDER THIS AGREEMENT FOR THE THEN CURRENT YEAR.
7. **License Fee, Records, Audit, Insurance**.
   1. License Fee. Licensee shall pay TMNA the applicable license fee as set forth on Exhibit A of this Agreement (“**License Fee**”). Licensee shall remit the applicable License Fee to ETI, who shall remit the fee to TMNA directly.
   2. Records, Audit. While this Agreement is in effect and for a period of three (3) years after its termination or expiration, Licensee shall keep and maintain full, complete and accurate records related to its obligations under this Agreement. TMNA shall have the right to inspect such books and records at reasonable times during normal business hours, and make copies thereof.
   3. Insurance. Licensee shall obtain at its own expense, and maintain at all times, worker’s compensation including employer’s liability with minimum limits of $1,000,000 and comprehensive general liability (including but not limited to contractual liability and products and completed operations liability) subject to minimum limits of not less than $1,000,000 per occurrence and $2,000,000 in the aggregate with insurers that maintain an A.M. Best Rating of A-:VII. Coverages required shall (i) name TMNA as an additional insured on general liability and products liability (if separate), (ii) shall include a waiver of subrogation or no right of recovery against TMNA by Licensee or its insurers, (iii) shall be supplied with a copy of the certificate of insurance prior to performance of this Agreement. Such policies shall contain endorsements stating that the policies are primary and not excess over or contributory with any other valid, applicable, and collectible insurance in force for TMNA. Licensee shall be financially responsible for any deductibles, retentions and/or premiums. Limits shall not be considered as limitations or maximums with respect to Licensee’s indemnification obligations.
8. **Compliance With Laws**.
   1. Licensee’s Scan Tools must comply with all applicable federal, state, and local laws, regulations and rules, including without limitation, including those of the U.S. Environmental Protection Agency (EPA) and the California Air Resource Board (CARB) pertaining to the dissemination of emission-related service information, as applicable to the subject matter of this Agreement, and the U.S. Export Administration Laws and Regulations (“**EAR**”). Licensee shall not export, re-export, resell, ship or divert or cause to be exported, re-exported, resold, shipped or diverted, directly or indirectly, any Toyota Diagnostic Data or direct products thereof to any country or entity for which the United States Government or any agency thereof at the time of such activity requires an export license or other governmental approval without first obtaining such license or approval.
   2. Licensee must not in any manner encourage, assist or acquiesce in the use of Scan Tools with the Vehicles for: (i) modification or enhancement of any ECU calibration parameter or characteristic curve for the purposes of emission or performance “tuning” (such as, by way of example and not of limitation, air/fuel schedules); (ii) modification or enhancement of any ECU operating parameter or variant coding table, except to restore original factory settings or reinitialize vehicle-specific configuration data following replacement of an ECU or electrical/electronic component in accordance with TMNA’s service procedures; (iii) accessing any protected ECU memory location or secured function; or (iv) reprogramming any ECU memory location or flash memory partition using unauthorized software programs or flash data (software programs or flash data that is not authorized by TMNA).
   3. Licensee agrees that any breach by it of any of its obligations under this Section 8 is a material breach of this Agreement and in addition to all other remedies it may have at law or equity, TMNA may immediately cease the provision of Licensed Data to Licensee, including without limitation, requiring ETI to cease providing the Licensed Data to Licensee
9. **Term, Termination**.
   1. This Agreement shall be effective as of the Effective Date and have a term of one year. This Agreement shall renew at the end of each one year term for another one year term upon Licensee’s payment of the Annual Fee for the next one year term, such as may be invoiced to Licensee by TMNA’s nominee (presently, ETI). TMNA may terminate this Agreement without cause upon within thirty (30) days written notice to Licensee. If TMNA terminates this Agreement without cause, Licensee shall receive a pro-rata refund of the Annual Fee that it paid for the current one year term. TMNA may also terminate this Agreement immediately by giving Licensee written notice of termination if Licensee fails to timely pay the Annual Fee for the next one-year term, such as by the due date set forth in the invoice for the Annual Fee for the next one-year term.
   2. If Licensee (i) breaches any of its material obligations hereunder (including without limitation, its obligations under Section 3, 4 or 8) and fails to remedy that breach within thirty (30) days after the breach has been called to its attention by written notice of TMNA, (ii) files a petition in bankruptcy, has an order entered or a petition in bankruptcy filed against it, makes a general assignment for the benefit of creditors or otherwise acknowledges insolvency, (iii) is adjudged bankrupt, (iv) commences or is placed in complete liquidation, or (v) suffers the appointment of a receiver, who is not discharged within ninety (90) days after being appointed, for any substantial portion of its business; then, and in any such event, TMNA may terminate this Agreement immediately by giving written notice of such termination to Licensee.
   3. Sections 3, 4, 6, 8, 9(c), 10, 11 and 12 survive termination or expiration of this Agreement.
   4. Within ten (10) days after the termination or expiration of this Agreement, Licensee shall delete all Toyota Diagnostic Data from any electronic media and destroy all other copies, and shall confirm in writing that it has done the foregoing.
10. **Indemnity**. Licensee shall indemnify and hold TMNA harmless against all claims, liabilities, losses, suits, settlements, judgments, expenses including attorney or other legal fees, penalties, costs or demands of any kind made against TMNA arising out of or in any way connected to the design, manufacture, distribution, sale, offer for sale or use of any Scan Tool using Toyota Diagnostic Data, including without limitation, any claim or lawsuit for: (a) actual or alleged bodily injury or death to any person; (b) actual or alleged damage to tangible property; (c) alleged product defect in such a Scan Tool, (d) patent infringement or misappropriation of ideas; (e) cause of or transfer of viruses, trojan horses, worms, time bombs, robots or other harmful components or contaminants, including damage to software, hardware or loss of data; or (f) breach of this Agreement.
11. **Equitable Relief**. Licensee acknowledges and agrees that any breach of any of the obligations contained in Sections 3 (Ownership, Restrictions), 4 (Confidentiality) or 8 (Compliance with Laws) above shall result in material and irreparable harm to TMNA. Licensee therefore agrees that TMNA has the right to seek and obtain an injunction or other equitable relief to enforce these provisions without prejudice to any other rights and remedies TMNA may have. In any such action, prior notice shall not be required to obtain preliminary injunctive relief, and no bond shall be required.
12. **General**.
    1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein and supersedes all prior communications, negotiations, understandings and agreements between the parties, whether express or implied, either written or oral, with respect to the subject matter herein. This Agreement may only be amended by a writing executed by both parties.
    2. Relationship of the Parties. This Agreement does not constitute either party as the agent, representative or partner of the other party for any purpose. Neither party has the authority to assume or create an obligation on behalf of, or in the name of, the other party.
    3. Publicity. Licensee agrees that it shall not use any trademarks, trade names or service marks of Toyota Motor Corporation, TMNA or any of their affiliates without the prior written consent of TMNA.
    4. Governing law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to its conflict of laws provisions, and the federal laws of the United States.
    5. Alternative Dispute Resolution. Any and all disputes, claims or causes of action arising out of or relating to this Agreement (including any alleged violation of this Agreement, any controversy relating to the interpretation or enforceability of this Section 12(e), the arbitrability of any dispute, or any claim that this Agreement (or any part thereof) is invalid, illegal or otherwise voidable (or void) (collectively, “**Dispute**”) shall be resolved in accordance with the procedures specified in this Section 12(e), as follows, which shall be the sole and exclusive procedures for the resolution of any such Disputes:
       1. Negotiation. The parties shall attempt promptly and in good faith to resolve any Dispute arising out of or relating to the Agreement by negotiation.
       2. Mediation. If any Dispute should arise between the parties which cannot be resolved through negotiation, the parties shall endeavor to settle the Dispute by mediation. Either party may request in writing that the other party mediate the Dispute; such notice shall set forth the subject of the Dispute and the relief requested (“**Dispute Notice**”). Unless the parties otherwise agree, the mediation shall be conducted by a mediator affiliated with and under the rules of: ADR Services, JAMS or the International Institute for Conflict Prevention and Resolution (formerly known as the CPR Institute for Dispute Resolution) (“**CPR**”). The selection of an organization by the parties shall be made within ten (10) Business Days after a party requests mediation of a Dispute pursuant to this provision. If an organization/judge and applicable rules have not been agreed upon within such ten-day period, then the Dispute shall be mediated in accordance with the CPR Mediation Procedure and a single mediator shall be chosen by CPR.
       3. Arbitration. If within ninety (90) days of the date of the Dispute Notice the Dispute is not resolved, either party may serve the other party with a written notice of binding arbitration. Unless the parties otherwise agree, the arbitration shall be conducted by and under the commercial arbitration rules of the same organization that conducted the mediation. The arbitration shall be conducted by a panel of three arbitrators. The party initiating the arbitration shall designate its selected arbitrator in its notice of arbitration. The other party shall have ten (10) business days to designate its party-selected arbitrator. The arbitrators selected by the parties shall then agree upon a third arbitrator within fifteen (15) business days of the selection of the second arbitrator. If either party fails to appoint an arbitrator, or if the party-selected arbitrators cannot agree on the third arbitrator, then the dispute resolution service whose rules govern the arbitration shall appoint the arbitrator.
       4. Damages. The arbitrators are not empowered to award damages in excess of those permitted under this Agreement and attorneys’ fees and legal costs and expenses.
       5. Provisional Remedies; Legal Action. Notwithstanding the provisions of this Section 12(e)(v), a party may file a complaint limited to seeking provisional judicial relief pending the outcome of the mediation or arbitration provided by this Section 12(e). If any legal action or proceeding becomes necessary to seek provisional equitable relief, or to enforce the provisions of this Section 12(e) or to enforce the award of the arbitration, such legal action or proceeding shall be brought exclusively either (a) in any state court of competent jurisdiction located in Collin County, Texas, or (b) in the United States District Court for the Northern District of Texas, Dallas Division, and the parties expressly consent, and waive any objections, to subject matter jurisdiction, personal jurisdiction and venue in such courts. THE PARTIES EXPRESSLY AGREE THAT, NOTWITHSTANDING THE DESIGNATION OF BOTH STATE AND FEDERAL COURTS FOR JURISDICTION AND VENUE, NEITHER PARTY IS WAIVING ITS RIGHT, AS PERMISSIBLE UNDER 28 U.S.C. SECTION 1441 (A)-(F), TO REMOVE MATTERS ORIGINALLY FILED IN STATE COURT TO FEDERAL COURT, AS SPECIFIED IN THIS SECTION 12(e). THE PARTIES FURTHER ACKNOWLEDGE AND AGREE THAT, SHOULD A MATTER BE FILED IN STATE COURT IN COLLIN COUNTY, TEXAS, AND SUCH MATTER IS PROPERLY REMOVABLE UNDER SECTION 1441, NO PARTY SHALL OBJECT TO THE REMOVAL AND TRANSFER OF THE MATTER PURSUANT TO 28 U.S.C. SECTION 1404 TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION. Furthermore, the parties expressly consent, and waive any objection, to being served with process of any such legal action or proceeding in accordance with the notice provisions of Section 12(j).
       6. Governing Law. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. Section 1 et seq., to the exclusion of state laws inconsistent therewith and judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof.
       7. Venue. The place of arbitration shall be Dallas, Dallas County, Texas.
       8. Confidentiality. All negotiations and proceedings pursuant to this Section 12(e) are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by applicable Law.
    6. Assignment. Licensee may not assign any right or obligation under this Agreement, whether by operation of law or otherwise, without the prior written consent of TMNA (which consent may be withheld in its discretion). A Change of Control of Licensee shall be deemed an assignment by Licensee, whether control is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of the assets of Licensee are acquired by any person or entity, or Licensee is merged with or into another person or entity. “**Change of Control**” means (i) a consolidation or merger with or into any person or entity; (ii) a sale, transfer or other disposition of all or substantially all of the assets of Licensee; or (iii) an acquisition by any person or entity, or group of persons or entities acting in concert, of beneficial ownership of more than fifty percent (50%) (or such lesser percentage that constitutes power to direct or cause the direction of the management and policies of Licensee, whether through the ownership of voting securities (or other ownership interest), by contract or otherwise) of the outstanding voting securities or other ownership interests of Licensee. The terms and conditions hereof shall inure to the benefit of and be binding upon agents and successors in interest of each party.
    7. Notices and Written Communications. Any notice or other communication required under this Agreement must be in writing and either delivered personally or by expedited courier service, or sent by telefax or telex (and confirmed by mail) or certified mail (airmail from outside the U.S.), postage prepaid, return receipt requested, addressed as follows:

|  |  |
| --- | --- |
| If to Licensee: | If to TMNA: |
| To the person signing this Agreement on behalf of Licensee at the address set forth below Licensee’s name in the signature block of this Agreement. | Toyota Motor North America, Inc.  Attention: Procurement Contracts Manager  6565 Headquarters Drive  Plano, Texas, 75024 |

or to such other address as the party to receive such notice has designated by written notice to the other party.

* 1. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provisions in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement; (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded; and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.
  2. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.
  3. Authority. Each party represents and warrants to the other that (i) it has the right, power and authority to execute, deliver and perform this Agreement, and has taken all action necessary to authorize it to enter into and perform this Agreement, including in the case of Licensee (if a limited liability company), in compliance with any and all requirements of the operating agreement of such limited liability company; (ii) the signatory for such party has full right, power and authority to bind such party to all of the terms and conditions of this Agreement; and (iii) this Agreement constitutes a valid, legal and binding obligation of such party.

[signatures on next page]

IN WITNESS WHEREOF, the parties have entered into this Agreement by having it signed by their duly authorized representatives.

|  |  |
| --- | --- |
| **LICENSEE** | **TMNA** |
|  |  |
| (Licensee’s Name) |  |
|  |  |
|  | By: |
|  | (Signature) |
| (Licensee’s Address) |  |
|  | (Printed Name) |
| By: | Title: |
| (Signature) | Date: |
|  |  |
| (Printed Name) |  |
| Title: |  |
| Date: |  |

Exhibit A

Scan Tool

Scan Tools shall be limited to devices exchanging only those electronic messages with an ECU on-board a Vehicle needed for purposes of performing diagnosis, analysis, test and repair of the Vehicle. Except as provided below, the Scan Tool must not have the capability of modifying any software program or data in such an ECU, including but not limited to, (i) modification or enhancement of any ECU calibration parameter or characteristic curve for the purposes of emission or performing “tuning” (such as by way of example and not of limitation, air/fuel schedules); (ii) modification or enhancement of any ECU operating parameter or variant coding table; (iii) accessing any protected ECU memory location or secured function; or (iv) reprogramming of any ECU memory location or flash memory partition using any software or flash data not authorized by TMNA. Scan Tools may have the capability of restoring original factory settings or reinitializing Vehicle-specific configuration data following TMNA’s ECU/component replacement procedures.

Bi-directional access capability includes, but is not limited to, bi-directional control and data stream information (*e.g*., operation of emission related actuators).

License Fee:

The amount stated in the schedule below, annually, to be paid in advance to TMNA’s nominee listed below, which TMNA may change at any time by giving Licensee notice of the change. TMNA reserves the right to change the fees set forth in the below schedule prior to any renewal of this Agreement.

1. Comprehensive Data License fee = $25,000
2. Annual Data License fee = $12,500

Payment Information:

Checks are to be made payable and remitted to:

Equipment and Tool Institute  
Attn: Greg Potter  
37899 W. 12 Mile Road, Suite 220  
Farmington Hills, MI 48331