

## NAVKAL SOFTWARE LICENSE AGREEMENT

READ THE TERMS OF THIS AGREEMENT CAREFULLY BEFORE OPENING THE SOFTWARE MEDIA PACKAGE. BY OPENING THE SOFTWARE MEDIA PACKAGE, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, PROMPTLY RETURN THE UNUSED SOFTWARE TO YOUR PLACE OF PURCHASE FOR A REFUND.

THIS AGREEMENT is made between Navistar, Inc., a Delaware corporation, U.S.A, having its principal office at 2701 Navistar Drive, Lisle, Illinois 60532 (hereinafter Navistar") and you, the purchaser (hereinafter "Customer") of the NavKal Software (hereinafter Software").

WHEREAS, Navistar is an original equipment manufacturer for light, medium and heavy duty trucks, buses, specialty trailers, specialty vehicle chassis and engines, with the make International® (hereafter "International").

WHEREAS, Navistar has developed the Software to be used in connection with the servicing of International trucks and engines;

WHEREAS, Customer is desirous of obtaining the Software at its various business location(s) in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

### 1. GRANT OF LICENSE:

Navistar hereby grants to Customer a nonexclusive and nontransferable license to use, subject to the terms and conditions herein, an object code form of the Software only for Customer's internal use for which the corresponding fee has been paid on computer system on which the Software is to be run. The Software and documentation shall remain the property of Navistar and no rights or licenses are granted other than as set forth herein. The Software shall be used by Customer only in connection with the servicing of International trucks, International or Navistar endorsed products or parts. Customer agrees that it will not modify the Software or documentation or sublicense or distribute copies (except as permitted herein) of the Software or documentation therefor to any third party in any form or media. Customer further agrees that it will not reverse engineer, disassemble or decompile or otherwise attempt to derive the source code for the Software or create derivative

works of the Software including translated or localized versions thereof. Customer hereby acknowledges Navistar's or its licensor's copyrights in the Software and documentation regardless of whether a copyright notice appears on the Software or documentation or whether a registration thereof has been filed with the Copyright Office of the United States.

## 2. TAXES:

Customer agrees to pay all taxes, except income taxes, however designated, or amounts levied in lieu thereof, based on or measured by the fees set forth in this Agreement or on this Agreement, or services furnished under this Agreement, or the use thereof, which may be imposed under the authority of any Country, federal, state, or local taxing jurisdiction, including any attachment tax, license, permit, or fee.

## 3. TRAINING:

Training for the Software is available for separate purchase. The Customer may perform a self-guided computer web-based training course provided by Navistar for purchase to become familiar with the diagnostic and vehicle feature capabilities of the Software. In the event of a major revision of the Software, Navistar may require additional training, at Customer's expense, to ensure proper operation of the Software by Customer.

## 4. SUPPORT:

Except as provided herein no support for the Software will be provided to Customer under this Agreement. Customer agrees that in the event that it finds errors or experiences problems in operating the Software it shall immediately report such errors or problems to Navistar. Navistar shall exert reasonable efforts to correct such errors or problems. In the event that the Customer, or any third party acting for the Customer, without the written approval of Navistar modifies the Software, all the Software warranties are void. If such modifications are determined to be the cause of a failure of the Software, Customer agrees to pay Navistar for the time expended by the Navistar support group on such failure at Navistar's then current industry standard rates for the supporting roles activities. If Customer requests that Navistar correct or repair such failure caused by Customer modifications, Navistar may attempt to do so at Customer's expense including travel expenses if on-site assistance is required.

## 5. BACK-UPS:

Customer agrees to exercise due diligence in maintaining safeguards to protect and backup the Software and data relating thereto. Navistar will under no circumstances be responsible for backing up Customer data.

## 6. CONFIDENTIALITY OF SOFTWARE, DOCUMENTATION AND DATA:

Customer acknowledges that the Software, documentation therefor and data supplied by Navistar constitutes Navistar's trade secrets, and Customer agrees that it will hold such information in confidence, will in no way discuss or otherwise make available such information to any third parties, including Navistar's competitors, and will use such information only in accordance with the provisions of this Agreement. Customer agrees that access to such information will be given only to employees who have a need to know such information, and these employees will be informed of the confidential nature thereof and will be required to observe the provisions of confidence as set forth above. Customer agrees that it shall thoroughly safeguard the confidentiality of the Software, documentation therefor and data supplied by Navistar and in no event shall its efforts in this respect be to a lesser extent than Customer's efforts to safeguard its own proprietary information. Customer's obligation to hold the Software, documentation therefor and data in confidence shall continue beyond the termination of this Agreement.

## 7. WARRANTY:

Navistar warrants that at the time of delivery of the Software to customer, the Software substantially meets the current specifications for the Software. Navistar does not warrant that the operation of the Software will be uninterrupted or error free. Navistar will, for so long as this Agreement is in force, use its best efforts to assist Customer if the Software fails to substantially meet specifications. Installation of the Software on unauthorized equipment or use of unauthorized software with the Software will invalidate all Software warranties and relieve Navistar of all support obligations for any equipment and software to the extent that any defect, malfunction, failure to meet specifications, etc., of the Software is attributable to such installation or use of such unauthorized equipment or software, and the Customer will be solely liable for any damages caused thereby. The foregoing warranty is in lieu of all other warranties expressed, implied, or statutory, including warranty of merchantability and warranty of fitness for a particular purpose.

## 8. LIMITATION OF LIABILITY:

Navistar shall not be liable for any personal injuries, equipment damage, loss of profits, loss of use, loss of business, interruption of business, or direct or indirect, special, incidental, or consequential damages of any kind that are incurred by Customer resulting from the Software, the unavailability thereof, or arising under this Agreement or the breach thereof, whether the claim is in contract, tort (including negligence), strict liability or otherwise. In any event, Navistar's liability to Customer for a claim of any kind related to this Agreement or to the Software shall not exceed the greater of the aggregate of fees paid to Navistar under this Agreement.

## 9. PATENT AND COPYRIGHT INDEMNIFICATION:

Navistar will assume and defend at its sole expense any lawsuit brought against Customer based on a claim that the Software or documentation used within the scope of this Agreement infringes any trade secret right, copyright or patent, provided Customer promptly notifies Navistar of the existence of the lawsuit and tenders the complete defense of the lawsuit to Navistar.

## 10. ASSIGNMENT, SALE OR TRANSFER:

This Agreement, as well as any license granted hereunder, may not be assigned, sublicensed or transferred by Customer unless written approval from Navistar is obtained. If Navistar determines that a licensed and certified user has provided his logon/user identification and password to an untrained user, for the purpose of allowing the untrained user access to servicing an International vehicle with this Software without the technical training required to do so, then the right to access this Software will be revoked as per the provisions of this Agreement.

## 11. TERM, TERMINATION:

The term of this Agreement shall be valid for a period of one year and shall be repurchased thereafter on a year-to-year basis unless Navistar provides sixty (60) days written notice to Customer of its intention to allow this Agreement to expire at the end of the then current calendar year. Additionally, Navistar may partially terminate this Agreement with respect to one or more of the program functions by providing Customer with sixty (60) days notice of its intention to do so, and this Agreement will automatically terminate with respect to such program function(s) at the end of such sixty (60) day period. Customer may terminate this Agreement at any time by providing Navistar with sixty (60) days written notice of its intention

to do so and this Agreement will automatically terminate at the end of such sixty (60) day period. This Agreement and all licenses granted hereunder may be terminated for cause by Navistar if Customer has breached the duties, obligations or responsibilities imposed upon it by this Agreement. Customer shall have thirty (30) days after receipt of written notice from Navistar to cure any such failure and avoid an automatic termination hereunder. After termination or expiration of this Agreement for any reason, Customer will return to Navistar the original and all copies (in whole or in part or in any form) of the Software, or the terminated program function(s) if appropriate, and any related documentation. The provisions of Sections 6, 8, and 10 of this Agreement will survive the termination thereof.

#### 12. NOTICES:

Notices given pursuant to this Agreement shall be considered effective upon actual receipt by a customer and shall be sent to the customers at their respective contact information.

#### 13. APPLICABLE LAW AND FORUM:

This Agreement shall be governed by the laws of the State of Illinois without giving regard to choice of law provisions of any jurisdiction. Any suit arising under the terms of this Agreement shall be tried in the United States District Court for the Northern District of Illinois, Eastern Division, or in Courts of the State of Illinois located therein.

#### 14. ENTIRE AGREEMENT:

This Agreement, including any attachments hereto, is the entire agreement between the parties relating to the subject matter hereof and supersedes all oral or written promises, representations, proposals, discussions, conversations, negotiations, and any inconsistent terms and conditions contained in any other agreement between the parties. Any modification of the terms and conditions of this Agreement and attachments must be in a written document signed by the duly authorized representatives of both parties hereto.

#### 15. ACCESS REQUIREMENTS

Access to the full capabilities to the Software is governed by a user database that is maintained by Navistar. In addition, the Software has built in functions that shall revoke access to advanced functions if the Customer does not meet certain

conditions. For advanced functions the Customer must adhere to the following requirements:

- A certified Software user must have a unique Logon and Password to access the Software.
- The Customer must have access to the Internet.
- If a vehicle is programmed using the Software, the Customer must connect the computer to the Internet within 1 calendar day for uploading vehicle configuration files to Navistar maintained databases.
- The Customer may be restricted in the number of vehicles that can be programmed before a connection to the Internet is required for uploading vehicle configuration files.
- The Customer must make a connection to the Internet at least once every 5 days to ensure the Customer has received the most current version of the Software and supporting data.

Navistar shall not be liable for interruption in service for extended periods of time due to circumstances or events beyond the control of Navistar.