

You must have EXPRESSED privileges to access the Quadzilla Beta Program Information.

Beta Test Non-Disclosure & License Agreement

Introduction

THIS IS A LEGAL AGREEMENT BETWEEN QUADZILLA USER (ENTITY OR PERSON, hereinafter collectively referred to as "YOU" or "YOUR" or "USER") AND QUADZILLA PERFORMANCE TECHNOLOGIES, INC. ("QUADZILLA") FOR THE QUADZILLA PRODUCT(S) TO BE AVAILABLE THROUGH QUADZILLA, INCLUDING BUT NOT LIMITED TO DIESEL VEHICLE PERFORMANCE PRODUCT(S) CONTAINING PROPRIETARY HARDWARE AND SOFTWARE, AND WRITTEN AND/OR "ONLINE" ELECTRONIC DOCUMENTATION (the "DOCUMENTATION"). THIS AGREEMENT GRANTS YOU LIMITED RIGHTS TO USE AND/OR ACCESS AND/OR PARTICIPATE IN ANY BY-INVITATION PROJECTS PERTAINING TO THE PRODUCT(S) AND THE DOCUMENTATION, AS FULLY EXPLAINED ABOVE.

USER ACKNOWLEDGES THAT ITS AUTHORIZED REPRESENTATIVE HAS READ AND UNDERSTANDS THIS AGREEMENT (INCLUDING ALL ATTACHED EXHIBITS) AND AGREES TO THE VALIDITY AND BE BOUND BY THE TERMS OF THIS NON-DISCLOSURE AGREEMENT ("NDA") and LICENSE GRANT ("LICENSE"). IF YOU DO NOT AGREE TO THE TERMS OF THIS NDA, YOU WILL NOT BE GRANTED ACCESS TO USE THE BETA PROGRAM.

THESE NDA AND LICENSE TERMS, TOGETHER WITH ANY AND ALL QUADZILLA BETA PROGRAM AGREEMENTS, AND/OR ANY OTHER AGREEMENTS OR TERMS AND/OR CONDITIONS OF USE APPEARING OR REFERENCED ON THIS SITE OR IN THE DELIVERED DOCUMENTATION REPRESENT THE ENTIRE SET OF TERMS AND CONDITIONS GOVERNING YOUR USE OF THIS BETA PROGRAM, SERVICES AND ACCOMPANYING WRITTEN MATERIALS (WHERE APPLICABLE), AND IT SUPERSEDES ANY PRIOR PROPOSAL, REPRESENTATION, OR UNDERSTANDING BETWEEN THE PARTIES. YOUR ACCEPTANCE OF ALL OF THE TERMS AND CONDITIONS OF THIS NDA AND LICENSE IS A CONDITION OF YOUR RIGHT TO PARTICIPATE IN THE BETA PROGRAM FOR TESTING PURPOSES ONLY.

IT IS HIGHLY RECOMMENDED THAT YOU KEEP A COPY OF THIS NDA AND LICENSE TERMS FOR YOUR RECORDS.

1. Acknowledgment of Validity and Limited Rights for Beta Testing Only.

By installing the BETA PRODUCT(S), QUADZILLA grants to you a non-exclusive, limited purpose license to use one copy of the BETA PRODUCT(S) in DEMO form only, and the DOCUMENTATION, only as authorized in this LICENSE and NDA, and you hereby acknowledge and agree to the validity of this AGREEMENT and the terms and conditions contained herein, and agree to be bound hereto.

These products have been designed and developed by QUADZILLA, either alone or together with other third parties, and this LICENSE and NDA is being made on behalf of all parties who contributed to the PRODUCT(S) and DOCUMENTATION. Subject to the terms and provisions set forth, the USER is willing to accept delivery of one or more such PRODUCTS (each a "Test Product") for the purpose of using and evaluating the same for a specific test period as effectuated by a time-out mechanism in the Test Product (a "Test Period").

QUADZILLA is willing to permit the USER to use and evaluate the Test Product under the terms and conditions hereinafter contained in order to obtain user information pertaining to such Test Product which may be helpful to QUADZILLA in making any changes, enhancements or modifications with respect thereto. The PRODUCT may be used only on a single vehicle owned, leased or otherwise controlled by you. You may not use the PRODUCT for any purpose other than the intended one or on any other vehicle, except as expressly provided herein.

2. Ownership of Proprietary Rights and Grant.

QUADZILLA does hereby grant to USER at no charge a nonexclusive, nontransferable right to use the PRODUCT(S) furnished in connection with or as the Test Product for the Test Period. This right shall terminate at earlier of: (i) the end of the Test Period; or (ii) the date QUADZILLA determines in its sole discretion that either (x) the USER is not satisfactorily performing evaluations of the Test Product and reporting such evaluations to Quadzilla; (y) QUADZILLA no longer has a need for user information from the USER regarding the Test Product; or (z) QUADZILLA has learned that the terms of this agreement have been breached by USER.

You acknowledge and agree that the PRODUCT(S) and DOCUMENTATION are proprietary products of QUADZILLA or its third party contributors protected under United States copyright laws, other applicable copyright laws, and international treaty provisions. You further acknowledge and agree that the entire right, title and interest in and to the PRODUCT(S) and DOCUMENTATION, including associated intellectual property rights, shall remain with QUADZILLA or its third party contributors. QUADZILLA retains all rights not expressly granted. Subject to the Provisions of this Agreement, QUADZILLA will furnish USER with updates and enhancements of the Test Product, if applicable, as and when the same are released. Nothing in this AGREEMENT obligates QUADZILLA to create any such updates or enhancements.

3. Evaluation and Reports.

USER shall utilize and evaluate the Test Product in its day-to-day vehicle environment and conduct such tests and evaluations as may be reasonably necessary to form an opinion concerning the performance of the Test Product. The USER shall provide QUADZILLA with reports concerning its opinion and evaluation of the Test Product. USER shall consult with representatives of QUADZILLA from time-to-time concerning the performance of the Test Product.

USER agrees that all right, title and interest to any reports, feedback or suggestions relating to the Test Product or any inventions relating to an improvement of the Test Product conceived in or made as a result of User's performance of this AGREEMENT shall become the exclusive property of QUADZILLA and that QUADZILLA may disclose and use such information for any purposes whatsoever, entirely without obligation of any kind to USER.

4. Confidential Information and Data.

USER acknowledges that each Test Product consists of technology which is proprietary and confidential to QUADZILLA or its licensors; and all rights, title and interest therein or thereto, including without limitation, all patents, copyrights, trademarks and trade secrets remain in QUADZILLA or its licensors. Therefore, USER shall not disclose, directly or indirectly, or take any other action which would result in the unauthorized disclosure of

any confidential or proprietary data whatsoever, including, but not limited to, reproduction of data furnished USER by QUADZILLA.

The release of confidential information to USER does not constitute a commercialization of the Test Product, but rather is a release for testing purposes only. USER shall not disclose to any third party the terms of this Agreement nor do the results of any USER evaluation hereunder except with the written consent of QUADZILLA. USER shall, upon QUADZILLA'S request, certify in writing as to the return or destruction of all such confidential information.

For purposes of this AGREEMENT, "Confidential" or "Proprietary Information" shall include, but not be limited to, the Test Product, including its functionality, performance, business purpose, specifications, documentation, and the like, test results obtained by USER through use of the Test Product, any material data relating to use of the Test Product by USER, including but not limited to defects, deficiencies, errors, omissions, work-arounds, features, enhancements, updates, upgrades, and other information typically relating to unreleased versions of computer programs.

And any and all information, written or oral, relating to the Test Product, including plans, business, technical, and financial information, which may, from time-to-time, be disclosed by QUADZILLA to USER during the Test Period. It is understood by both parties that ANY information provided by QUADZILLA during the Test Period to USER relating to the Test Product is Confidential and Proprietary Information of QUADZILLA.

The parties shall use such Confidential and Proprietary Information only for the purpose set forth in Section Two above. USER shall make no other use of the Confidential and Proprietary Information, in whole or in part, without the specific prior written consent of QUADZILLA. Accordingly, USER agrees not to make any commercial use of such Confidential and Proprietary Information, and USER shall not participate in, nor assist in any attempt to translate, copy, disassemble, reverse engineer, or decompile any Test Product, nor shall USER make copies or translations of any Test Product documentation. Furthermore, USER will not make any pre-release reports or give pre-release interviews concerning the Test Product or the Confidential Information without QUADZILLA'S prior written consent.

USER shall maintain QUADZILLA'S Confidential and Proprietary Information in strict confidence, shall limit internal disclosure of such Confidential and Proprietary Information to employees having a legitimate need to know, and shall exercise the same degree of care in protecting QUADZILLA'S Confidential and Proprietary Information as it exercises in protecting its own confidential and proprietary information.

Any related materials supplied by QUADZILLA, including Test Product documentation, may not be reproduced in any manner by USER. The original and all copies of Confidential and Proprietary Information shall remain the property of QUADZILLA and shall be returned to QUADZILLA upon demand.

5. Disclaimer of Warranty.

USER acknowledges that the Test Products have not been completely tested and will contain defects or deficiencies which cannot or may not be corrected. USER further acknowledges that use of the Test Products may involve the capture of and manipulation of vehicle computer data beyond USER'S control, and some errors in the data may occur while transferring, transmitting or translating data while using the Test Products.

QUADZILLA cautions USER to determine for itself the suitability of the use of the Test Product for any purpose.

USER acknowledges that QUADZILLA has no express or implied obligation to announce or introduce the Test Product or any similar or compatible product. USER acknowledges that all testing, research and development performed by it pursuant to this Agreement are done entirely at its own risk. ACCORDINGLY, QUADZILLA MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE USE OR PERFORMANCE OF THE TEST PRODUCTS, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

USER ACCEPTS THE PRODUCTS IN "AS IS" CONDITION, AND QUADZILLA SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING WITHOUT LIMITATION LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, COSTS OF LOSS OR DAMAGES OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF QUADZILLA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. Miscellaneous.

This AGREEMENT and the license contained herein shall not be assignable by the USER without the express written consent of QUADZILLA. This AGREEMENT constitutes the entire AGREEMENT between the parties and supersedes all prior agreements, whether written or oral, concerning the subject matter herein, and may not be amended or modified except by QUADZILLA. Any notices or other communication shall be addressed to the parties at the address shown above.

This AGREEMENT shall be governed by the laws of the State of Texas, United States of America, without regard to conflicts of law rules. This AGREEMENT will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded, nor shall the Uniform Computer Information Transactions Act ("UCITA") apply to this transaction. USER shall not use Test Products with knowledge or reason to know that they will be transported outside the country in which the USER'S principal place of business is located.

In addition to the foregoing, and not in lieu thereof, USER agrees to comply with the export laws and regulations of the United States Government, or any other export laws, restrictions or regulations, as they apply to the exports of products and technical data from the United States and re-exports or transfers of products and technical data from other countries, and to furnish or complete such documentation as may be required. USER'S obligations under Sections 3, 4 and 5 shall survive the termination of this Agreement and commercial release of the Test Product(s).

7. Consequences of Breach.

USER acknowledges that:

- a. irreparable injury and damage to QUADZILLA will result from unauthorized disclosure of the Test Product Confidential Information gleaned by USER through use of the Test Product, and from uses of the Test Products other as contemplated herein;

- b. monetary damages may not be sufficient remedy for unauthorized disclosure of the Test Product;
- c. QUADZILLA shall be entitled, without waiving any additional rights or remedies available to it at law, in equity, or by statute, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction; and
- d. USER's breach of this Agreement shall result in immediate termination of this Agreement and may be cause for exclusion in other QUADZILLA sponsored BETA programs, among other remedies available to QUADZILLA at law or otherwise.

BY ACCEPTING THIS AGREEMENT, YOU ACKNOWLEDGE THAT YOU ARE AN AUTHORIZED REPRESENTATIVE OF YOUR ORGANIZATION AND HAVE READ AND UNDERSTAND THIS AGREEMENT AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS CONTAINED HEREIN.