

Nissan Vehicle Software End User License Agreement

This End User License Agreement ("Agreement") governs your use of software and firmware (collectively, "Software"), which is provided to you by Nissan North America, Inc. and/or its parent or affiliates (collectively, "Nissan") and installed on your Nissan vehicle ("Vehicle"). This Agreement covers any and all updates to the Software ("Updates"), as well as applications, services, functions, and content provided through the Software (collectively, "Services"). The Services may be provided by Nissan, its licensors, and/or third parties authorized by Nissan and/or its licensors or licensees (collectively, "Service Providers").

As used in this Agreement, "you" and "your" means any person accepting this Agreement as specified below, and "Authorized User" means any authorized user of the Vehicle, as well as any other individual or entity who may access or use the Software and/or Services. Each Authorized User is independently bound to the terms of this Agreement regardless of whether such Authorized User individually reviews this Agreement.

PLEASE READ THIS ENTIRE AGREEMENT CAREFULLY BEFORE USING THE SOFTWARE OR SERVICES. NISSAN PROVIDES THE SOFTWARE AND SERVICES TO YOU AND TO ANY AUTHORIZED USER SOLELY ON THE ON THE CONDITION THAT YOU COMPLY WITH THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT. THE TERMS OF THIS AGREEMENT MAY CHANGE FROM TIME TO TIME AS SET FORTH IN THE SECTION BELOW ENTITLED "MODIFICATION OR TERMINATION." ANY USE OF THE SOFTWARE OR SERVICES, WHETHER AS ORIGINALLY INSTALLED OR AFTER ANY UPDATE, AND/OR DOWNLOAD OF ANY SOFTWARE UPDATE, SIGNIFIES YOUR CONSENT TO THIS AGREEMENT. DO NOT USE THE SOFTWARE OR SERVICES, AND DO NOT MAKE THE SOFTWARE OR SERVICES AVAILABLE TO ANY AUTHORIZED USER IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

THESE TERMS AND CONDITIONS INCLUDE AN AGREEMENT TO MANDATORY ARBITRATION, WHICH MEANS THAT YOU OR ANY AUTHORIZED USER MAY HAVE TO SUBMIT ANY DISPUTE RELATED TO THESE TERMS OR THE SOFTWARE OR SERVICES TO BINDING INDIVIDUAL ARBITRATION RATHER THAN PROCEEDING IN COURT. THE ARBITRATION PROVISION ALSO INCLUDES CLASS ACTION AND JURY TRIAL WAIVERS, WHICH MEANS THAT YOU AGREE TO PROCEED WITH ANY DISPUTE INDIVIDUALLY AND NOT AS PART OF A CLASS ACTION AND WAIVE YOUR RIGHT AND ANY AUTHORIZED USER'S TO A TRIAL BY JURY. DO NOT USE THE SOFTWARE OR SERVICES, AND DO NOT MAKE THE SOFTWARE OR SERVICES AVAILABLE TO ANY AUTHORIZED USER IF YOU DO NOT AGREE TO THESE TERMS IN THEIR ENTIRETY.

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2. Other Licenses or Agreements. Certain Software or Services may be provided to you by Nissan under separate licenses or terms of service which are expressly applicable to such Software or Services ("Specific Terms"). In that case, the Specific Terms will govern your access to and/or use of such Software or Services, and not this Agreement.

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(a) use (including make any copies of) the Software or Services beyond the scope of the license granted under Section 1;

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(c) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Software or Services or any part thereof, except as expressly permitted under applicable law or under the terms of a Third Party License;

(d) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software or Services, or any part thereof;

(e) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices provided on or with the Software or Services;

(f) remove, disable, or circumvent any copy protection, rights management, or security features protecting the integrity of the Software and/or Services;

(g) copy the Software or Services, in whole or in part, except as expressly permitted under the terms of an applicable Third Party License;

(h) use the Software or Services in violation of any law, regulation, or rule,

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8. Maintenance. Support. and Updates.

(a) Nissan, in its sole discretion, may provide or offer you, on a complimentary basis or for a fee, updates, upgrades, and other modifications to the Software or Services (collectively, "Updates"). Nissan may develop and provide Updates in its sole discretion. All Updates to the Software will be deemed Software, and related Updates to applications, services, functions, and content will be deemed Services, all subject to all terms and conditions of this Agreement.

(b) You acknowledge that, depending upon your Vehicle and the type of Update at issue, Nissan and/or its Service Providers may provide some or all Updates through an over-the-air ("OTA") process using your Vehicle's wireless communication technology. Nissan has no obligation to provide Updates, either OTA or via any other media. You consent to the use of OTA technology to deliver Updates.

(c) You acknowledge that your Vehicle's settings and/or functionality of certain systems may be altered and/or require reset following the installation of an Update. You further acknowledge that once an Update has started, you may not be able to stop installation of the Update, nor will you necessarily be able to revert back to a prior version of the Software or Services.

(d) Nissan has no obligation to provide any Updates or to provide any other maintenance and support services with respect to any Software or Services, unless Nissan has expressly agreed separately in writing to provide such maintenance or support services.

9. Collection and Use of Information. You acknowledge that Nissan may, directly or indirectly through the services of third parties, collect, use, and store information regarding you and/or your use of the Software and Services, as well as about equipment on which the Software is installed or through which it otherwise is accessed and used, through the provision of maintenance and support services. You agree that Nissan may use such

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(a) Nissan retains the right to terminate, discontinue, or modify any features or functions of the Software, Services, or this Agreement at any time in its sole discretion.

(b) Modifications to this Agreement will be posted on a website located at www.nissanusa.com or such other website as Nissan may designate. It is your responsibility to check this site for any changes. In certain instances, Nissan may provide you with notice of such modifications via email and/or through the multimedia equipment in your Vehicle. Your access and use of the Software and Services following any modification of this Agreement will signify your assent to and acceptance of the Agreement as modified. If you object to any modification of the Agreement, your sole recourse is to discontinue immediately use of the Software and Services.

(c) You may terminate this Agreement at any time by ceasing to use the Software and Services.

11. NO WARRANTIES. THE SOFTWARE AND SERVICES ARE PROVIDED TO YOU AND ALL AUTHORIZED USERS "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, NISSAN, ON ITS OWN BEHALF AND ON BEHALF OF ITS PARENT, AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SOFTWARE AND SERVICES, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, NISSAN PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE LICENSED SOFTWARE WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

12. LIMITATION OF LIABILITY. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

(a) IN NO EVENT WILL NISSAN OR ITS PARENT, AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY, OR INABILITY TO USE THE SOFTWARE; LOST REVENUES OR PROFITS; DELAYS, INTERRUPTION, OR LOSS OF SERVICES, BUSINESS, OR GOODWILL; LOSS OR CORRUPTION OF DATA; LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION, OR SHUTDOWN; FAILURE TO ACCURATELY TRANSFER, READ, OR TRANSMIT INFORMATION; FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION; SYSTEM INCOMPATIBILITY

OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION; OR BREACHES IN SYSTEM SECURITY; OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT NISSAN WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) OUR TOTAL LIABILITY TO YOU RELATING TO THIS AGREEMENT AND/OR YOUR USE OF THE SOFTWARE OR SERVICES, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY WILL BE LIMITED TO THE AMOUNT YOU HAVE PAID US DIRECTLY FOR THE USE OF THE SOFTWARE AND/OR SERVICES, IF ANY, AND IF YOU HAVE PAID NO AMOUNT, THEN TEN UNITED STATES DOLLARS (\$10.00). YOU ALSO ACKNOWLEDGE AND AGREE THAT YOU HAVE VIEWED OR USED THE SITE WITH A FULL UNDERSTANDING OF THE LIMITATION OF OUR LIABILITY IN THESE TERMS.

(c) THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF ANY REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

13. RELEASE AND WAIVER OF CLAIMS AND DAMAGES. EXCEPT WHERE SUCH RELEASE IS LEGALLY PROHIBITED, FOR YOURSELF, AUTHORIZED USERS, AND ANYONE ELSE CLAIMING UNDER YOU OR ON YOUR BEHALF, YOU AGREE TO RELEASE AND DISCHARGE NISSAN, ITS PARENT, AFFILIATES, AND ITS OR THEIR LICENSORS, SERVICE PROVIDERS, AND OTHER AFFILIATES, ALONG WITH THEIR RESPECTIVE OFFICERS, DIRECTORS, AND EMPLOYEES, AND EACH THIRD-PARTY BENEFICIARY (COLLECTIVELY, THE "NISSAN RELEASEES") FROM ALL CLAIMS, LIABILITIES, AND LOSSES IN CONNECTION WITH THE SOFTWARE OR SERVICES. THIS INCLUDES, BUT IS NOT LIMITED TO, A FULL AND FINAL RELEASE OF ANY AND ALL CLAIMS FOR PRODUCTS LIABILITY, UNFAIR AND DECEPTIVE TRADE PRACTICES ACT VIOLATIONS, BAD FAITH, BREACH OF WARRANTY, MALFUNCTION OF THE SOFTWARE OR SERVICES, AND PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THE TOTAL OR PARTIAL FAILURE OF PERFORMANCE OF THE SOFTWARE OR SERVICES, EVEN IF CAUSED BY OR BASED UPON THE NEGLIGENCE OR GROSS NEGLIGENCE OF ONE OR MORE OF THE NISSAN RELEASEES. EXCEPT WHERE SUCH WAIVER IS LEGALLY PROHIBITED, YOU AGREE TO WAIVE TO THE FULLEST EXTENT ALLOWED BY LAW, ANY CLAIM FOR DAMAGES OTHER THAN DIRECT, COMPENSATORY DAMAGES AS LIMITED IN THIS AGREEMENT. YOU HEREBY RELEASE AND DISCHARGE THE NISSAN RELEASEES FROM AND AGAINST ANY CLAIMS FOR DAMAGES, INJURY, DEATH, OR OTHER LOSSES TO YOU, AUTHORIZED USERS, OR ANY OTHER PERSON, AS WELL AS ANY CLAIM FOR DAMAGES OR INJURY TO PROPERTY OF ANY KIND RESULTING, DIRECTLY OR INDIRECTLY, FROM USE OF THE SOFTWARE OR SERVICES BY YOU OR ANY OTHER PERSON. *YOU UNDERSTAND THAT YOU MAY BE WAIVING RIGHTS WITH RESPECT TO CLAIMS THAT ARE AT THIS TIME UNKNOWN OR UNSUSPECTED, AND IN ACCORDANCE WITH SUCH WAIVER, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND, AND HEREBY EXPRESSLY WAIVE, THE BENEFITS OF SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA, AND ANY SIMILAR LAW OF ANY STATE OR TERRITORY, WHICH PROVIDES AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."*

14. Export Regulation. The Software and Services may be subject to U.S. export control laws, including the Export Control Reform Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the Software or Services to, or make the Software or Services accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting,

re-exporting, releasing, or otherwise making the Software or Services available outside the U.S.

15. U.S. Government Rights. The Software is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if you are the U.S. Government or any contractor therefor, you shall receive only those rights with respect to the Software and Services as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other U.S. Government licensees and their contractors.

16. Dispute Resolution/Choice of Law.

ARBITRATION CLAUSE - IMPORTANT - PLEASE REVIEW - AFFECTS YOUR LEGAL RIGHTS.

- **EITHER YOU OR NISSAN MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.**
- **IF A DISPUTE IS ARBITRATED, YOU GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST NISSAN INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.**
- **DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND NISSAN WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.**

(a) In accordance with this section, any dispute, claim, or controversy arising out of or relating to this Agreement, or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, or relating to the Software or Services shall, at your or Nissan's election, be resolved by neutral, binding arbitration and not by a court action (the "Arbitration Clause"). If federal law provides that a claim or dispute is not subject to binding arbitration, this Arbitration Clause shall not apply to such claim or dispute. Any claim or dispute is to be arbitrated by a single arbitrator on an individual basis and not as a class action. To the extent permitted by applicable law, the arbitrator cannot hear class or representative claims or requests for relief on behalf of others and you expressly waive any right you may have to proceed in any class or representative action. You may choose one of the following arbitration organizations, and its applicable rules, to conduct the arbitration: New Era ADR (www.neweraadr.com) or the American Arbitration Association (800-778-7879, www.adr.org), or any other organization subject to our approval. You may get a copy of the rules of an arbitration organization by contacting the organization or visiting its website. Unless modified by this Arbitration Clause, New Era ADR's arbitration will follow its Virtual Expedited Arbitration Rules and Procedures (www.neweraadr.com/rules-and-procedures/), while AAA's arbitration will adhere to AAA's Commercial Arbitration Rules (www.adr.org).

(b) Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the applicable rules. The arbitrator shall apply governing substantive law and the applicable statutes of limitations. Unless applicable law provides otherwise, the arbitration hearing shall be conducted in the federal district in which you reside. Nissan will pay your filing, administration, service and case

management fee, your arbitrator and hearing fee and any arbitration appeal fees you incur all up to a maximum of \$5,000, unless the law requires Nissan to pay more. The amount Nissan pays may be reimbursed in whole or in part by decision of the arbitrator if the arbitrator finds that any of your claims are frivolous under applicable law. Each party shall be responsible for its own attorney, expert, and other fees, unless awarded by the arbitrator under applicable law. If the chosen arbitration organization's rules conflict with this clause, then the provisions of this clause shall control. The arbitrator's award shall be final and binding on all parties, except that you may appeal any arbitrator's award pursuant to the rules of the arbitration organization, and we may only appeal an award against us exceeding \$100,000. Any proceeding related to this Arbitration Clause shall be governed by the Federal Arbitration Act (9 U.S.C. § 1 et. seq.) and not by any state law concerning arbitration.

- (c) You retain the right to seek remedies in small claims court for disputes or claims within that court's jurisdiction, and Nissan agrees to reimburse your filing fees for such proceedings. You also retain the right to seek individual injunctive relief in court except where claims asserting such relief are subject to a separate arbitration agreement between you and Nissan. Except in those limited instances, if one party otherwise files a court action instead of arbitration, all proceedings will be stayed until resolution of any proceedings to compel arbitration, including appeals. Neither you nor Nissan waives the right to arbitrate by filing suit. Any court having jurisdiction may enter judgment on the arbitrator's award. This Arbitration Clause shall survive any termination of this Agreement. If any part of this Arbitration Clause, other than waivers of class action rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable. If a waiver of class action rights is deemed or found to be unenforceable for any reason in a case in which class action allegations have been made, the remainder of this Arbitration Clause shall be unenforceable.
- (d) You consent to the following: Any claims relating to the Software or Services will be governed by the laws of the State of Tennessee, excluding the application of its conflicts of law rules. Subject to the foregoing Arbitration Clause, you agree that venue for all actions filed in court, relating in any manner to this Agreement, shall be in a federal or state court of competent jurisdiction located in Davidson County, Tennessee.

17. Miscellaneous.

(a) Nissan will not be responsible or liable to you, or deemed in default or breach hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, pandemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, air conditioning, or equipment, loss and destruction of property, or any other circumstances or causes beyond Nissan's reasonable control.

(b) This Agreement, together with any additional terms incorporated by reference, constitutes the sole and entire agreement between you and Nissan with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

(c) You shall not assign or otherwise transfer any of your rights, or delegate or otherwise transfer any of your obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Nissan's prior written consent, which consent Nissan may give or withhold in its sole discretion. No

delegation or other transfer will relieve you of any of your obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section is void. Nissan may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without your consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

(d) This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other individual or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

(e) This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(f) If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(g) This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

(h) The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.