



**General Terms and Conditions** for the provision and use of Applications and Data Content  
for Publishers ("GTC")

## 1 Definitions

- 1.1 **"Applications"** means all software applications, tools, user interfaces, portals, or other programs (including mobile apps and web-based applications) provided by the OEM that serve to access, process, display, analyze, distribute, or otherwise use data content. The handling of the provided applications is further specified in the respective Individual Order. The data content themselves is not considered applications.
- 1.2 **"Data Content"** means all information provided or made accessible by Mercedes-Benz AG in connection with repair, maintenance, diagnosis, or operating information as well as flash and coding solutions, regardless of format or medium. This includes, among others, technical documentation and manuals, repair and maintenance instructions, or other content designated as such by the OEM, which are further specified in the respective Individual Orders. Independent software programs or applications are not included, unless these are expressly provided as data content.
- 1.3 **"Certificates"** means digital certificates or other authentication and authorization evidence, which are issued in particular within the framework of the CeBAS system (e.g., Certificate-Based Authentication System or a comparable OEM authentication system). Further details on the provision of certificates result from the respective "General Terms and Conditions for the provision and use of DCS Certificates for Publishers" and Individual Order and are specified there.
- 1.4 **"Other Content"** is content provided under the Contract without themselves being data content or applications.
- 1.5 **"Applications and Data Content"** are applications, data content, and other content together.
- 1.6 **"Publisher"** or **"Re-Publisher"** (hereinafter together "Publisher") means any independent economic operator within the meaning of Regulations (EU) No 566/2011 and No 64/2012 that has its registered office within the EU, the EFTA Member States and the United Kingdom and is authorized by Mercedes-Benz AG to use the applications and data content relating to the brands of Mercedes-Benz Group AG in accordance with the Contract, and that produces and distributes, inter alia, technical service and repair information and diagnostic devices for the automotive industry within the EU, the EFTA Member States and the United Kingdom.
- 1.7 **"Derived Publisher Data"** means data, data sets, content, or information generated, processed, analyzed, aggregated, transformed, or enriched by the Publisher based on the data content.

Derived Publisher Data may in particular include:

- statistical evaluations and aggregations,
- anonymized or sufficiently abstracted data sets,
- independently created classifications or taxonomies,
- data collections submitted or transformed by the Publisher.

Classifications, taxonomies, or other data structures created by the Publisher through reverse engineering or other forms of reverse engineering of the data content or otherwise are all content of the Publisher, for which the Publisher is responsible. Mercedes-Benz AG is not responsible for such content and assumes no liability or warranty for them.

Not considered as Derived Publisher Data are:

- mere format conversions,
- unchanged or only slightly edited data content.

The classification as Derived Publisher Data does not affect the continuing rights of Mercedes-Benz AG to the original data content.



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- 1.8 "Access System" is the portal, application, or interface (e.g., web portal and/or API) provided by Mercedes-Benz AG through which applications and data content are provided.
- 1.9 "User Account" is an account (including sub-accounts) provided by Mercedes-Benz AG through which the Publisher obtains access to applications and data content.
- 1.10 "Framework Agreement" means the Framework Agreement on the Provision and Use of Applications and Data Content under which Individual Orders within the meaning of the Framework Agreement are concluded and which are each supplemented by these GTC (the Framework Agreement, the Individual Order, and these GTC together also the "Contract"). Unless otherwise regulated in these GTC, the definitions as used in the Framework Agreement apply.
- 1.11 "Applicable Law" means all laws, ordinances, official orders, regulatory requirements, and binding technical or administrative requirements that apply directly to a Party in connection with the Contract or the use, provision, or processing of the data content and applications provided under this Contract. For Mercedes-Benz AG, this includes in particular legal requirements of the law of the European Union (EU) or other countries outside the EU or the European Economic Area (EEA) that directly obligate the manufacturer, in particular in connection with the provision of repair and maintenance information or other vehicle data.
- 1.12 "Written Form" requires at least an advanced electronic signature, which must be effected by suitable methods of electronic data exchange (e.g., the Mercedes-Benz company's own application "eSigning").

## 2 Service Content, Individual Orders, and Contracting Parties

- 2.1 The Mercedes-Benz AG provides applications and data content for vehicles distributed under a brand of the Mercedes-Benz Group AG to enable Publishers to access the applications and data content and grants Publishers the rights required for the use agreed in the respective Individual Order.
- 2.2 These GTC become part of every Individual Order for the use of applications and data content for Publishers and apply to all services of Mercedes-Benz AG in connection with the provision of the applications and data content.
- 2.3 Currently, depending on the design of the Individual Order by the Publisher, the services provided include services from the Product Clusters, among others:
- XENTRY Data BASIC RMI
  - XENTRY Data DIAGNOSIS
  - XENTRY Data ADVANCED

which are further defined in the respective Individual Order.

- 2.4 The provision of data content and applications under an Individual Order may be effected by enabling read access (online), via an API (interface), or via other electronic access paths offered by Mercedes-Benz AG. The respectively concretely agreed scope of services, the activated modules, any access periods, technical specifications, prices, and other product-related parameters result from the respective Individual Order and the associated Annexes.
- 2.5 For an Individual Order, the Publisher must complete the order form provided by Mercedes-Benz AG and transmit it to Mercedes-Benz AG. Unless expressly regulated otherwise in the order form, the Publisher is bound to his order for a period of 14 days.



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- 2.6 An Individual Order only comes into existence upon express acceptance by Mercedes-Benz AG. Acceptance occurs by signing the order form by Mercedes-Benz AG in written form and returning the order form signed by Mercedes-Benz AG to the Publisher. The order form countersigned by Mercedes-Benz AG, which the Publisher receives, simultaneously constitutes the order confirmation of Mercedes-Benz AG. If Mercedes-Benz AG does not wish to accept an order, Mercedes-Benz AG will inform the Publisher thereof within a reasonable period.
- 2.7 The provisions in the respective order form and the supplementary product-specific information are decisive for the conclusion and content of the Individual Order.
- 2.8 The contracting parties to an Individual Order are Mercedes-Benz AG and the respective Publisher. The Publisher is not entitled to transfer the right of use granted under this Contract to third parties, grant sub-licenses, or make provided applications and data content accessible to third parties. With prior consent in written form by Mercedes-Benz AG, the Publisher may grant sub-licenses to affiliated companies of the Publisher within the meaning of Sections 15 et seq. AktG in the contract territory to the extent permitted to the Publisher and may also pass on data content and applications to this extent. The Publisher is responsible for ensuring that affiliated companies comply with the provisions of this Agreement. Affiliated companies are listed in **Annex D**. Changes regarding these companies require consent in written form by Mercedes-Benz AG and must be continuously updated in **Annex D**. Mercedes-Benz AG is entitled to decide on the respective consent at its own discretion.
- 2.9 Mercedes-Benz AG is entitled to transfer this Contract and all or some of the rights and obligations arising from this Contract in whole or in part to companies affiliated with it within the meaning of Sections 15 et seq. AktG ("Group Companies") or other third parties. Consent of the Publisher is not required for this. Mercedes-Benz AG will inform the Publisher of a transfer to a Group Company or another third party in text form. The transfer becomes effective upon receipt of the notification by the Publisher, unless a later point in time is specified in the notification. To the extent that a contract transfer or debt assumption is required for the transfer of certain obligations, the Publisher hereby grants its consent to the contract or debt assumption by the Group Companies or other third parties mentioned in sentence 1. Mercedes-Benz AG remains responsible toward the Publisher until full performance of the obligations arising up to the time of transfer.
- 2.10 General terms and conditions of the Publisher or other third parties do not become part of the Contract, even if they have not been objected to by Mercedes-Benz AG.

### 3 Registration, Access, and Protection of Access Data

- 3.1 Depending on the technical design, registration may require that the Publisher apply for and receive a user ID before accessing the access system. The Publisher transmits to Mercedes-Benz AG all information necessary for the provision of such an ID and access to the access system and the respective applications and data content. Further information on this is explained in the product-specific service descriptions. All statements made to Mercedes-Benz AG during registration must be truthful.
- 3.2 The access data provided by Mercedes-Benz AG for the use of the applications and data content (personalized identity (User ID) and passwords) are intended exclusively for use by the authorized Publishers and their respective authorized individual employees. Any automated retrieval via scripts or systematic copying or the like is not permitted. The Publisher must also impose these obligations on its employees. Exceptions such as Robotic Process Automation require review and individual approval in written form by Mercedes-Benz AG. The Publisher is responsible for maintaining the confidentiality of the respective employee logins and will instruct its employees accordingly.



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Use of the provided access data by other persons, including those within the Publisher's company (e.g., as "group users" or the like), is not permitted, even if the respective persons otherwise belong to the authorized user group. Depending on the product, there may be different user roles, which are defined separately in the respective Individual Order where applicable.

- 3.3 The Publisher undertakes to use the access data provided to it exclusively for the applications and data content officially provided by Mercedes-Benz AG for the agreed purposes, not to pass them on to third parties or make them accessible to third parties, and to take all reasonable precautions to exclude accidental disclosure. Third parties within the meaning of this GTC are all people or companies not involved in the conclusion of this Contract. This also includes affiliated companies of the Publisher as well as their respective employees and service providers commissioned by them. The passing on of access data constitutes a material breach of contract. The use of access data in connection with other content or applications not provided by Mercedes-Benz AG under the Contract is not permitted (e.g., illegally acquired software). In the context of product monitoring and security, data and accesses are monitored to counteract misuse. Section 2.8 remains unaffected by this provision.
- 3.4 Any type of loss of access data (regardless of the reason), unauthorized disclosure to unauthorized persons, misuse (including suspicion of misuse), and other comparable events that could affect the security of the access system as well as the applications and data content must be reported to Mercedes-Benz AG immediately via the communication path provided by Mercedes-Benz AG for this purpose in the product specifications.

## 4 Right of Use

- 4.1 The applications and data content are intended exclusively for use by the Publisher in accordance with the provisions of the Framework Agreements for BASIC RMI, ADVANCED and DIAGNOSIS, this GTC, and the respective Individual Order. Mercedes-Benz AG grants Publishers a simple, non-exclusive, spatially limited to the acquired countries and temporally limited according to the provisions of this GTC and the respective Individual Order and, unless provided in this GTC, non-sub-licensable and non-transferable right of use for their own use of the applications and data content for exploitation in their own software and hardware products and services, among others in the field of repair and maintenance services for vehicles of the brands of Mercedes-Benz AG or other brands of Mercedes-Benz Group AG, in accordance with the provisions of applicable law. The right to use the access systems is limited to the respective contract term.
- 4.2 To the extent agreed in the respective Individual Order and technically provided for in the access system, the right of use to data content and applications includes
- displaying/reading,
  - downloading/storing,
  - structuring, technical preparation, and integration into own databases or information systems, as well as
  - marketing as part of the Publisher's own products and services,

to the extent this is necessary for the provision of own products and services for, among others, maintenance, diagnosis, and repair or other services of vehicles of Mercedes-Benz AG or other brands of Mercedes-Benz Group AG for independent market participants in the aftermarket. Use that goes beyond the right of use described above, in particular replicating and attempting to build a shadow database, local copy, or permanent storage system, is expressly prohibited. Use by the Publisher that goes beyond this constitutes a breach of this Contract.



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- 4.3 Regardless of Sections 4.1 and 4.2, all other rights to the applications and data content, including their subsequent further developments and additions made by Mercedes-Benz AG, remain exclusively with Mercedes-Benz AG or with the original software suppliers.
- 4.4 The Publisher hereby grants Mercedes-Benz AG a simple, non-exclusive, gratuitous, irrevocable, temporally, spatially, and content-wise unlimited, as well as wholly or partially transferable and sub-licensable right of use to all feedback, suggestions, improvement proposals, error reports, test results, usage observations, and other information that the Publisher or its users transmit in connection with Mercedes-Benz AG's services, regardless of whether this occurs orally, in writing, or in any other form ("Feedback"). This right of use authorizes Mercedes-Benz AG to use the Feedback in any form and in any medium, in particular for further development, improvement, adaptation, reproduction, and exploitation of the applications, the data content, and the access system as well as other products and services of Mercedes-Benz AG or affiliated companies, each in accordance with the provisions of applicable law and authorizes Mercedes-Benz AG to enforce corresponding rights independently and without the involvement or consent of the Publisher.

To the extent that protectable work results (in particular texts, concepts, models, data preparations, annotations, or other content) arise within the framework of the Feedback or the use of the services and belong to the Publisher originally, the Publisher also grants Mercedes-Benz AG the usage rights described above with respect to the provider. To the extent a transfer is required, this is deemed to have occurred hereby.

The Publisher waives, to the extent legally permissible, the right to author attribution (Section 13 UrhG) with regard to the Feedback and will, if necessary, obtain all necessary declarations and consents from the natural persons affected thereby.

Mercedes-Benz AG is not obliged to use or implement feedback. The Publisher has no claim to remuneration, participation, or other consideration.

- 4.5 The applications and data content are provided in the form and as long as they are also used by Mercedes-Benz AG or are available to it. The conditions for provision are as described in the Individual Orders. Due to the continuous further development of the respective systems and system landscapes, Mercedes-Benz AG is entitled to change data formats, API structures, transmission paths, and access methods at any time, whereby Mercedes-Benz AG will give due consideration to the interests of the Publisher in doing so. No further claim exists (in particular no claim to financial compensation).
- 4.6 The processing and handling of data content by third parties on behalf of the Publisher is generally not permitted. With prior consent in written form by Mercedes-Benz AG within the framework of the respective Individual Order, the right to process and handle may be granted to affiliated companies as well as to external service providers of the Publisher to be named in advance and released by Mercedes-Benz AG. The Publisher is responsible for ensuring that its affiliated companies and corresponding third parties comply with the provisions of this Contract just as it does. The Publisher's affiliated companies are each listed as **Annex D** to the Framework Agreement. Changes regarding these companies require consent in written form by the Parties and must be continuously updated in **Annex D**. To ensure the security of the data content and applications, Mercedes-Benz AG may refuse consent for good cause, which must be justified to the Publisher accordingly.
- 4.7 The Publisher is entitled to make the data content usable within its application. Beyond this, it is not permitted to pass on the data content to third parties. This does not apply to "Derived Publisher Data" within the meaning of Section 1.7 of this Contract.



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- 4.8 Setting up an interface for third parties ("Interface Partners") or passing on a Mercedes-Benz AG interface description to an interface partner not approved by Mercedes-Benz AG that enables the passing on of the data content or the data generated with the Publisher's application to third parties is also considered as passing on. The provision of a proprietary interface developed by the Publisher itself must not conflict with the business interests of Mercedes-Benz AG. The Publisher shall provide Mercedes-Benz AG with a current list of interface partners upon request, to the extent this is necessary to verify compliance with this Contract.
- 4.9 The Publisher undertakes to cease access to data content and applications through interfaces or interface partners that do not comply with the provisions of this Section 4 immediately and to prove this to Mercedes-Benz AG. Proof is provided by sending a copy of the access denial, technical setting, and/or termination notification.
- 4.10 Portions of Applications and Data Content containing software may contain Free and Open Source Software (hereinafter "FOSS") components. Mandatory information regarding the FOSS components used is incorporated into the applications and data content or delivered with them by other means. The granting of rights under this Section 4 by Mercedes-Benz AG does not apply to FOSS. Publishers obtain licenses for FOSS directly from the right holder as predefined in the respective FOSS license. The Publisher is therefore responsible for complying with the FOSS licenses in the context of its own exploitation of the FOSS components. If any term of this GTC contradicts a FOSS license, the FOSS license shall apply to the respective FOSS component.
- 4.11 Upon request by Mercedes-Benz AG, compliance with the usage rights under this Contract must be proven.
- 4.12 Sections 69d (2) and (3) as well as Section 87e UrhG remain unaffected by the provisions in Section 4.
- 4.13 In the event of termination of the Contract or an Individual Order, the right of use to the provided applications and data content granted under this Agreement generally expires. This does not apply to Derived Publisher Data. The Publisher remains entitled to continue to use and/or distribute data content or other content, regardless of whether they have already been integrated into its products, for a further six (6) months from termination of the Contract together with its products or services. After expiration of the six (6) months, the Publisher must cease all use and distribution thereof (depletion period). During this period, Mercedes-Benz AG is no longer obliged to provide applications and data content, in particular updates or updated data content or other content as well as special accesses or interfaces to applications. The Publisher must take the corresponding consequences into account in relation to its customers and regulate them contractually if necessary. Within the depletion period, the Publisher has no claim to updates or support services from Mercedes-Benz AG. The right to use certificates, among others, for flashing or coding control units or other components expires upon termination of the Contract. Further use of these certificates, e.g., for renewed flashing or coding operations, is not permitted after completion of the respective operations.
- 4.14 In case of suspicion or knowledge of a breach of this Contract by the Publisher, Mercedes-Benz AG is entitled to temporarily block individual or all accesses or products of the Publisher until the matter is fully clarified. Furthermore, Mercedes-Benz AG is entitled to immediately and permanently block the access data and the applications and data content if a serious breach of usage rights is confirmed after completion of the examination. Serious breach of usage rights in this context is classified as intentional conduct or abusive behavior. The Publisher can avert these measures if he dispels the suspicion by submitting suitable evidence at his own expense. The suspension does not give rise to claims by the Publisher for damages or other compensation.



## 5 Obligations of Mercedes-Benz AG, Support, and Updates for Applications and Data Content

- 5.1 Mercedes-Benz AG is obliged to provide the applications and data content in accordance with the respective Individual Order and the applicable service description.
- 5.2 Applications and data content are provided "as is". Mercedes-Benz AG assumes no warranty for correctness, completeness, and suitability for a particular purpose.
- 5.3 The Parties agree that the applications and data content provided under this Contract are provided exclusively for the purpose of the statutory and contractual obligations of Mercedes-Benz AG, in particular in accordance with Article 61 et seq. Regulation (EU) 2018/858 and delegated legal acts and corresponding successor regulations.
- 5.4 Mercedes-Benz AG assumes no warranty that the provided data content and applications, including their structure, content, format, or availability, meet the legal, regulatory, or technical requirements that apply to the Publisher or its business activities. In particular, Mercedes-Benz AG is not obliged to ensure that the data content and applications meet requirements that arise from legal provisions that do not affect Mercedes-Benz AG but the Publisher or that apply in other jurisdictions – in particular outside the European Union. The above provision does not affect any independent statutory obligations of Mercedes-Benz AG to provide data content, in particular those arising from EU type approval law and otherwise applicable law.
- 5.5 The Publisher is responsible for checking whether the data content and applications provided under this Contract are suitable for its intended use and whether their use complies with the statutory and regulatory requirements applicable to it.
- 5.6 The Parties agree that the services serve exclusively to fulfill the statutory provision obligations of Mercedes-Benz AG and do not constitute a business-critical IT service.
- 5.7 The provision and use of the applications and data content as well as any support services may be subject to certain restrictions, interruptions, and/or inaccuracies that are outside the sphere of influence of Mercedes-Benz AG and that may be caused in particular by events of force majeure, including strikes, epidemics, lockouts, natural disasters, official orders, or by technical or other measures or incidents (e.g., lack of internet access, repairs, maintenance, software updates and extensions) that must be carried out on systems of Mercedes-Benz AG. Corresponding, planned measures will be announced as far as possible in good time beforehand and, as far as possible, carried out at times outside normal working hours CET (Central European Time) on working days. In the event of the aforementioned events, the performance obligations of Mercedes-Benz AG are temporarily suspended. No damages or other secondary claims exist for damages based on such events and not attributable to Mercedes-Benz AG. Section 11 remains unaffected by this.
- 5.8 Mercedes-Benz AG provides user support during regular service hours on working days from 8:00 to 18:00 CET (Central European Time, "Service Hours"). The use of support requires the existence of an Individual Order for the use of the data access system as well as data content and/or applications.
- 5.9 Support inquiries must be transmitted to Mercedes-Benz AG via the ticket system provided by Mercedes-Benz AG for this purpose or via the communication path designated by Mercedes-Benz AG. Support inquiries are processed during service hours. Outside these service hours, support inquiries are generally not answered or processed.



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- 5.10 The applications and data content must be maintained at regular intervals and, if necessary, at short notice to enable proper provision of the respective services (e.g., by installing updates). This may result in the services not being available in individual cases for a temporary period. Mercedes-Benz AG will inform Publishers of planned maintenance work and its expected duration in good time, generally at least 48 hours in advance. This also applies to the installation of security updates, patches, system hardening, or other security and compliance measures. Corresponding measures will be announced as far as possible in good time beforehand and carried out at times outside normal working hours.

## 6 Obligations of the Publisher

- 6.1 The Publisher ensures that the technical requirements and increased security requirements for the operation of the respective applications and data content are met. The respective requirements result from the Individual Order as well as the supplementary product information.
- 6.2 The Publisher must always use the applications and data content in the respective current version provided by Mercedes-Benz AG and keep them on a current data status, to the extent the Publisher can influence this. A current data status exists when the Publisher – depending on the provision – uses exclusively the most recently provided version of the data content by Mercedes-Benz AG. For online data, access must always be made to the currently available data stocks. When using API products, all updates must be implemented continuously and immediately. The Publisher must ensure that the current version of the data provided by Mercedes-Benz AG is always integrated into its products and services.
- 6.3 The Publisher is obliged to professionally review the provided data content before publication. It must adopt security and warning notices unchanged, mark version levels, not modify security-relevant content, inform users of its products about risks of improper use such as repairs, and only admit authorized users. Responsibility for any editorial, technical, or content-related further processing lies exclusively with the Publisher.
- 6.4 Within the framework of the use of the applications and data content, the Publisher undertakes to apply (i) technical and organizational measures in accordance with the state of the art to protect the provided applications and data content as well as the access system (including through authentication systems and measures to prevent unauthorized data transmission), and (ii) with increased security requirements to apply the measures prescribed by Mercedes-Benz AG for securing user data and applications. These include measures such as a mandatory identification process as a basis for certain access rights and, for example, multi-factor authentication during the login process. Further appropriate measures for securing may be introduced at any time.
- 6.5 All warning notices and security-relevant information as well as user information given in the respective applications and data content and usage rights must be strictly observed by the Publisher and users of its products. The Publisher is liable for any damages caused by a violation thereof.
- 6.6 The Publisher is obliged not to commit or omit actions that could lead to criminal liability for, among others, fraud or breach of trust, insolvency offenses, offenses against competition, granting advantages or corruption of persons employed by the Publisher or third parties. In the event of a violation, Mercedes-Benz AG is entitled to withdraw from all existing legal transactions with the Publisher without notice and to terminate all negotiations.
- 6.7 Without prejudice to the foregoing, the Publisher is obliged to comply with all laws and regulations affecting it and the business relationship with Mercedes-Benz AG.



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- 6.8 The applications and data content as well as all associated documentation, information, or materials may be subject to export control regulations. The Publisher undertakes to comply with all statutory requirements and to export or re-export the applications and data content or associated technical documentation, information, or materials exclusively to the countries contractually agreed with Mercedes-Benz AG. Export or re-export to other countries as well as diversion, transfer, or disclosure to third parties is not permitted without prior approval by Mercedes-Benz AG.
- 6.9 The Publisher shall not sell, export or re-export, directly or indirectly, to the Russian Federation or Belarus or for use in the Russian Federation or Belarus any goods or technology supplied under or in connection with this Agreement.

AND/OR

- The Publisher shall also not sell, supply, export, license or transfer, directly or indirectly, in any other way intellectual property rights or trade secrets as well as granting rights to access or re-use any material or information protected by intellectual property rights or protected as trade secret to the Russian Federation or Belarus or for use in the Russian Federation or in Belarus. The Publisher is required to prohibit possible sublicensees of such intellectual property rights or trade secret, from using such intellectual property rights, trade secrets or other information in connection with common high priority items as listed in Council Regulation (EU) 833/2014 that are intended for sale, supply, transfer or export, directly or indirectly, to the Russian Federation or for use in the Russian Federation.
- 6.10 The Publisher shall undertake its best efforts to ensure that the purpose of Clause 6.9 is not frustrated by any third parties further down the commercial chain, including by possible resellers and/or possible sublicensees of such intellectual property rights or trade secret.
- 6.11 The Publisher shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of Clause 6.9.
- 6.12 Any violation of Clauses 6.9, 6.10 and 6.11 shall constitute a material breach of an essential element of this Agreement, and Mercedes-Benz AG shall be entitled to seek appropriate remedies, including, but not limited to termination of this Agreement, and compensation of any costs, damage or liability incurred by Mercedes-Benz AG resulting from the infringement, including the imposition of fines.
- 6.13 The Publisher shall immediately inform Mercedes-Benz AG about any problems in applying Clauses 6.9, 6.10 and 6.11, including any relevant activities by third parties that could frustrate the purpose of Clause 6.9. The Publisher shall make available to Mercedes-Benz AG information concerning compliance with the obligations under Clauses 6.9, 6.10 and 6.11 within two weeks of the simple request of such information.
- 6.14 The Publisher is obliged to immediately notify Mercedes-Benz AG in case of suspicion or knowledge of its breach of the provisions of this Section 6.

## 7 Term and Termination

- 7.1 Individual Orders for applications and data content have a term of one (1) year and are automatically extended by a further year unless terminated by Mercedes-Benz AG or the Publisher with an ordinary notice period of three (3) months at the end of a month in written form.



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- 7.2 An Individual Order as well as the Framework Agreement may be terminated without notice by Mercedes-Benz AG in written form for good cause. Good cause exists in particular when
- the Publisher materially acts contrary to the provisions of the Contract, in particular in accordance with Sections 4 and 6, such as
  - the Publisher uses, reproduces, manufactures, or has manufactured the applications and data content without authorization, passes on the applications and data content or the access data provided to it to third parties without authorization, or uses them for remote access,
  - uses the access data provided to it in applications and data content not officially provided by Mercedes-Benz AG (e.g., illegally acquired software),
  - the Publisher ceases operations with/without succession,
  - the Publisher no longer belongs to the authorized user group within the meaning of the Contract or changes within this user group,
  - the Publisher does not pay the remuneration agreed in the Individual Order despite due date and reminder.
- 7.3 The Publisher's right to terminate the Contract in accordance with statutory provisions remains unaffected.

## 8 Remuneration and Payment

- 8.1 The costs and payment modalities for the applications and data content are governed by the respective valid price list, which is attached as **Annex F** to the Individual Order.
- 8.2 The costs are generally invoiced monthly unless other conditions for invoicing are agreed in the Individual Order.
- 8.3 Unless otherwise agreed, invoices are due for payment within 30 days from the invoice date. A different payment term may result from the respective Individual Order or from the invoice. Payment is deemed to have been made when it has been credited to the account specified on the invoice. The Publisher must immediately obtain and continuously maintain all official or other approvals required to make payments to Mercedes-Benz AG and to pay all required taxes and levies.
- 8.4 The Publisher must pay the remuneration agreed for the ordered access or usage rights, regardless of whether and to what extent the applications and data content are actually used with the ordered number of usage rights or not.
- 8.5 All bank fees and charges are borne by the Publisher.
- 8.6 In the event of payment default, Mercedes-Benz AG is entitled to claim damages by calculating interest in the amount that is due for the default period in accordance with applicable laws. This amount may be increased if Mercedes-Benz AG can prove greater damage, or reduced if the Publisher can prove that the damage is lower. Payment default of more than 60 days from the due date of the invoice constitutes a gross breach of contract.
- 8.7 The stated and agreed prices are net prices without value added tax, are quoted in euros, and may be increased by the applicable national value added tax or other indirect taxes, unless neither a tax exemption nor a zero tax rate or a reverse charge applies.



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- 8.8 If an exemption from value added tax/VAT or other indirect taxes depends on further requirements, Mercedes-Benz AG is entitled to invoice a corresponding value added tax amount or value added tax deposit amount as security, which will be refunded without interest after the requirements have been demonstrably met, e.g., receipt of proper documents or evidence.
- 8.9 A service recipient established in the EU communicates its valid value added tax identification number (VAT ID) of its country of residence or, in the case of service receipt through its fixed establishment, the VAT ID of the EU member state of its fixed establishment.
- 8.10 If the Publisher does not pay the owed remuneration on time, it goes into default after the first reminder.
- 8.11 Mercedes-Benz AG reserves the right to withhold or reduce the services to be rendered until the invoice is settled by the Publisher and, if necessary, to terminate the contractual relationship.
- 8.12 The Publisher may only offset claims against claims of Mercedes-Benz AG if the Publisher's counterclaim is undisputed or a legally enforceable title exists. Counterclaims of the Publisher from the same contractual relationship are excluded from this. It may only assert a right of retention to the extent that it is based on claims from the same contractual relationship.
- 8.13 Price changes by Mercedes-Benz AG remain reserved even within existing contracts. Mercedes-Benz AG reserves the right to adjust the stated prices annually at its reasonable discretion (Section 315 BGB) to changed costs. In the event of price increases, the Publisher has the right to terminate the Contract within 14 days after receipt of the change notification in text form. After this period, the price change is deemed accepted.

## 9 Tax Clause

- 9.1 The Parties endeavor to take all measures to achieve a possible reduction or elimination of taxes that may arise in connection with this Contract in accordance with national regulations and, where applicable, the valid agreement for the avoidance of double taxation on taxes on income and assets between the Publisher's country and the Federal Republic of Germany ("Agreement").
- 9.2 All taxes and levies of any kind that arise in connection with payments by the Publisher and that are imposed on Mercedes-Benz AG by the German tax authorities are borne by Mercedes-Benz AG. All taxes and levies of any kind that arise in connection with payments by the Publisher in the Publisher's country or are to be paid there are borne by the Publisher. The preceding sentence does not apply to taxes on income that are imposed or to be withheld in accordance with national regulations and with the Agreement, where applicable.
- 9.3 The agreed prices for the provision of contractual services are understood plus statutory value added tax, to the extent its calculation is legally prescribed and neither a zero tax rate, reverse charge nor another value added tax exemption applies. The invoice must meet all statutory requirements required for input tax deduction or reimbursement of value added tax.
- 9.4 If the Publisher is obliged under national regulations and under the Agreement, where applicable, to withhold taxes on payments under this Contract, the Publisher will do everything within its power to ensure that the payment to Mercedes-Benz AG is taxed at the time of payment at the reduced withholding tax rate in accordance with the Agreement, where applicable, or in accordance with national regulations.



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- 9.5 If the Publisher is obliged to withhold and pay taxes on payments under this Contract, the Publisher will transmit to Mercedes-Benz AG without culpable delay the original withholding tax receipts of the national tax authority and all other documents from which Mercedes-Benz AG as taxpayer, the amount of the tax payment, the tax law and the legal regulation on which the tax payment is based, the tax rate or the assessment basis underlying the tax payment, as well as the date of the tax payment emerge.

A copy of the documents should be sent to the following email address: [withholdingtax@mercedes-benz.com](mailto:withholdingtax@mercedes-benz.com).

- 9.6 If the Publisher is obliged to withhold taxes on payments under this Contract and/or the respective supplementary agreements and the Publisher has not properly paid the withheld taxes in whole or in part to the competent tax authority, any outstanding withholding taxes, interest accruing thereon and any default charges or other sanctions due to the omitted or incorrect payment of the tax to be withheld are borne exclusively by the Publisher. If, however, the Publisher has withheld and paid taxes to the tax authority without a corresponding obligation to withhold existing under applicable national law and/or the Agreement, the Publisher indemnifies Mercedes-Benz AG against damages arising therefrom, including any interest payments actually received by the tax authority.
- 9.7 If the withholding tax receipts of the tax authority and the documents are issued in a language other than German or English, the Publisher declares itself willing to have a translation of the documents into German or English language arranged at its own expense upon request by Mercedes-Benz AG and to have the correctness of the translation officially or notarially certified.

## 10 Safety Notices

- 10.1 All warning notices and security-relevant information as well as user information given in the respective applications and data content and usage rights must be strictly observed by the Publisher. The Publisher is liable for any damages caused by a violation thereof.
- 10.2 Furthermore, subsequent further developments and additions to the provided applications and data content must be strictly observed.

## 11 Liability and Penalties

- 11.1 The applications and data content also contain links to pages on the Internet. Mercedes-Benz AG wishes to point out that it has no influence on the design and content of the foreign pages to which links are made. Therefore, no warranty is given for the timeliness, correctness, completeness, or quality of the information provided there. Against this background, Mercedes-Benz AG hereby distances itself from all content of these linked pages. This declaration applies to all links to external pages contained in the applications and data content and their content.
- 11.2 It is the responsibility of the Publisher to check and ensure that the use of the applications and data content in the Publisher's products and services does not cause damage to its customers. To the extent Mercedes-Benz AG provides the applications and data content to the Publisher in accordance with the contract, Mercedes-Benz AG is not responsible for corresponding damages.



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- 11.3 If Mercedes-Benz AG is liable under statutory provisions for damage caused by slight negligence, Mercedes-Benz AG is liable in a limited manner:

Liability exists only in the event of breach of material contractual obligations, such as those that the contract intends to impose on Mercedes-Benz AG according to its content and purpose or whose fulfillment enables the proper execution of the contract in the first place and on whose observance the Publisher regularly relies and may rely. This liability is limited to the typical damage foreseeable at the time of conclusion of the contract.

- 11.4 The Parties agree that the typical foreseeable damage within the meaning of Section 11.3 does not exceed EUR 500,000.

- 11.5 The personal liability of the legal representatives, vicarious agents, and employees of Mercedes-Benz AG for damages caused by them through slight negligence is excluded.

- 11.6 Any liability limitations or exclusions under this Section 11 do not apply to damages caused by grossly negligent or intentional breach of duties by Mercedes-Benz AG, its legal representative, or its vicarious agent, as well as in the event of injury to life, body, and health. In these cases, Mercedes-Benz AG is liable in accordance with statutory provisions.

- 11.7 Regardless of fault, any possible liability of Mercedes-Benz AG in the event of fraudulent concealment of a defect, from the assumption of a guarantee or a procurement risk and under the Product Liability Act remains unaffected.

- 11.8 In the event of system failures, shutdowns of accesses, functional changes to the applications and data content as well as deletion of historical data and the elimination of data sources, the liability of Mercedes-Benz AG for any damages (including damages from lost business profits, business interruption, loss of business, or other financial losses) is excluded, to the extent these are not caused by intent or gross negligence on the part of Mercedes-Benz AG. Section 11.5 applies accordingly.

- 11.9 Mercedes-Benz AG is liable for the loss of data only to the extent that the respective Publisher has ensured by usual procedures that the data can be restored with reasonable effort. This includes in particular proper and regular data backups by the Publisher. This does not apply where the backup of the data is an agreed performance obligation of Mercedes-Benz AG.

- 11.10 To the extent tenancy law applies within the framework of the owed services, Section 536a para. 1, first alternative BGB is excluded.

- 11.11 The Publisher indemnifies Mercedes-Benz AG and its affiliated companies, organs, employees, and vicarious agents upon first request from all claims of third parties that are asserted arising from or in connection with

(a) the use, processing, passing on, or other use of the applications and data content by the Publisher or third parties commissioned by it,

(b) a contractual use of the services,

(c) the violation of statutory provisions by the Publisher (in particular data protection, competition, copyright, trade secret, or product liability law).



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The indemnification also includes reasonable costs of legal defense (including court and attorney fees at market rates) as well as other expenses necessary for legal defense.

The indemnification applies to the extent the Publisher is responsible for the obligation breach giving rise to the claim. It does not apply to the extent Mercedes-Benz AG is responsible for the obligation breach giving rise to the claim.

Mercedes-Benz AG will inform the Publisher in text form immediately of claims asserted by third parties. The Publisher will provide Mercedes-Benz AG with all information and documents necessary for legal defense to a reasonable extent and take actions necessary to defend against the claims, to the extent this is possible without violating statutory obligations or rights of third parties.

This indemnification leaves the otherwise agreed liability limitations between the Parties unaffected.

- 11.12 In the event that the applications and data content of Mercedes-Benz AG reach third parties, whether the Publisher or its employees pass them on intentionally or negligently without authorization or intentionally or negligently fail to ensure that they are inaccessible to third parties, a contractual penalty in the amount of EUR 25,000 per breach is to be paid. The assertion of damages with credit for the contractual penalty remains unaffected. The use of the applications and data content must correspond to industry-standard usage behavior and the contractual agreements. Any misuse constitutes a breach of contract.

Misuse is considered to be in particular the following serious breaches that give rise to the justified suspicion of an intention to cause damage or unauthorized commercial use:

- an excessive exceeding of the usual scope of use (e.g., mass calling of WIS documents, in a data volume that gives rise to the suspicion of unauthorized data extraction,
- a significant deviation from the usual usage behavior, which clearly indicates the use of Robotic Process Automation for systematic retrieval of data, or
- any other unauthorized use or provision of the applications and data content that is suitable for unauthorized use of the applications and data content and causing potential damage. In these cases, a contractual penalty in the amount of EUR 10,000 per breach becomes due.

In the event of legal violations, in particular violations of export regulations and applicable sanctions, a contractual penalty of EUR 15,000 per breach is to be paid. This regulation applies independently of a passing on of the data to third parties.

## 12 Audit and Control Rights

- 12.1 Mercedes-Benz AG is entitled to review the contractual use of the applications and data content by the Publisher during the term of this Contract. For this purpose, the Publisher must provide all information required for this in good time and completely.
- 12.2 Furthermore, Mercedes-Benz AG is entitled to conduct on-site inspections (audits) at the Publisher after appropriate prior notice and during normal business hours or to have them conducted by authorized third parties bound by confidentiality, to the extent concrete indications of significant breaches by the Publisher exist that, in the view of Mercedes-Benz AG, require this. For this purpose, the Publisher will grant Mercedes-Benz AG access to systems,



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documents, and information and/or access to business premises and employees, to the extent this is or may be relevant for the clarification of the Publisher's breaches in question. Mercedes-Benz AG will take into account the worthy of protection interests of the Publisher such as existing confidentiality obligations toward third parties and will affect the Publisher's business operations as little as possible.

- 12.3 If breaches of contractual use are found during the review or audit, the Publisher bears the costs incurred by the audit. Further claims of Mercedes-Benz AG remain unaffected.

## 13 Insurance

- 13.1 The Publisher undertakes to maintain appropriate business liability insurance as well as professional liability insurance (including product liability for information products, where market-standard) at its own expense during the entire contract term with an insurer licensed in the EU. The insurances must cover risks arising from the use of API or download accesses as well as possible breaches of obligation by the Publisher with regard to the obligations assumed by the Publisher in the Contract.
- 13.2 The existence or amount of insurance coverage does not constitute a limitation of the statutory or contractual liability of the Publisher.

## 14 Confidentiality

- 14.1 The Publisher is obliged to treat all information – including but not limited to technical and commercial information, plans, findings, information, drafts, and documents – that become known to it during the term of the Contract in connection with the applications and data content or that it receives from Mercedes-Benz AG as confidential, not to pass them on to third parties, to protect them from access by third parties, to use them only for purposes in connection with the use cases defined in the Individual Orders, and to pass them on only to employees who are themselves bound by confidentiality, unless otherwise agreed between the Parties.
- 14.2 This confidentiality obligation does not apply to information:
- that was demonstrably known to the Publisher before the effective date of these GTC,
  - that was demonstrably lawfully acquired by the Publisher from a third party without a confidentiality obligation existing,
  - that is already publicly accessible or becomes publicly accessible without violating the obligations contained in this Framework Agreement,
  - that was demonstrably developed by the Publisher in the course of its own independent work.
- 14.3 The Publisher undertakes to impose the same confidentiality obligation on its employees to whom this information is disclosed as the Publisher has entered into, unless these employees are already subject to an equivalent confidentiality obligation due to their employment contracts.
- 14.4 If development results are reported that can be protected by intellectual property rights, the Parties reserve all rights to such later applied for or granted protection rights.



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- 14.5 The confidentiality obligations regarding information that were made available during the term of these GTC continue for a period of five (5) years after termination of this Framework Agreement.

## 15 Data Protection

- 15.1 The Parties assume that each Party processes personal data that it processes in connection with this Contract as an independent controller within the meaning of Art. 4 No. 7 GDPR. Processing on behalf, whether by Mercedes-Benz AG or the Publisher as processor of the other Party, does not occur.
- 15.2 If and to the extent that processing on behalf within the meaning of Art. 28 GDPR should be necessary in individual cases, the Parties will conclude a separate agreement on processing on behalf.
- 15.3 The Publisher is independently responsible for the lawfulness of data processing, in particular for compliance with the GDPR and other applicable data protection laws.
- 15.4 The Publisher ensures in particular with regard to the transmission of data to Mercedes-Benz AG:
- existence of a legal basis
  - compliance with information obligations
  - implementation of appropriate technical and organizational measures
  - observance of data subject rights
  - data protection-compliant passing on to third parties.
- 15.5 The Publisher will not transmit personal data to Mercedes-Benz AG to the extent no sufficient legal basis exists and all other data protection requirements are also met.
- 15.6 Mercedes-Benz AG is entitled to process personal data transmitted by the Publisher to Mercedes-Benz AG to the extent a corresponding legal basis exists, in particular to the extent this is necessary for:
- provision of access
  - authentication and authorization
  - IT security and abuse prevention
  - system operation and stability
  - fulfillment of statutory obligations
  - enforcement of contractual claims

In particular, the following data may be processed: user identifiers, contact data, access and usage logs, IP addresses, authentication data, FIN and vehicle data

- 15.7 Each Party undertakes to implement appropriate technical and organizational measures in accordance with Art. 32 GDPR.
- 15.8 Each Party will inform the other Party immediately insofar as a data protection breach occurs that may affect the other Party or its data. The Parties will support each other to the extent legally required in the investigation and containment of the data protection breach.



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- 15.9 Each Party fulfills data subject claims independently in its area of responsibility. If necessary, the Parties will support each other appropriately in doing so.
- 15.10 Mandatory data protection obligations of the Parties remain unaffected.

## 16 Amendments to these GTC

- 16.1 The current version of these GTC is accessible at any time on the Internet under [<https://b2bconnect.mercedes-benz.com/de/legal/terms-of-use>]. Upon request, the current version will be sent to the Publisher.
- 16.2 Mercedes-Benz AG is entitled to amend the GTC at any time at its reasonable discretion. If a separate contract contains a regulation on the dynamic inclusion of the respective current version of these GTC, this applies with priority.
- 16.3 In all other cases, Mercedes-Benz AG will inform the Publishers of the amendments in text form (e.g., email) six (6) weeks in advance. If the Publisher does not object within four (4) weeks after receipt of the amendment notification in text form, the amendments are deemed accepted and with expiration of the aforementioned period of six (6) weeks and the continued objectionless use of the applications and data content as amended in agreement.
- 16.4 If the Publisher objects to the amendments, both Mercedes-Benz AG and the Publisher have the right to terminate the Contract or individual Individual Orders affected thereby with a notice period of four (4) weeks.
- 16.5 Mercedes-Benz AG undertakes to inform the Publisher when informing about the amendments about the meaning of silence or non-objection.

## 17 Copyright and Trademarks

- 17.1 The Publisher is not entitled to use MBAG's company name and trademarks, including but not limited to "Mercedes-Benz", "Three Pointed Star in a Ring" and "smart". Particularly the Publisher is not entitled to advertise with the trademarks "Mercedes-Benz" and "smart" for its Contractual Goods.
- 17.2 The Publisher may, however, refer to the fact that the Contractual Goods can diagnose the respective Mercedes-Benz vehicles provided that the reference may not use the Mercedes-Benz logo and "Mercedes-Benz" is written in the same font and size as the other text.

## 18 Final Provisions

The place of performance and exclusive jurisdiction is Stuttgart. The law of the Federal Republic of Germany applies, excluding the application of any conflict of laws rules. The application of the uniform UN Sales Law based on the United Nations Convention of 11.04.1980 on Contracts for the International Sale of Goods is excluded.



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## Further Applicable Documents

- Framework Agreement regarding the Provision and Use of Applications and Data Content for Publishers – BASIC RMI and ADVANCED
- Framework Agreement regarding the Provision and Use of Applications and Data Content for Publishers – DI-AGNOSIS