

CONFIDENTIALITY AGREEMENT

This Agreement made and entered into this _____ day of _____ (“Effective Date”), by and between the EQUIPMENT AND TOOL INSTITUTE (“ETI”), an Michigan not-for-profit corporation with offices 37899 W. 12 Mile Road, Suite 220 Farmington Hills, MI, USA, and _____, a _____ with an address of _____, a member of ETI (“Member”).

WITNESSETH:

WHEREAS, certain original equipment manufacturers have provided ETI with certain proprietary data concerning forthcoming models so that members of ETI can develop equipment and tools for the servicing of those models by service providers when those models are offered to the public; and

WHEREAS, the proprietary data is made available to ETI on condition that such data be held by ETI and its members on a confidential basis; and

WHEREAS, Member desires to utilize such data for the development of equipment and tools to service current and new models, and ETI desires to provide the confidential and proprietary data to Member for the stated purpose; and

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, ETI and Member agree as follows:

1. **Confidential Information** – ETI shall furnish proprietary data concerning automotive equipment of forthcoming models to Member for the sole purpose of assisting Member in developing equipment and tools to service such models when they are offered to the public.
2. **Secrecy** – Member shall hold all such proprietary data, which have not been publicly disclosed, using the same standard of care that Member uses to protect its own confidential or proprietary information of similar nature, which shall be no less than reasonable care; shall use such data only for the contemplated purpose set forth in paragraph 1; and shall not disclose such data to any third party without prior written approval by ETI, during the term of this Agreement and for three (3) years thereafter.
3. **Copyright** – Member may not reproduce for distribution or use outside Member any copyrighted materials provided to Member under this Agreement without the permission of the copyright owner.
4. **Suppliers and Consultants** – Member shall not disclose such proprietary data to any supplier, consultant or other third party unless that party agrees in writing to be bound by the secrecy requirements and other provisions of this Agreement. Member shall at all times be responsible for its suppliers, consultants and third parties.
5. **Identification** – All “documents,” in its broadest sense including computer or other electronic media, containing confidential proprietary data which are furnished to Member pursuant to this Agreement shall be marked or encoded “Confidential and Proprietary” when given to Member, and all copies thereof, whether whole or partial, shall be and remain the property of ETI. Member shall deliver all such documents and all copies thereof to ETI at any time upon request made by ETI, and in any case at the termination of this Agreement or if Member shall cease to be a member in good standing of ETI for any reason. Notwithstanding the foregoing, Member shall not be required to destroy, delete or modify any

backup tapes or other media made pursuant to automated archival processes in the ordinary course of business provided any such Confidential Information retained shall remain subject to the confidentiality obligations of this Agreement for so long as such Confidential Information is retained.

6. **Permissible Disclosures** – Notwithstanding any provision of this Agreement to the contrary, Member shall not be obliged to maintain in confidence:
 - a. information which is, or subsequently becomes within the knowledge of the general public through no fault of the Member;
 - b. information which was previously known to Member at the time of the receipt of the information;
 - c. information which is subsequently obtained from a third party who has obtained the information through no fault of Member;
 - d. information which has been, or subsequently is, developed independently of any disclosure hereunder, by Member;
 - e. Information required to be disclosed to government agencies or pursuant to court order by Member, but only to the extent that such disclosures are so required. In such instances, Member shall, before making such disclosure and to the extent legally permitted, immediately provide written notice of such required disclosure to ETI in order to permit ETI to protect its interests in preserving the secrecy of the information.
7. **Assignment** – Member may not assign the benefits or obligations of this Agreement without the prior written approval of ETI.
8. **Indemnification** – Member agrees to defend, indemnify and save ETI and its officers, directors, staff, management company and agents harmless against all claims, demands, causes of action, liabilities, lawsuits, judgments, decrees, taxes, penalties and fines instituted against ETI or its officers, directors, staff, management company or agents arising out of or on account of Member's use of the information disclosed by ETI Member pursuant to this Agreement.
9. **Penalties** – Member agrees that in the event of Member's violation of any of the requirements of this Agreement, Member shall be subject to suspension or expulsion from membership in ETI, as well as payment of ETI's reasonable attorneys' fees and such fines and other penalties as ETI's Board of Directors may approve and as the law may entitle to exact.
10. **Term**
 - a. This Agreement shall continue in force for one year from the Effective Date and may be renewed for subsequent one-year periods by mutual agreement set forth in writing.
 - b. This Agreement may be terminated immediately by ETI upon written notice to Member in the event of material breach by Member of any of Member's obligations contained herein.
 - c. Notwithstanding termination, the obligation to keep confidential the proprietary data disclosed to the receiving party shall survive such termination and continue for the period set forth in paragraph 2 above.
11. **Execution and Applicable Law** – This agreement has been executed in Farmington Hills, MI, and shall be governed in accordance with the laws of the State of Michigan every respect.
12. **Paragraph Headings** – Paragraph headings and numbers have been inserted for convenience of reference only and if there shall be any conflict between any such headings and numbers and the text of this Agreement, the text shall control.

13. **Waiver** – Waiver by either party of any term or condition of this Agreement or any breach shall not constitute a waiver or any other term of condition of breach of this Agreement.
14. **Joint Effect of Agreement** – Nothing in this Agreement shall be deemed to create a partnership or agency relationship between ETI and Member or to make the parties jointly liable for any obligation arising out of the activities and services contemplated by this Agreement.
15. **Counterparts** – This Agreement may be executed in one or more counterparts, each of which taken together shall be considered one and the same Agreement.
16. **Notices** – Any notice or communication permitted or required by this Agreement shall be in writing and shall become effective two days after the mailing thereof by certified mail, return receipt requested, postage prepaid, and addressed to:

If to ETI, to:
Mr. Greg Potter
Equipment and Tool Institute
37899 West Twelve Mile Rd., Suite 220
Farmington Hills, MI 48331

If to Member:

With copy to:
Howe & Hutton, Ltd.
20 North Wacker Drive, Suite 4200
Chicago, IL 60606
Attention: John Peterson, General Counsel

17. **Entire Agreement** – This Agreement contains all of the terms agreed upon by the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, arrangements, and communications between the parties concerning such matter, whether oral or written.

IN WITNESS WHEREOF, the parties to this Agreement have signed it on the day and Effective Date first written above.

EQUIPMENT AND TOOL INSTITUTE	Member Company:
By:	By:
Print Name:	Print Name:
Title	Title
Date	Date