

Memorandum of Understanding

between the
New South Wales Government
and
Nissan Motor Co. Ltd and **Renault s.a.s.**



Cover photo: Bob Peters (DECC)

Published by:

Department of Environment, Climate Change and Water NSW

59–61 Goulburn Street

PO Box A290, Sydney South, NSW 1232.

Phone: (02) 9995 5000 (switchboard). Fax: (02) 9995 5999. TTY: (02) 9211 4723.

Email: info@environmjent.nsw.gov.au. Website: www.environment.nsw.gov.au

DECC 2009/545

ISBN 978 1 74232 402 9

July 2009

Memorandum of Understanding
between the
New South Wales Government,
the Nissan Motor Co. Ltd
and
Renault s.a.s.

This Memorandum of Understanding (MoU) is executed this

4th day of August 2009,

between the undersigned parties:

1. **Nissan Motor Co. Ltd.**, a company organised under the laws of Japan and having its registered office at 2 Takara-Cho, Kanagawa-Ku, Yokohama-Shi, Kanagawa 220-8623, Japan (hereinafter Nissan) and
2. **Renault s.a.s.**, a company validly existing and organised under the laws of France, having its registered office at 13–15, quai Alphonse Le Gallo, 92513 Boulogne Billancourt Cedex, France (hereinafter Renault) and
3. **the Crown in Right of the State of New South Wales**, acting through the Department of Environment, Climate Change and Water NSW of 59–61 Goulburn Street, Sydney, NSW 2000 (hereinafter the New South Wales Government).

Nissan, Renault and the New South Wales Government are hereinafter individually referred to as a Party and collectively as the Parties.

Preamble

Whereas Nissan and Renault are leading car manufacturers which are engaged worldwide in the business of designing, developing, manufacturing, assembling, marketing and selling automotive vehicles, as well as their related parts and components, under the 'Nissan' and 'Infiniti' trademarks for Nissan and under the 'Renault', 'Dacia' and 'Samsung' trademarks for Renault.

Whereas Nissan and Renault are separate legal entities involved in a strategic alliance.

Whereas Nissan and Renault and the New South Wales Government believe that introduction and expansion of electric vehicles (EVs) will make an important contribution to the reduction of carbon dioxide emissions and air pollution.

Whereas Nissan and Renault desire to be leaders in the development and sales of EVs around the world, and the New South Wales Government is interested in the introduction and expansion of EVs therein.

Whereas Nissan and Renault and the New South Wales Government wish to start discussion on possible cooperation with respect to introduction and expansion of EVs in New South Wales from a business, technical, legal and incentives standpoint (such cooperation will be referred to as 'EV Connection Program – Partnership for Zero Emission Mobility', hereafter known as the Program).

Now, therefore, the Parties wish to record their understanding as follows:

1. Purpose

- 1.1. The purpose of this MoU is to set forth the general principles that shall govern the discussions regarding the Program and to describe on a preliminary basis the possible program or arrangement which the Parties contemplate in relation thereto.
- 1.2. The Parties acknowledge that this MoU is a non-binding expression of the Parties' understandings which is intended to facilitate the preparation and negotiation of the appropriate legally binding agreements (the Definitive Agreements) which will embody the final understanding of the Parties regarding the Program. The Parties therefore agree that they shall have no binding obligation with respect to any of the cooperation contemplated in this MoU. Notwithstanding the preceding sentence, the Parties agree that the provisions of clause 7 (Intellectual property), clause 8 (Confidentiality), clause 10 (Costs and expenses), and clause 11 (Miscellaneous) shall be legally binding on the Parties.
- 1.3. The Parties agree that they shall forthwith establish a working team comprising officials of the New South Wales Government and senior managers of Nissan and Renault who shall within one hundred and twenty (120) days of the date of this MoU propose a Definitive Agreement.
- 1.4. Neither Party shall be responsible to the other Party for any kind of direct, indirect, special or consequential damages which may be incurred by it as the result of:
 - (a) breach of any of the non-binding provisions of this MoU
 - (b) failure in execution of any of the Definitive Agreements
 - (c) termination or expiration of this MoU for any reason whatsoever.

2. Program

At the present stage of their discussions, the Parties are considering the arrangement set out below for implementation of the Program. The description set out below is merely indicative and the Parties are free to study, discuss and decide on any other arrangement which more effectively reflects their business intents and objectives.

2.1. Nissan and Renault's role

Under the Program, Nissan and Renault intend:

- (a) to use reasonable endeavours to supply EVs to the New South Wales vehicle market
- (b) to provide the New South Wales Government with information, ideas or knowledge relating to a battery-charging network, incentives, activities and opportunities to be educated about EVs

- (c) to establish working teams with governments, government agencies, national and pan-national regulatory institutions, non-governmental organisations and companies whose purpose will be to:
 - (i) propose a comprehensive and viable plan for the implementation and maintenance of a battery-charging network in New South Wales
 - (ii) formulate incentive packages that government and regulatory institutions may offer to EV infrastructure providers, EV consumers and EV users
 - (iii) establish a plan that will support opportunities and activities to be educated to promote the use of EVs.

2.2. The New South Wales Government's role

Under the Program, the New South Wales Government intends:

- (a) to participate in the working team referred to in clause 2.1 above
- (b) to investigate financial and non-financial incentives for:
 - (i) EV purchase
 - (ii) EV use
 - (iii) establishment, operation and maintenance of an EV charging network.
- (c) to provide Nissan and Renault with information, ideas or knowledge relating to a battery-charging network, incentives and opportunities and activities to educate about EVs, noting that this information would also be available to all other interested parties
- (d) to recommend and organise participation of local organisations (including companies) in the Program in New South Wales.

3. No obligation to consummate

The Parties acknowledge:

- (a) that the determination and implementation of the final arrangement for the Program contemplated herein shall be based on each Parties' business, technical, legal and tax concerns
- (b) that the execution of this MoU does not constitute any obligation or commitment by any Party to enter into any Definitive Agreements or to make or vary any New South Wales Government policies, guidelines or procedures, including, but not limited to any relating to procurement.

4. Non-exclusivity

Each Party is free to discuss or implement a similar program with any third party or government entity.

5. Approvals

The Parties agree that the implementation of the Program contemplated by this MoU shall be subject to the receipt of all applicable governmental, regulatory, corporate and other approvals that each Party may require as per the law and regulations of the respective countries and each party's internal regulations. The Parties shall cooperate with each other in securing such approvals.

6. Term and termination

6.1. This MoU shall become effective on the date hereof and shall remain in full force and effect until the earlier of:

(a) the execution of all the Definitive Agreements as per clause 1.2

or

(b) 15 January 2010.

This MoU may be terminated by either Party giving the other Party 30 days prior written notice. The term of this MoU may be extended by the Parties in writing, and unless such writing is executed before the period specified herein expires, this MoU shall be terminated.

6.2. Clauses 7, 8, 10 and 11 of this MoU shall survive any termination of this MoU.

7. Intellectual property

Nissan and Renault acknowledge that the New South Wales Government may create new material (or arrange for new material to be created) for the purposes of performing this MoU according to its objectives, including, but not limited to, written reports and policies ('New Material'). When creating New Material, the New South Wales Government will not rely upon or include in the New Material any material provided to it by Nissan and or Renault ('Alliance Material') without the prior written consent of Nissan and Renault (not to be unreasonably withheld). Nissan and Renault may unconditionally withhold consent to the use of any Alliance Material which is not in the public domain, which is Confidential Information or which contains third parties' rights. Subject to the foregoing it is agreed that the New South Wales Government will own or be granted unrestricted use of all the intellectual property rights in the New Material. Nothing in this clause 7 affects the Parties' obligations concerning Confidential Information in clause 8. This clause 7 is agreed to be contractually binding, and survives expiry or termination of this MoU.

8. Confidentiality

8.1. All Confidential Information belonging to a Party is the sole and exclusive property of the Party. A Party may only use another Party's Confidential Information in connection with performing this MoU according to its objectives, unless the Party that the Confidential Information belongs to agrees otherwise in writing.

- 8.2. Without affecting clause 8.1, all Confidential Information of a Party shall be held in confidence by the other Party receiving the Confidential Information to the same extent and in at least the same manner as the receiving Party protects its own confidential or proprietary information.
- 8.3. Subject to clauses 8.1 and 8.4, no Party shall disclose, publish, release, transfer or otherwise make available another Party's Confidential Information in any form to any third party without first obtaining the written consent of the Party that the Confidential Information belongs to.
- 8.4. A Party may disclose Confidential Information:
- (a) to its legal or professional advisers to seek legal or professional advice, and to its Affiliates but only in connection with performing this MoU according to its objectives, and subject to an obligation to keep the Confidential Information confidential
 - (b) to the extent that the Party is required to disclose it under any law, government policy or legal or Parliamentary process, rules or conventions, such as Parliamentary Standing Orders, or to any regulatory body such as a stock exchange.
- 8.5. Unless the Parties agree otherwise in writing, immediately on request, or on expiry or termination of this MoU, whichever happens first, a Party must deliver to the other Party that supplied Confidential Information to it all documents and any material in their possession or control that contain that Confidential Information. A Party need not comply with this clause 8.5 to the extent that it is required to keep a copy of any Confidential Information by law or any Parliamentary process, rule or convention.
- 8.6. In this clause 8:
- 'Affiliate' means, with respect to a party, any entity that, directly or indirectly, is controlled by, controls, or is under common control with a party.
- For Nissan or Renault, 'Affiliate' includes Renault–Nissan B.V.
- For the New South Wales Government, 'Affiliate' includes Ministers, Ministerial staff, New South Wales Government departments and agencies, and corporatised New South Wales Government agencies.
- 'Control' means the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of a majority of the voting securities, by contract or otherwise.
- 'Confidential information' means any information that:
- (a) is by its nature confidential
 - (b) is designated as confidential by the Party providing the information
- or*
- (c) a Party knows or ought to know is confidential.
- 8.7. Notwithstanding clause 8.6, confidential information shall not include information that:
- (a) is independently developed or known by the receiving Party, as demonstrated by the receiving Party

- (b) becomes publicly known (other than through the fault of the receiving Party
or
- (c) is rightfully received from a third party free of any obligation of confidentiality.

8.8 This clause 8 is agreed to be contractually binding, and survives expiry or termination of this MoU.

9. Consultation regarding policy

The Parties agree to liaise and consult with each other in order to achieve the objectives set out in this MoU; however, this MoU is not intended to give rise to a legally enforceable obligation on the part of the New South Wales Government to:

- (a) obtain Nissan and Renault's consent in respect of making of policy in relation to EVs
or
- (b) include Nissan and Renault's opinions, information, ideas or knowledge in respect to the making of policy in relation to EVs.

10. Costs and expenses

From the date of execution of this MoU and until all of the Definitive Agreements are executed and/or this MoU is terminated as defined in clause 6 hereabove, each Party shall be responsible for and bear its own costs and expenses in relation to the Program (including fees of counsel and other advisors), such as but not limited to those costs and expenses that may be sustained in connection with the preparation of this MoU, the Definitive Agreements and the discussion for the Program, generally.

11. Miscellaneous

11.1 Publicity

No party may make any public announcement or press release regarding the existence, content, performance or any part of this MoU except about anything that is already public knowledge other than through their fault, without the prior written consent of the other Parties, which consent shall not be unreasonably withheld. Without limiting clause 8, no Party may include any other Party's Confidential Information in a public announcement or press release without the prior written consent of the other Party.

11.2 Subject to clause 11.1, Nissan and Renault agree that the New South Wales Government may at any time make a public announcement or press release concerning any policies, programs or other activities it proposes regarding subject matter relevant to this MoU, such as EVs, but the New South Wales Government must first use reasonable efforts to tell Nissan and Renault of its intention to do so.

11.3 Neither Nissan nor Renault may make any public announcement or press release regarding any New South Wales Government proposed policies, programs or other

activities, which, to avoid doubt, is the New South Wales Government's Confidential Information. Nissan and Renault may comment on any New South Wales Government existing policies, programs or other activities but only to the extent the information commented on is already public knowledge.

11.4 Assignment

No Party shall have the right, power or authority to assign this MoU or any of its rights or obligations hereunder to any third party, without the prior written consent of the other Party. Any such assignment without the other Parties' prior written consent shall be null and void.

11.5 Amendment or waiver

A waiver, amendment or modification of any term or condition of this MoU must be in writing and signed by all Parties. No waiver by any Party of any breach hereunder shall be deemed a waiver of any other breach or any subsequent breach.

11.6 Governing law

This MoU shall be governed by and construed in accordance with the substantive laws of the New South Wales Government.

11.7 Dispute resolution

The Parties agree that any dispute arising under this MoU will be dealt with as follows:

- (a) the Party claiming that there is a dispute will give to the other Parties a written notice setting out the nature of the dispute
- (b) the key personnel of the Parties will try to resolve the dispute in good faith by direct negotiation within 10 business days of a Party giving notice in accordance with this clause 11.7
- (c) if the key personnel are unable to resolve the dispute by direct negotiation within 10 business days, key personnel of each Party will, within a further 5 business days, refer the dispute for resolution by the Minister of the Department of Environment, Climate Change and Water NSW and a corporate officer of Nissan and Renault
- (d) should the dispute remained unresolved both parties agree to third party arbitration by the Institute of Arbitrators and Mediators Australia or equivalent accredited body.

11.8 The Parties shall cooperate fully with any process instigated under clause 11.7 in order to achieve a speedy resolution.

11.9 Despite the existence of a dispute, the Parties will continue to perform their obligations under this MoU.

11.10 Relationship

Nothing contained herein shall be deemed to create an agency, joint venture, franchise relation or joint and several liability between the Parties. For the avoidance of doubt, the Parties expressly agree that neither Nissan nor Renault are responsible for the acts or omission of the other.

11.11 Language

This MoU shall be executed in English, which shall be deemed the original language. Should this MoU be translated into a language other than English, the English language version shall control and prevail over any translation thereof.

11.12 Notices

Notices required in the course of the performance of this MoU shall be served as follows:

If to Nissan: Nissan Motor Co. Ltd
Attention: Rayna Handelman
Fax number:
Phone number:
E-mail: rayna@mail.nissan.co.jp

If to Renault: Renault s.a.s.
Attention:
Fax number:
Phone number:
Email:

If to the New South Wales Government:
Department of Environment, Climate Change and Water NSW
Attention: Zoe De Saram
Fax number:
Phone number:
Email: zoe.desaram@environment.nsw.gov.au