**ARIZONA PROVING GROUND
TEST TRACK USAGE AGREEMENT**

THIS TEST TRACK USAGE AGREEMENT (this “**Agreement**”), for the use of the Arizona Proving Grounds Test Track is effective as of [**DATE**] (the “**Effective Date**”), by and between **INTERTEK TESTING SERVICES NA, INC.** with a place of business at 30700 W Patton Rd, Wittmann, AZ 85361 (“**LICENSOR**”), and **[LEGAL NAME]., a [INCOROPORATED STATE] corporation**, with a place of business at **[LEGAL ADDRESS**] (“**USER**”), with User and Licensor, collectively, the “**Parties**,” and each, a “**Party**.”

**RECITALS**

# WHEREAS, LICENSORowns or managesthe Arizona Proving Grounds (the “**Proving Grounds**”) located at 30700 West Patton Road, Wittmann, Arizona 85361 and [**TAPG TEST TRACK]** (the “**Test Track**”).

# WHEREAS, USER is involved in automotive driving and testing and seeks to utilize the Test Track for the sole purpose of testing and evaluation of automotive technology.

# WHEREAS, LICENSOR agrees to permit USER the use of the Test Track as further described and subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration as set forth herein, the parties agree as follows:

1. **SCOPE OF WORK**

**1.1** USER may use, and LICENSOR shall permit the use of Test Track pursuant to and in accordance with the Scope of Work (attached hereto as Exhibit A) (the “**Scope of Work**”) and this Agreement. USER shall perform only those tests listed and described in Exhibit A and on the dates indicated therein. The Parties jointly may amend the Scope of Work. Any such amendments to change the Scope of Work shall be effective only upon express agreement of both Parties and shall be in writing and signed by both Parties.

**1.2** USER acknowledges and agrees that its use of the Test Track is in conjunction with other users, including LICENSOR, its affiliates, parents, and subsidiary companies as well as Toyota Motor Engineering & Manufacturing North America, Inc., Toyota Motor North America, Inc., and/or any of their respective affiliates, employees, and contractors (each, a “**Toyota Party**”). From time to time, as circumstances may require, LICENSOR may adjust the schedule for USER’s use of the Test Track to ensure usage is distributed appropriately in LICENSOR’s sole discretion. Notwithstanding anything to the contrary in this Agreement, LICENSOR reserves the right to withdraw permission to perform any test at any time prior to the commencement of such test. In the event USER is not allowed to perform a test set forth in Exhibit A, USER shall be reimbursed for any fee paid to LICENSOR which corresponds to the performance of the canceled test.

**1.3** LICENSOR also reserves the right to withdraw permission for any test after testing commences in the event that any safety regulations or operating procedures are violated or if in LICENSOR's sole opinion the test becomes unsafe or dangerous. However, by approving such items, LICENSOR shall not be considered accepting responsibility for the test or product, nor shall its approval be considered as an endorsement as to the safety of the proposed testing or product. In the event a test is canceled in progress due to USER’s failure to observe safety regulations or operating procedures, no refund will be made of any fee paid by USER for such test.

1. **TERM OF AGREEMENT**

This Agreement is valid as of the Effective Date for a one (1) year period. Unless otherwise terminated as set forth herein, this Agreement shall automatically renew for successive one (1) month periods unless and until either Party notifies the other Party of its intention to not renew this Agreement upon at least thirty (30) days’ prior written notice.

1. **RENTAL FEES AND DEPOSIT**

**3.1** The Track Rental Fees (the “**Track Rental Fees**”) for the use of the Test Track is shown in the Scope of Work.

**3.2** The balance of the Track Rental Fees and other sums due from USER for use of the Test Track under this Agreement, are due within thirty (30) business days after invoicing.

1. **CONFIDENTIALITY**

 **4.1** The term "**Confidential Information**" shall mean (a) any items, concepts, processes, technical know-how, or information provided to USER by LICENSOR or any Toyota Party relating to any operations of LICENSOR or any Toyota Party; and (b) all documents, records, data compilations, computerized records, CAD data, drawings, photographs, videotapes, models, molds, prototypes or other items, concepts, processes or information to which USER may be provided access by LICENSOR or any Toyota Party; and (c) any other information derived by USER as a result of this Agreement.

 **4.2** The term " Confidential Information" shall not include information that (a) is or becomes available in the public domain through no wrongful act of USER; (b) is already in USER's possession prior to the performance of the Services to be provided by Licensor set forth on Exhibit A (the “**Services**”) without an obligation of confidentiality; (c) is independently developed by USER; or (d) is required to be disclosed pursuant to a final and unappealable order of a court or agency of competent jurisdiction served on USER, provided that USER gives LICENSOR 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.

 **4.3** Except as otherwise authorized in writing by LICENSOR, or except as may be required by a final and unappealable order of a court or agency of competent jurisdiction, USER shall not, and shall not permit any Permitted Invitees, to (a) communicate, disclose, describe, characterize, duplicate, imitate, or otherwise make known any Confidential Information to any person or entity; or (b) use any Confidential Information for USER's financial benefit or the financial benefit of any Permitted Invitee or for any purpose which may adversely affect LICENSOR, any Toyota Party, or any business or operation of LICENSOR or any Toyota Party.

 **4.4** USER shall (a) take all reasonable steps to keep the Confidential Information confidential and (b) expressly require, through appropriate legal documents, each of its Permitted Invitees (as defined below) exposed to any of the Confidential Information to keep all Confidential Information confidential. Without limiting the foregoing, at LICENSOR’s request, USER shall provide an Acknowledgment executed by any and all persons having access to such Confidential Information to LICENSOR, in the form attached hereto as Exhibit B. USER shall limit the use and circulation of the Confidential Information within its organization to the maximum extent possible. The obligations to maintain secrecy and confidentiality set forth herein shall continue indefinitely and shall survive termination of this Agreement.

 **4.5** USER acknowledges that the restrictions contained in this Agreement are necessary to protect the legitimate interests of LICENSOR and the Toyota Parties and that any violation of said provisions would result in irreparable injury to LICENSOR or any Toyota Party. In the event of a breach or threatened breach by USER of any provision of this Agreement, USER agrees that LICENSOR will be entitled to injunctive relief restraining USER and its Permitted Invitees from such breach or threatened breach and to any other legal or equitable remedies available to LICENSOR.

 **4.6** Any information provided to LICENSOR during the term of this Agreement shall not be considered confidential or proprietary to USER unless it is marked confidential and provided to LICENSOR in a manner consistent with its classification as confidential (“**USER Confidential Information**”). In the event that USER provides USER Confidential Information to LICENSOR, the foregoing provisions of Sections 4.2, 4.3, 4.4 and 4.5 shall apply to LICENSOR and the protection of USER Confidential Information.

 **4.7** USER agrees that, upon request by LICENSOR or termination of this Agreement, USER will promptly deliver to LICENSOR all property belonging to LICENSOR or any Toyota Party, their customers, clients or suppliers including the originals, copies, and derivatives of documents, manuals, reports, notebooks, notes, memoranda, records, reports, photographs, drawings, plans, papers, or any other recorded written or printed matter (including all forms of electronically recorded data and information, computer programs and software) made available to USER in connection with this Agreement, whether or not such documents contain Confidential Information and/or any proprietary information. USER also agrees that, upon request, USER will certify in writing that USER has returned all property belonging to LICENSOR or any Toyota Party or any of their clients, customers, or suppliers.

**4.8** Neither Party may disclose of the terms of this Agreement without the other Party’s prior written consent.

**4.9** This Article 4 shall survive the expiration or termination of this Agreement.

1. **LIMITATION OF WARRANTIES**

Neither LICENSOR nor any Toyota Party is responsible for the performance, adequacy, or safety of the products being tested. Neither LICENSOR nor any Toyota Party is responsible for any test data generated by USER or for the use of any test data. Neither LICENSOR nor any Toyota Party shall have any liability for any deductions, inferences, or generalizations drawn by USER or others from such test results and reports. THE TEST TRACK IS PROVIDED ON AN “AS IS” BASIS AND LICENSOR MAKES NO REPRESENTATIONS AND THERE ARE NO EXPRESS OR IMPLIED WARRANTIES INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR INFRINGEMENT (ALL IMPLIED WARRANTIES BEING HEREBY EXPRESSLY DISCLAIMED), INCLUDING AS TO THE ACCURACY OF ANY DATA, AND NEITHER LICENSOR NOR ANY TOYOTA PARTY WILL BE LIABLE FOR ANY LOST PROFITS OR INCIDENTAL OR CONSEQUENTIAL DAMAGES IN RELATION TO TESTING PERFORMED BY USER OR IN CONNECTION WITH THIS AGREEMENT.

Notwithstanding anything to the contrary contained in this Agreement, USER acknowledges and agrees that there is no expectation of privacy with respect to any third parties in any activity conducted by USER on the Test Track pursuant to this Agreement. **LICENSOR MAKES NO REPRESENTATION OR WARRANTY REGARDING WHETHER OR NOT LICENSOR WILL PROVIDE SECURITY SERVICES OR, IF LICENSOR DOES ELECT TO PROVIDE SECURITY SERVICES, WHAT FORM OF SECURITY SERVICES WILL BE PROVIDED.**

1. **INDEPENDENT CONTRACTOR STATUS**

It is expressly understood and agreed that the personnel furnished by USER shall be and will remain USER’s employees or agents and under no circumstances are these personnel to be considered LICENSOR's employees or agents. USER’s employees shall maintain an independent contractor relationship with LICENSOR at all times. Further, it is expressly understood and agreed that USER shall perform its services under this Agreement as an independent contractor and shall not be considered an agent of LICENSOR for any purpose. USER shall be solely and fully responsible for any of its subcontractors, agents, or other personnel under USER’s supervision. Neither Party is granted the right, power, or authority to create any obligation on behalf of the other Party, or to legally bind the other Party in any way.

1. **COMPLIANCE WITH RULES AND REGULATIONS**

USER agrees to comply with, and to cause its Permitted Invitees to comply with, any and all of the rules and regulations from time to time established by LICENSOR, including: [**INTERTEK SOW BOOKING NEEDS ASSESMENT FORM]**. USER shall be responsible for the safety and professional conduct of its Permitted Invitees. USER will assign drivers who have been properly screened for safe driving records. USER represents and warrants to LICENSOR that the assigned drivers meet the Driver Qualification Requirements Policy per track safety policy, [**INTERTEK SOW BOOKING NEEDS ASSESMENT FORM**], and any other requirements LICENSOR may indicate are necessary in connection with the Scope of the Work. A driver may be barred from using the Test Track if LICENSOR personnel reasonably determine that his or her driving is a threat to the safety and operation, or to the confidentiality, of other test products, drivers, and personnel. For purposes of this Agreement, “**Permitted Invitees**” shall mean, collectively, all Related Parties (as defined below), all officers, directors, members, managers, and employees of any parent, subsidiary, or affiliated business entity of USER), all contractors and subcontractors of USER (and the subcontractors and employees of such contractors and subcontractors), all permitted invitees of USER or any Related Party, and any other person who shall enter upon the Proving Grounds through or on behalf of USER or any of the foregoing listed entities or persons. “**Related Parties**” means the officers, directors, shareholders, members, managers, partners, affiliates, joint ventures, subsidiaries, parents, employees, agents, successors, or assigns of a particular person or entity.

USER acknowledges and agrees that all applicable local, state, and federal laws, regulations, and ordinances and requirements (including any special use permits)are binding obligations of USER and its Permitted Invitees and shall govern the permitted uses of the Test Track by USER.

1. **INSURANCE**

USER shall procure and maintain insurance policies, at its sole expense, that name LICENSOR as an additional insured and agrees to provide LICENSOR with certificates of insurance that require either the insurance company or the insurance agent or broker to notify LICENSOR of any lapse or material change in coverage. USER will insure against any and all public liability, including injuries or death to persons and damage to property arising out of or related to USER’s performance hereunder. USER’s insurance coverage shall be considered primary as to any insurance coverage provided by LICENSOR. The required insurance coverage is set forth below as follows:

A. Comprehensive General Liability: $5,000,000 (per occurrence)

B. Workers' Compensation: Statutory Limit

C. Employers’ Liability: $1,000,000

D. Automobile Liability: $1,500,000 (owned or non-owned vehicles)

E. Excess Liability (Umbrella): $4,000,000

Comprehensive general liability shall include, but not necessarily limited to, coverage for products, completed operations, contractual liability, bodily injury, and property damages (in the form of general liability and/or umbrella coverage) combined single limit per occurrence. USER is considered to be in immediate breach of this Agreement if there is a lapse in any coverage as set forth above. A lapse of coverage by USER shall act as a basis by which LICENSOR can terminate this Agreement after providing USER four (4) business days’ formal written notice and if USER has not secured insurance coverage in that time period.

1. **TERMINATION**

Either Party may terminate this Agreement at any time, for any reason, by providing thirty (30)days' written notice to the other Party. In the event of USER’s default of any term of this Agreement, LICENSOR may immediately terminate this Agreement by giving written notice thereof to USER, retain the deposit as partial liquidated damages, and pursue any other remedies that may be available at law or in equity.

1. **ASSUMPTION OF RISK AND INDEMNIFICATION**

**10.1** USER, on behalf of itself, and its Permitted Invitees assumes (as between USER and LICENSOR and/or any Toyota Party) all risks involved in its use of the Test Track, including all risk of bodily injury, death, and property damage. Prior to entering the Test Track, all persons must sign a Release, Waiver and Assumption of Risk Agreement in the form attached as Exhibit C or such other form from time to time established.

**10.2** USER agrees to indemnify, defend, and hold harmless LICENSOR, and its Related Parties, and Toyota and its Related Parties, for, from, and against any and all liability, suits, expenses, actions, legal or administrative proceedings, claims, demands, damages, attorneys’ fees, and costs, whatsoever of any kind or nature, arising in any manner out of any of the following (but not to the extent caused by any act or omission of LICENSOR): (i) USER’s or its Permitted Invitees’ use, operation, maintenance, testing, or possession of products, (ii) USER’s or its Permitted Invitees’ breach of any of the terms of this Agreement, (iii) the negligent or intentional acts of USER or its Permitted Invitees or failure to act by USER or any or its Permitted Invitees’, or (iv) violation of any law, ordinance, or regulation of any federal, state, or local governmental authority by USER, or its Permitted Invitees, as a result of or arising out of any or all of the testing performed under this Agreement by USER or its or its Permitted Invitees.

**10.3** Notwithstanding anything to the contrary contained in this Agreement, LICENSOR and USER each hereby waives any and all right of recovery (including subrogation claims by the waiving Party's insurance carrier), claim, action, or cause of action, against the other and its Related Parties (which shall include, for Licensor, any Toyota Party) or Permitted Invitees, as applicable, for any loss or damage that may occur at, or related to, the Test Track, against which the waiving Party is required to insure pursuant to this Agreement, including negligence of the other Party or its Related Parties or Permitted Invitees, as applicable, and each hereby covenants that no insurer shall hold any right of subrogation against the other Party by reason thereof; provided, however; that the provisions of this Section 10.3 shall not apply to any deductible under any insurance required to be carried by USER under this Agreement or to any liability in excess of the required insurance coverage.

**10.4** This Article 10 shall survive the expiration or termination of this Agreement.

1. **INTELLECTUAL PROPERTY AND PROHIBITION ON BROADCAST AND PICTURES**

**11.1** USER shall not use any name, trademark, service mark, or logo of "TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA," "Toyota," "LICENSOR," or any similar word or trademark of Toyota Motor Corporation or a, LICENSOR or any Toyota Party for any purpose.

**11.2** USER shall not refer to LICENSOR or any of the Licensor Parties in any press releases, advertising, letterheads, or in other public or media communications (including social media) without the prior written consent of LICENSOR, which consent LICENSOR may withhold in its sole and absolute discretion. “**Licensor Parties**” are defined as: Licensor and its Related Parties, any Toyota Party and its Related Parties. and/or any of their respective affiliates, employees, and contractors, including any third-party manager. Furthermore, neither USER nor any of its Permitted Invitees may broadcast or disseminate (by any means, electronic or otherwise), photograph, videotape, film, or draw the Test Track or any activity taking place on the Test Track except with express prior written permission of LICENSOR. If broadcasting, dissemination, photography, videotaping, filming, or drawing is expressly permitted, such use shall not be construed to authorize USER or its Permitted Invitee to reproduce, sell, distribute, or utilize such broadcasts, photographs, videotapes, filming, or drawing for commercial purposes.

**11.3** USER may not claim in any manner that by using the Test Track, or any other activity provided for in this Agreement by LICENSOR to USER, constitute endorsement by LICENSOR or any Licensor Party of USER's or any of its Permitted Invitee’s product(s), nor may LICENSOR’s or any Licensor Party’s name be used in any advertising or promotional material of USER or any Permitted Invitee, without the prior written consent of LICENSOR.

**11.4.** Except with the express, prior, written consent of USER, LICENSOR may not issue any publicity such as public disclosures, announcements, press releases, or advertisements relating to this Agreement, or any relationship between LICENSOR and USER.

**11.5** This Article 11 shall survive the expiration or termination of this Agreement.

1. **PROPERTY USE AND DAMAGE**

USER will, and will cause its Permitted Invitees to, exercise reasonable care when using the Test Track. USER shall, and shall cause its Permitted Invitees to, maintain a clean activity area throughout the term of this Agreement and, upon termination of this Agreement, shall restore the Test Track to the same condition in which it was found. USER shall repair any and all damages to the Test Track (including any resources, facilities, premises, or property of LICENSOR) caused by or attributable to USER’s or its Permitted Invitees’ activities, and LICENSOR or its designee shall be the sole judge of the extent of such damage and the adequacy of any repairs or restoration. No physical alteration to the Test Track (including installation or modification of new or existing structures, alteration of any trees or other plants, and disturbance of any ground surface or cover) may be made without LICENSOR’s prior written consent.

1. **Transfers**

**13.1** USER shall not, without the prior written consent of LICENSOR, which consent LICENSOR may grant or withhold, in LICENSOR’s sole and absolute discretion, assign this Agreement or any interest herein (any such assignment, encumbrance, sublicense, license or the like shall sometimes be referred to as a “**User** **Transfer**”). For purposes of this Agreement, the term “User Transfer” shall also include the transfer, withdrawal or change, voluntary, involuntary, or by operation of law, of (1) forty-nine percent (49%) or more of the partners or members, as applicable, or (2) twenty-five percent (25%) or more of the partnership interests or membership interests, as applicable, (B) a change in the voting control of such limited liability or partnership, (C) the dissolution of the partnership or limited liability company without immediate reconstitution thereof; or (D) a change in the manager, managing member, or general partner, as applicable, and (ii) if USER is a closely held corporation (i.e., whose stock is not publicly held and not traded through an exchange or over the counter), (A) the dissolution, merger, consolidation or other reorganization of USER, (B) the sale or other transfer of more than an aggregate of forty-nine percent (49%) of the voting shares of USER, or (C) the sale, mortgage, hypothecation, or pledge of more than an aggregate of forty-nine percent (49%) of the value of the unencumbered assets of USER. In no event may USER encumber this Agreement. Any User Transfer without Licensor’s consent shall constitute an immediate default (without any notice or cure period) by USER under this Agreement, and shall, at LICENSOR’s election, result in the immediate termination of this Agreement. No User Transfer shall release USER from its obligation to perform all covenants herein contained. In all events, USER shall provide prior written notice of any User Transfer to LICENSOR.

**13.2** USER shall not, and shall not permit any Permitted Invitee to, (a) obtain or renew any type of vehicle dealer license that identifies LICENSOR, any Toyota Party, or the Test Track in regards to an established place of business for USER or any Permitted Invitee; or (b) market, offer for sale, or conduct any vehicle sale activities from the Test Track. Any breach of this Section 13.2 shall be deemed an automatic default hereunder without the requirement of any notice. This Section 13.2 shall survive the expiration or termination of this Agreement.

**13.3** LICENSOR shall have the right to sell, convey, transfer, mortgage, or assign (“**Licensor Transfer**”), in whole or in part, for collateral purposes or otherwise, its rights and obligations under this Agreement and in all or part of the Proving Grounds and any Services. In the event of any Licensor Transfer made other than for collateral purposes, this Agreement shall remain in full force and effect, provided, however, that (i) LICENSOR shall be released from any and all liabilities under this Agreement first arising after the date of such Licensor Transfer, so long as the transferee assumes in writing LICENSOR’s obligations under this Agreement first arising after the date of Licensor Transfer, and (ii) USER shall thereafter recognize such transferee as LICENSOR under this Agreement.

**13.4** During the Term of this Agreement, LICENSOR reserves the right to lease, license, or otherwise grant to third parties (including business competitors of USER) the right to use such areas of the Proving Grounds as LICENSOR may elect in its sole and absolute discretion.

1. **GENERAL PROVISIONS**

**14.1** Each Party agrees that, at its sole cost and expense, it shall comply with all laws, regulations, ordinances, and codes applicable to its (or its Permitted Invitees, as applicable) performance under this Agreement.

**14.2** All notices, requests, demands, and other contractually-required communications hereunder must be in writing and shall be deemed to have been duly given if personally delivered in writing or mailed by certified or registered mail, postage prepaid, to the other Party at the address set forth below or to such other persons and address as either Party may designate in writing:

LICENSOR REPRESENTATIVE for TEMA:

**TAPG Intertek Testing Services**

30700 W Patton Rd

Wittmann, AZ 85361

Attention: Jim Rollison, PG Site Manager (jim.rollison@intertek.com)

USER:

**[COMPANY NAME]**

[address]

[city, state, zip]

Attention: [requesting manager and above name required, title, email address]

**14.3** This Agreement sets forth the entire agreement between the Parties concerning the subject matter hereof and supersedes all prior agreements, negotiations, and discussions. This Agreement may not be amended, modified, or altered except by a written instrument signed by an authorized representative of both Parties hereto. Any failure or delay by a Party to insist on performance by the other Party as required herein shall not be deemed to constitute a waiver of such performance. Further, a waiver by a Party of a term or condition of this Agreement shall not be deemed to constitute a waiver of any other term or condition.

**14.4** If any provision of this Agreement is invalid or unenforceable under any statute or rule of law, the provision is to that extent to be deemed omitted, and the remaining provisions shall not be affected in any way.

**14.5** The terms, conditions, covenants, and agreements herein contained shall be governed, construed, and controlled according to the laws of the State of Texas, without reference to choice of law rules that would require the application of any other law. Venue shall be in Collin County, Texas.

**14.6** Any delay or failure of either Party to perform its obligations hereunder shall be excused if and to the extent that it is caused by an event or occurrence beyond such Party’s reasonable control and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, or court injunctions or orders.

**14.7** This Agreement may be executed in any number of counterparts, including PDF and electronic counterparts, each of which shall be treated as an original but all of which, collectively, shall constitute a single agreement.

**14.8** This Agreement shall bind and inure to the benefit of the successors and assigns of the Parties hereto, subject to the provisions and restrictions herein as to transfers, assignment and sublicensing.

**14.9** Time is of the essence of this Agreement. Section or paragraph headings do not limit or add to the provisions of this Agreement; on the contrary, they are to be disregarded upon any interpretation thereof. The language in all parts of this Agreement shall be in all cases construed according to its fair meaning, and not strictly for or against Licensor or Licensee. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby; provided, however, this Agreement can be reasonably and equitably continued with the remaining provisions only. Unless the context of this Agreement clearly requires otherwise, (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine and neuter genders shall each be deemed to include the others; (c) “or” is not exclusive; (d) the words “include,” “includes” and “including” are not limiting and shall be read to mean “including, without limitation” and its variants, and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it; (e) the words “hereof,” “herein” and “hereunder” and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document; (f) references to “days” shall mean calendar days, unless the term “business days” shall be used, in which case “business day” shall mean any calendar day except Saturday, Sunday and any day which is a legal holiday under the laws of the State of Arizona or is a day on which banking institutions located in such state are closed; and (g) the words “will” and “shall” shall be construed to have the same meaning and effect.

**14.20** Anything to the contrary herein contained notwithstanding, there shall be absolutely no personal liability on persons, firms, or entities who constitute LicensoR, any Related Party of LicensoR or any Licensor Party with respect to any of the terms, covenants, conditions, and provisions of this Agreement, and USER shall, subject to the rights of any first mortgagee, look solely to the interest of LicensoR, its successors and assigns, in the Test Track for the satisfaction of each and every remedy of USER in the event of default by LicensoR hereunder; such exculpation of personal liability is absolute and without any exception whatsoever.

**14.21** Any and all disputes, claims, and/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 14.21, 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 14.21, as follows, which shall be the sole and exclusive procedures for the resolution of any such Disputes:

(a) Negotiation. The Parties shall attempt promptly and in good faith to resolve any Dispute arising out of or relating to this Agreement by negotiation.

(b) 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.

(c) 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 (3) 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.

(d) Damages. The arbitrators are not empowered to award damages in excess of those permitted damages or indemnity obligations under this Agreement and prevailing Party shall be entitled to an award of reasonable attorneys’ fees, costs, and other expenses incurred in connection with any Dispute.

(e) Provisional Remedies; Legal Action. Notwithstanding the provisions of this Section 14.21, a Party may file a complaint limited to seeking provisional judicial relief pending the outcome of the mediation and/or arbitration provided by this Section 14.21. If any legal action or proceeding becomes necessary to seek provisional equitable relief, or to enforce the provisions of this Section 14.21 or to enforce the award of the arbitration, such legal action or proceeding shall be brought exclusively either (i) in any state court of competent jurisdiction located in Collin County, Texas; or (ii) in the United States District Court for Collin County, Texas, 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 14.21. THE PARTIES FURTHER ACKNOWLEDGE AND AGREE THAT, SHOULD A MATTER BE FILED IN STATE COURT, 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 U.S. DISTRICT COURT FOR THE COUNTY OF COLLIN, TEXAS. 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 herein.

(f) Governing Law. The arbitration and the foregoing agreement to arbitrate 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. The Parties agree and acknowledge that this Agreement affects interstate commerce.

(g) Venue. The place of the arbitration shall be Collin County, Texas.

(h) Language. The language which shall be used in the arbitration proceedings shall be English.

(i) Confidentiality. All negotiations and proceedings pursuant to this Section 14.21 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.

(j) ADR Notice. Each Party agrees that any applicable limitations period, whether arising from contract, statute, applicable legal requirements or otherwise, will be tolled and suspended beginning when a Party provides written notice to the other Party, as provided for in this Agreement, of a Dispute to be resolved under this Section 14.21 or when the Parties begin negotiations under this Section 14.21, whichever is earlier. Tolling and suspension of the limitations period will continue until: (i) the Parties resolve the Dispute as evidenced by a written settlement agreement; or (ii) forty-five (45) days after a binding arbitration decision is rendered, whichever is earlier. Notwithstanding the foregoing, in the absence of a written notice from one Party to the other to submit the Dispute to either non-binding mediation or binding arbitration (an “ADR Notice”), then either Party may provide the other Party with written notice that it desires the running of the limitations period to recommence. Such limitations period shall recommence forty-five (45) days thereafter, unless within such forty-five (45) day period the receiving Party delivers an ADR Notice to the other Party, in which event the limitations period shall be tolled and suspended as set forth above.

**14.22** If either Party places the enforcement of this Agreement or any part hereof, or the collection of any Base License Fee or other charges due or to become due hereunder, or recovery of the possession of the Test Track, in the hands of an attorney, or files suit upon the same, the non-prevailing (or defaulting) Party shall pay the other Party’s reasonable attorneys’ fees and court costs, including paralegal fees, any attorneys’ fees, and court costs in connection with any appeals and any bankruptcy or insolvency proceedings involving USER or this Agreement. If LICENSOR is named as a defendant in any suit brought against USER in connection with or arising out of USER’s use of the Test Track as permitted hereunder, USER shall pay to LICENSOR its costs and expenses in such suit, including its reasonable attorneys’ fees. Any such attorneys’ fees and other expenses incurred by either Party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys’ fees obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment.

**14.23** Each Party represents to the other that that neither such representing Party nor any beneficial owner of such representing Party is or will be an entity or person (a) listed in the Annex to, or is otherwise subject to the provisions of, Executive Order 13224 issued on September 23, 2001 (the “**Executive Order**”), (b) included on the most current list of “Specially Designated Nationals and Blocked Persons” published by the United States Treasury Department’s Office of Foreign Assets Control (“**OFAC**”) (which list may be published from time to time in various media including the OFAC website page), (c) which or who commits, threatens to commit, or supports “terrorism,” as that term is defined in the Executive Order, or (d) affiliated with any entity or person described in clauses (a), (b), or (c) above (any and all parties or persons described in clauses (a) through (d) are herein referred to individually and collectively as a “**Prohibited Person**”). Each Party covenants and agrees that none of such Party, any affiliate of such Party, or any person owning an interest in such Party or any such affiliate, will (i) conduct any business, or engage in any transaction or dealing, with any Prohibited Person, including the making or receiving of any contribution of funds, good, or services, to or for the benefit of a Prohibited Person, or (ii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive Order.

**14.23** Each Party represents and warrants to the other that the individuals executing this Agreement are duly authorized by the entity on whose behalf they are signing, and that this Agreement is binding upon such entity.

IN WITNESS WHEREOF, USER and LICENSOR have executed this Agreement as of the Effective Date.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

**LICENSOR (representative)**:

[TAPG INTERTEK TESTING SERVICES NA, INC.]

By:

Name:

 Title:

**USER**:

**[COMPANY LEGAL NAME]**

By:

Name:

 Title:

List of Exhibits

Exhibit A - Scope of Work

Exhibit B - Acknowledgement

Exhibit C - Release, Waiver and Assumption of Risk Agreement

**Exhibit A**

SCOPE OF WORK BOOKING FORM

1. **Term.**

Unless otherwise terminated as set forth herein, this Agreement shall automatically renew for successive one (1) month periods unless and until either Party notifies the other Party of its intention to not renew this Agreement upon at least thirty (30) days’ prior written notice.

1. **Testing Schedule, Procedures & General Information.**

Required completion of TAPG Intertek SOW Booking Form for each requested track and facility rental period. Submit for commencement of rental request. **[**AMTC Intertek SOW Booking Form will be sent to Project Mgr./Lead/Trip Captain**]**

1. **Description of Services and Track Rental Fees.** AMTC Project Proposal Quote SOW response of description of services, fees and payment PO requirement will be sent after SOW Booking Form has been reviewed, understood, and executed for agreement.
2. **Coordinator**.

|  |
| --- |
| **Mike Antic**TPG Operations ManagerArizona Mobility Test CenterToyota Arizona Proving Ground30700 W Patton RdWittmann, AZ 85361mike.antic@toyota.comMobile: (623) 203-7868 |

1. **Location of Performance.** TOYOTA ARIZONA PROVING GROUND
2. **Resources.** Unless otherwise provided in Scope of Work Booking Form, User shall be responsible for providing all resources necessary for the performance of Services. .

**Exhibit B**

ACKNOWLEDGEMENT

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Permitted Invitee”) hereby acknowledges his or her understanding that [COMPANY LEGAL NAME.], a [INCORPORATED STATE] corporation (“**USER**”) has entered into a TEST TRACK USAGE AGREEMENT (the “**Agreement**”) with INTERTEK TESTING SERVICES NA, INC. (“**LICENSOR**”) pursuant to which USER has agreed to keep confidential and to cause its Permitted Invitees to keep confidential, certain information that may be provided to USER or Permitted Invitee in the course of performance by either of them under the Agreement. In addition, the Agreement sets forth certain understandings with respect to ownership of intellectual property and the obligation to return to LICENSOR or a Toyota Party certain property and information upon termination of the Agreement or related Scope of Work. As a Permitted Invitee of USER and as a condition of access to the Proving Grounds, Permitted Invitee agrees to comply with each and every term of the Agreement relating to the foregoing, including Sections 4 and 11 of the Agreement, which provisions have been presented and explained to Permitted Invitee. Without limiting the foregoing, Permitted Invitee agrees that with respect to the foregoing, each and every duty and obligation imposed on the USER under the Agreement shall be the separate and independent duty and obligation of Permitted Invitee and that LICENSOR may avail itself of each and every remedy available under the Agreement in the event of a breach by Permitted Invitee.

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Exhibit C**

RELEASE, WAIVER AND ASSUMPTION OF RISK AGREEMENT

**ARIZONA PROVING GROUND (Proving Grounds)**

 **PLEASE PRINT**

|  |
| --- |
| **NAME:** |
| **ADDRESS:** |
| **TELEPHONE #:** |
| **EMERGENCY CONTACT:** |

|  |
| --- |
| **I possess a current driver’s license:** |
| **STATE OF ISSUE:** |
| **LICENSE #:** |
| **EXPIRATION DATE:** |

**RELEASE, WAIVER AND ASSUMPTION OF RISK**

The undersigned hereby RELEASES, FOREVER DISCHARGES and AGREES TO INDEMNIFY AND HOLD HARMLESS the Released Parties (defined below) their respective officers, directors, employees, successors, assigns, agents and licensees from and against any and all liabilities, claims, damages or obligations, arising from the undersigned’s use of any vehicle (either as a passenger or a driver), and/or participation in any type of work or spectating event, including but not limited to vehicle evaluation, training, testing, research and development ,and engineering design at the Arizona Proving Ground site (collectively, **“Proving Grounds Activities”**). **“Released Parties”** include any entities now existing or subsequently formed of which Licensor, Licensor Parties, or Toyota Motor Corporation owns, directly or indirectly, any portion of the outstanding shares, including Toyota Motor Engineering & Manufacturing North America, Inc.

To the fullest extent allowed by law, I VOLUNTARILY ASSUME AND ACCEPT COMPLETE RESPONSIBILITY for any and all risks of death, bodily injury, loss (pecuniary or otherwise), or damage to personal property, in connection with Proving Grounds Activities. I AGREE NOT TO SUE OR MAKE ANY CLAIM against any of the Released Parties for loss or damage on account of any injury or damage to personal property in connection with the Proving Grounds Activities.

Further, I have received a Proving Grounds Track Safety Orientation and a R&D Safety Orientation, which includes a verbal explanation of track operations. I understand my responsibilities as presented, and my responsibilities under the Arizona Proving Ground Safety & Operating Policy, which I have read and agree to abide by. I will further abide by any additional applicable policies or procedures related to the Proving Grounds Activities.

**I knowingly, voluntarily and intentionally make the waivers set forth above, and acknowledge I understand the meaning and ramifications of this RELEASE, WAIVER, AND ASSUMPTION OF RISK.**

Company Name: Date: