



Diagnostic Data Euro 5 6

DXX-XX

between Mercedes-Benz AG
and **Company name**

V2.4

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Licence Agreement
relating the provision of Contractual Diagnostic Data
(hereinafter called "this Agreement")

between

Mercedes-Benz AG

Mercedesstraße 120

70372 Stuttgart

GERMANY

- hereinafter called "MBAG" as the Licensor on the one hand -,

and

COMPANY

Street

Postal address

COUNTRY

- together with its subsidiaries and affiliated companies listed in Annex 3 hereinafter called "Publisher"
as the Licensee on the other hand -

- hereinafter MBAG and the Publisher jointly referred to as "Parties" and each being a "Party" -

Valid as of: _____
[date]



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Preamble

- Whereas** MBAG is owner of diagnostic data and digital certificates for vehicles distributed under one of the brands of Mercedes-Benz Group Companies.
- The Publisher intends to manufacture diagnostic tools using the Contractual Diagnostic Data (see section 1.1) and distribute such diagnostic tools in the Contractual Territory (see section 1.3).
- MBAG is willing to provide the Publisher with a licence to use the Contractual Diagnostic Data for the manufacturing of the Contractual Goods (see section 1.2) and the selling of such Contractual Goods in the Contractual Territory. The licence to use the Contractual Diagnostic Data is provided by way of lease against rental fees.
- MBAG is willing to provide the Publisher that has a licence to use the Contractual Diagnostic Data with a licence to provide its customers with the DCS-Certificates (see section 1.6) free of charge by way of gratuitous loan for the intended use.
- Now therefore,** in consideration of the premises and the mutual covenants herein contained, the Parties hereto agree as follows:

Article 1 – Definitions

- 1.1 "Contractual Diagnostic Data" shall mean the diagnostic data necessary to assess electronic functions in vehicles distributed under one of the brands of Mercedes-Benz Group Companies according to Article 61 Par. 7 of Commission Regulation (EU) No 2018/858. In case of doubt, the common understanding in **Annex 2** shall prevail.
- 1.2 "Contractual Goods" shall mean a diagnostic solution or tool using the Contractual Diagnostic Data and, if applicable DCS-Certificates.
- 1.3 "Contractual Territory" shall mean all countries to which Commission Regulation (EU) No 2018/858 of 30 May 2018 is applicable, as listed in **Annex 1**. Any additional countries included in the Contractual Territory shall be previously agreed upon by the Parties ("Additionally Agreed Countries") in Annex 1.
- 1.4 "ECU" shall mean Electronic Control Unit.

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- 1.5 "Security Access" shall mean a diagnostic service to access data and/or diagnostic services, which have restricted access for security, emissions or safety reasons using symmetric cryptography with a seed and key relationship, as outlined in chapter 10.4 of ISO 14229-1:2020.
- 1.6 "DCS-Certificates" shall mean digital certificates with a respective associated private key to access ECUs for secure diagnosis within a security concept based on APCE (authentication with public key infrastructure (PKI) certificate exchange) as outlined in chapter 10.6 of ISO 14229-1:2020. **Annex 10** forms a framework agreement for individual contracts for the loan of specific DCS-Certificates.
- 1.7 "Customer" shall mean any natural person or legal entity using the Contractual Goods.

Article 2 - Type and Scope of Data and DCS-Certificates

- 2.1 The Contractual Diagnostic Data contain exclusively data that are integrated in the diagnostic software used in authorized Mercedes-Benz and smart workshops and running on the XENTRY Diagnosis systems. The Publisher shall fill in the form (Annex 4) and specify the content of the Contractual Diagnostic Data package.
- 2.2 The Contractual Diagnostic Data cover all Euro 5 type-approved vehicle models onwards.
- 2.3 The content of the Contractual Diagnostic Data for all above mentioned ECUs comprises:
- OBD and non-OBD relevant information and data for conduct of diagnosis.
- If parts of the Contractual Diagnostic Data are protected with Security Access, these parts shall be provided by MBAG as well, provided that the Publisher fulfils the rules established in section 3.4. This shall not apply to parts of the Contractual Diagnostic Data protected with Security Access that are connected to flashing of ECUs, these parts shall not be provided to the Publisher.
- 2.4 The Contractual Diagnostic Data is provided online e.g., via "SWAN process" and is containing Contractual Diagnostic Data in a HTML-, ODX and a PDF-format. Language of provision of the Contractual Diagnostic Data will be German and English, dependent on the pre-development system of MBAG. Publisher shall ensure that any recipients of the Contractual Diagnostic Data provided via the online process are natural persons employed by Publisher.
- 2.5 Updates consist of two obligatory update deliveries per year to ensure the up-to-datedness of the Contractual Diagnostic Data running on the Contractual Goods.
- 2.6 DCS-Certificates and their characteristics are described in **Annex 10** (esp. its Appendix 1 "Publisher DCS-Certificate Description"). MBAG reserves the right to adapt **Annex 10** (including its

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appendices) and **Annex 11** from time to time and will inform the Publisher accordingly in textual form (e.g. e-mail).

- 2.7 DCS-Certificates have an independent technical period of validity, which might differ from the update period of the Contractual Diagnostic Data. The Publisher orders the number of required DCS-Certificates for its customers at MBAG. A lending relationship for a specific DCS-Certificate is established when MBAG accepts a request for this DCS-Certificate by issuing it. MBAG provides the DCS-Certificates to the Publisher for the intended use only and they remain property of MBAG. The Publisher forwards the received DCS-Certificates to its customers. A DCS Certificate is either issued for a natural person ("DCS Certificate Holder") or for a User with an assigned person named by the User to be competent and responsible for ensuring its proper handling ("DCS Certificate Responsible").
- 2.8 Publisher shall ensure that any web server(s) used to store or process Contractual Diagnostic Data or DCS-Certificates on behalf of Publisher are located in the Contractual Territory excluding any Additionally Agreed Countries. A comprehensive list of all web server(s) and their physical locations with respective details shall be provided by the Publisher in Annex 12. If there are any changes regarding such web server, the Publisher shall immediately inform MBAG by providing an updated version of this list.
- 2.9 Publisher shall also ensure, that DCS-Certificates issued for the Publisher must not and will not leave the Contractual Territory (including any Additional Agreed Countries). To this end, Publisher shall ensure that its customers are bound accordingly by way of contract. This applies especially to Contractual Goods using DCS-Certificates, whether DCS-Certificates are built in or retrieved by such Contractual Good.
- 2.10 In addition and with priority to this Agreement, the special terms outlined in **Annex 10** shall apply to DCS-Certificates. MBAG provides DCS-Certificates via a technical interface in a pull-process. MBAG provides and services the technical interface and administrates the access data in the PKI (Public Key Infrastructure). The Publisher is responsible for the continuous safe and secure storage of the DCS-Certificates with the respective associated private key.

Article 3 – Right of Use

- 3.1 MBAG hereby grants to the Publisher a non-exclusive licence to use the Contractual Diagnostic Data for the manufacturing of Contractual Goods and for the distribution of Contractual Goods in the Contractual Territory. For clarity, the manufacturing processes of Contractual Goods with-

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out using the Contractual Diagnostic Data can be performed in regions other than the Contractual Territory, but the manufacturing processes of Contractual Goods using the Contractual Diagnostic Data can only be performed in the Contractual Territory.

Publisher agrees to bind its distributors and resellers of Contractual Goods mutatis mutandis regarding the adherence of the regulations of this Agreement like the Publisher himself.

- 3.2 The use of the Contractual Diagnostic Data for any other application or any other territory not covered under this Agreement is subject to additional licence agreements, which might be concluded between the Parties.
- 3.3 The Publisher shall have no right to assign the licence, to grant sublicences or to make available Contractual Diagnostic Data to third parties. However, upon prior written or electronic approval (at least advanced electronic signature ("fortgeschrittene elektronische Signatur")) MBAG sublicences may be granted to subsidiaries and affiliated companies of the Publisher, within in the meaning of sections 15 et. seq. German Stock Corporation Act (AktG) in the Contractual Territory. The Publisher shall be responsible that their subsidiaries and affiliated companies observe the regulations of this Agreement like the Publisher himself. The subsidiaries and affiliated companies of the Publisher shall be listed in **Annex 3**. If there are any changes regarding these companies, the Publisher shall immediately inform MBAG. For greater certainty, MBAG is entitled to decide on the approval in its sole discretion.
- 3.4 Concerning the use of Contractual Diagnostic Data in general as well as Contractual Diagnostic Data protected with Security Access the Publisher shall comply with the following rules:
- Publisher shall implement stable and secure processes in his company as well as in the scope of software development of his Contractual Goods and shall abide by and maintain adequate data security measures, information security programs, including appropriate technical and physical safeguards, consistent with industry standards and technology best practices, to protect Contractual Diagnostic Data from (i) reasonably anticipated threats or hazards to the security/integrity of Contractual Diagnostic Data and (ii) unauthorized/accidental disclosure or acquisition by unauthorized persons. In this regard, the Publisher shall also ensure that the Contractual Diagnostic Data protected with Security Access are adequately encrypted in the Contractual Goods. Publisher agrees to provide MBAG with assurance of the above stated measures in **Annex 9**. If the protected Contractual Diagnostic Data is not secured by the Publisher according to the regulations and/ or there are cases of misuse of the Contractual Diagnostic Data in the sphere of the Publisher's control, the Publisher is liable for the resulting damages;
 - In order to prevent misuse within the Publisher's company and in order to prevent the Publisher's customers from getting access to Contractual Diagnostic Data with Security Access, the

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Publisher shall only pass the protected data to one responsible employee and one deputy within the Publisher's company. These responsible persons shall be mentioned by name in **Annex 4**. If there are any changes within the Publisher's company regarding these responsible persons, the Publisher shall immediately inform MBAG. The concept of data security shall be controlled by a neutral professional assessor;

- It is not allowed to implement theft relevant data in Contractual Goods irrespective of whether such data is provided by MBAG, or such data is factually accessible to the Publisher. The relevant ECUs are listed in **Annex 5**;
- The extent of functions and diagnostic services that the Publisher may implement in his Contractual Goods are limited to given OBD settings as serial type approval of the vehicles produced by MBAG;

- 3.5 The Publisher shall fill in a checklist (**Annex 7**) with details of the Publisher's company. An authorized representative of the Publisher shall subsequently sign this checklist.
- 3.6 Terms applicable to the Publisher's right to use DCS-Certificates are outlined in **Annex 10**. DCS-Certificates are provided to Publisher only for the purposes of manufacturing of Contractual Goods and for the distribution of Contractual Goods in the Contractual Territory. The provision of DCS-Certificates to Publisher for any other purposes and/or any other territory not covered under this Agreement is subject to additional licence agreements, which might be concluded between the Parties.

Article 4 – Copyright and Trademarks

- 4.1 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.
- 4.2 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.

Article 5 - Licence Fees

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- 5.1 For the licence granted hereunder the Publisher shall pay MBAG a licence fee which includes initial costs and the yearly updating costs for the Contractual Diagnostic Data as listed in Annex 8. The initial costs include one initial diagnostic data delivery and the first update delivery. The costs for yearly updates in the subsequent years include two update deliveries.
- 5.2 MBAG reserves the right to make price changes, even within existing agreements. MBAG reserves the right, in its reasonable discretion, to adjust the indicated prices on an annual basis (sec. 315 of the German Civil Code (abbreviated as "BGB")) in order to take account of changes in costs. If the prices are increased, then the Publisher will have the right to terminate the agreement in textual form within 14 days from the date it receives the change notice. After that period, the price change will be deemed to have been accepted by the Publisher.
- 5.3 Starting from the date the Publisher is integrating the Contractual Diagnostic Data, the Publisher shall loan MBAG regularly and free of charge the updates of the Publisher's diagnostic software for verification of proper use of the Contractual Diagnostic Data.
- 5.4 A disclosure of the Contractual Diagnostic Data provided to the Publisher or a declaration that the Contractual Diagnostic Data are not copyrightable, shall have no effect on the licence fee obligations of the Publisher set forth herein.
- 5.5 DCS-Certificates are made available free of charge.

Article 6 - Taxation

- 6.1 The Parties shall take all measures in accordance with their respective domestic law and the Treaty on the Avoidance of Double taxation between the Federal Republic of Germany and resident state of Customer ("the Tax Treaty") - if any - to ensure a reduction of or exemption from, as the case may be, taxes which might become payable in connection with this Framework Agreement and/or the respective Supplement(s).
- 6.2 All taxes or duties and surcharges of any kind whatsoever in connection with payments made by Customer and imposed on MBAG by the German tax authorities shall be borne by MBAG. All taxes or duties and surcharges of any kind whatsoever in connection with payments made by Customer and imposed or to be paid in Customer's country shall be borne by Customer. The preceding sentence does not apply to income taxes imposed or withheld in accordance with the Domestic Law and the Tax Treaty.
- 6.3 The agreed prices for the supply of Contract Services shall be increased by statutory VAT wherever legally required and a zero rate, a reverse-charge-method or any other VAT exemption is

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not applicable. The invoice shall meet all legal requirements for deduction as input VAT or refund of VAT.

- 6.4 In case Customer is required to withhold taxes in accordance with the Domestic Law and the Tax Treaty, if any, from payments under this Framework Agreement and/or the respective Supplement(s), Customer shall exercise its best efforts to attain that the payment to MBAG will be taxed at a reduced rate under the Tax Treaty or under Domestic Law at the time of payment.
- 6.5 In case Customer is required to withhold taxes from payments under this Framework Agreement and/or the respective Supplement(s), Customer shall provide MBAG without undue delay with the original tax certificate, copy of tax assessment and any other documents that evidence the calculation and the payment of the tax. These documents shall specify MBAG as tax payer, the amount of tax paid, the tax law and the legal regulation on which such tax payment is based, the tax rate and/or the amount on which such rate is based, the date of payment of the tax, and the tax authorities to which the payment of the tax has been made.
- 6.6 In case Customer is required to withhold taxes from payments under this Framework Agreement and/or the respective Supplement(s) and Customer has wrongly not paid the correct tax withheld to the competent tax authority, any outstanding withholding tax, interest and penalties due to the failure to pay the correct withholding tax shall be borne by Customer. In case Customer has wrongly withheld and paid withholding taxes to the tax authorities without being required to such withholding by applicable Domestic Law and/or the Tax Treaty, Customer shall indemnify MBAG for such failure including any interest payments actually received by the tax authorities.
- 6.7 If the documents of the tax authority are issued in a language other than German or English, Customer shall have the documents translated into German or English at its own expense at the request of MBAG and shall have the correctness of such translation certified either officially or by a notary public.

Article 7 – Bookkeeping

- 7.1 The Publisher shall keep accurate and separate books and records on the manufacture and sale of Contractual Goods stating quantity and model concerned. Besides, the Publisher provides a list of all ECUs that have been extracted from the Contractual Diagnostic Data of MBAG and that are processed in the Publisher's application and the concrete date from that the Publisher is integrating the Contractual Diagnostic Data in its own application.
- 7.2 MBAG shall be entitled, during usual business hours, to have Publisher's books examined by an external auditor obligated to observe secrecy, to the extent this is necessary for examining the licence accounts. For clarity, the external auditor shall enter into a Non-Disclosure Agreement

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(NDA) with the Publisher before such audit process is conducted and shall keep the books accessed as confidential information. The cost of such auditing shall be paid by Publisher in the event that it is determined by the external auditor that the amount of the licence fee paid is less than the licence fee owed. The Publisher will reimburse the difference between the licence fees, if any, to MBAG for all years that have been examined.

Article 8 – Terms of Payment

- 8.1 Within 3 months after the end of each calendar year the Publisher shall furnish MBAG a written or electronic report setting forth the Publisher's total sales range of Contractual Goods during the preceding calendar year in the Contractual Territory according to Annex 8 hereof. Such report shall be furnished whether or not any Contractual Goods have been sold during the preceding calendar year.
- 8.2 MBAG shall invoice the Publisher the license fee for the initial year upon signing the agreement and shall invoice the Publisher a yearly license fee for the succeeding years no earlier than 1st Oct of each year.
- 8.3 The Publisher shall credit a specified MBAG account mentioned on all invoices by MBAG. The Publisher shall pay the invoice within thirty (30) calendar days of the invoice date or at the payment date shown on the invoice ("Due Date") if not otherwise agreed by effecting payment without any deductions on MBAG's account.
- 8.4 Payment shall only be deemed to have been made as soon as such payment has been credited to the account quoted by MBAG.
- 8.5 In the event of payment default, MBAG may demand default interest in the amount of nine (9) percentage points over the basic rate of interest according to §247 BGB (German Civil Code). MBAG reserves the right to claim further damages.
- 8.6 Costs and banking charges for the services of the banks, if applicable, shall be borne by the Publisher.
- 8.7 All payments made hereunder shall be in euros.

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Article 9 – Technical Assistance

- 9.1 Upon request of the Publisher MBAG will provide a technical introduction lasting 4 hours' time in regard to the Contractual Diagnostic Data.
- 9.2 For avoidance of doubt the Publisher is not entitled to request further technical support and assistance in regard to the Contractual Diagnostic Data.
- 9.3 Upon request of the Publisher MBAG will provide technical assistance and support to the Publisher in regard to DCS-Certificates as further detailed in Appendix 3 to Annex 10. The Publisher will provide support in regard to DCS-Certificates to Publisher's customer.

Article 10 - Defence of and Infringement upon the Contractual Diagnostic Data

The defence of the Contractual Diagnostic Data against attacks by third parties and the prosecution of infringements upon the Contractual Diagnostic Data shall be the responsibility of MBAG; however, MBAG shall not be obligated to act correspondingly. The provisions of section 12.10 remain unaffected by this.

Article 11 – Term of Agreement

- 11.1 This Agreement shall become effective with the signature of the last signing Party and shall apply for an indefinite term. This Agreement may be terminated by either Party at three months' written notice or in electronic form (at least advanced electronic signature ("fortgeschrittene elektronische Signatur")) to the end of the month.
- 11.2 A lending relationship for a specific DCS-Certificate is established when MBAG accepts a request for this DCS-Certificate by issuing it. The term of an individual agreement for a specific DCS-Certificate in principle corresponds to the validity period for this DCS-Certificate, which is announced when the DCS-Certificate is issued. The termination of an individual agreement for a specific DCS-Certificate is additionally subject to Annex 10.
- 11.3 MBAG shall be entitled to terminate this Agreement and any agreement regarding an individual DCS-Certificate at any time, if the Publisher has committed a major breach of contract. Major breaches of contract are in particular:
- Any violation of rights of use;



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- Failure to comply with regulations of section 3.4 regarding Contractual Diagnostic Data protected with Security Access;
- If parts of the data of the checklist, mentioned in section 3.5, turn out to be grossly incorrect at a later date or the reported yearly sales range, mentioned in section 8.1, that were the basis for the yearly licence fees turn out to be unreasonably incorrect at a later date;
- Violation of confidentiality;
- Violation of security obligations concerning DCS-Certificates;
- An objective suspicion of security or confidentiality violations which the Publisher does not fully dispel in a timely manner after being notified by MBAG;
- Or any other default of any important provisions of this Agreement.

In case of a major breach of contract:

- The Publisher shall delete all Contractual Diagnostic Data and any DCS-Certificates from Contractual Goods and shall be obliged to pay a contractual penalty of 25.000 euros for every breach of one or more of Publisher's obligations in relation to ECU's and/or DCS-Certificates under this Agreement. A neutral assessor may control the realization of the deletion.
- The provision of data according to section 3.4 will be omitted in future.

The right of MBAG to assert claims for damages remains unaffected.

- 11.4 MBAG shall be entitled to terminate this Agreement at any time by giving four weeks written notice or in electronic form (at least advanced electronic signature ("fortgeschrittene elektronische Signatur")), if the Publisher has not made payments later than 3 months from the date such payments have been due, if such default has not been cured within 2 weeks following written notice or in electronic form (at least advanced electronic signature ("fortgeschrittene elektronische Signatur")) of such default by MBAG.

Notwithstanding section 11.2 and 11.3 in case of such termination:

- All rights granted to the Publisher hereunder shall revert to MBAG;
- The Publisher shall cease using the Contractual Diagnostic Data in connection with the manufacture, sale and distribution of new Contractual Goods;

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- All licence fee payments that have become due to MBAG before the date of termination shall remain unaffected and be immediately due and payable to MBAG within 10 days of the effective date of expiration or termination.
- 11.5 Except for the Publisher being at fault for the termination as provided in sections 11.3 and 11.4 upon termination of this Agreement:
- MBAG will not provide the Publisher with updates of the Contractual Diagnostic Data licensed under this Agreement any more. The access to these updates is subject to additional licence agreement, which might be concluded between the Parties.
 - The Contractual Diagnostic Data shall be returned to MBAG and all rights granted to the Publisher regarding to such Contractual Diagnostic Data shall revert to MBAG. Exception to this are derivative works. Derivative works shall mean all such data and other analogue, digital or other works that are created by Publisher from MBAG Data and/or that are based in any way on the MBAG Data, provided, however, that (i) the MBAG Data is combined, aggregated or adapted without undue delay in such a way that all such data and other analogue, digital or other works cannot be identified as originating or deriving directly from the MBAG Data and cannot be reverse-engineered, and (ii) the Derivative Works shall only be used in Customer's products and services within the permitted scope of use.
- 11.6 Regardless of fault, upon cessation of this Agreement or an individual DCS-Certificate agreement, as well as in the case of a partial or full prohibition of use, the Publisher shall immediately cease any and all use of the affected DCS-Certificates and completely delete all affected DCS-Certificates or cause its customer to delete all such DCS-Certificates. MBAG can request the Publisher to provide written or electronic confirmation (at least advanced electronic signature ("fortgeschrittene elektronische Signatur")) of the deletion or destruction of all copies. The right to assert claims for damages remains unaffected.

Article 12 – Warranties, Liability, Indemnification

- 12.1 The Contractual Diagnostic Data provided under this Agreement are those used by MBAG itself. MBAG does not warrant that the Contractual Diagnostic Data are correct and without errors or complete. In case of such errors or incompletions, MBAG will provide the Publisher with the adjusted Contractual Diagnostic Data as soon as the errors are detected and corrected within the next update delivery. MBAG does not warrant that the Contractual Diagnostic Data is adequate for the manufacture and use of the Contractual Diagnostic Goods. The Publisher is solely responsible for the diagnostic solution engineered by the Publisher based on the Contractual

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Diagnostic Data. Therefore, MBAG is exonerated from any form of liability against third parties for consequences resulting from the use of the Publisher's diagnostic solution.

- 12.2 The obligations by the Publisher under this Agreement are primarily in consideration for the transfer of the Contractual Diagnostic Data and are not conditional upon the existence of copyright protection of the Contractual Diagnostic Data. MBAG does not warrant the copyright protection of the licenced Contractual Diagnostic Data or parts thereof.
- 12.3 The DCS-Certificates shall be provided as they are used by MBAG. Warranty rights shall only exist if MBAG is responsible for either intent or gross negligence, or if MBAG has fraudulently concealed a defect. This also applies to any support services.
- 12.4 The Publisher shall immediately report any defects in comprehensible, detailed form, including all information that is helpful for identifying and analyzing the defect, in writing or electronically to the address designated by MBAG. In particular, this must include the work steps that led to the defect, the manner in which it appeared, and its effects. Unless otherwise agreed, the corresponding forms and procedures of MBAG shall be used.
- 12.5 MBAG shall provide damage compensation or compensation for futile expenditures, regardless of legal grounds (e.g. for legal transaction or similar obligations, a violation of obligations, or unlawful actions), without limitation in the event of intent or gross negligence; for the injury of life, body or health; and according to the provisions of the Product Liability Law. MBAG shall not be held liable beyond this.
- 12.6 The above liability limitation shall also apply to the personal liability of MBAG's employees, representatives, corporate bodies, and vicarious agents.
- 12.7 MBAG reserves the right to claim contributory negligence.
- 12.8 The Publisher shall be liable to MBAG in conjunction with this Agreement according to the statutory regulations. Any further liability by the Publisher toward MBAG in conjunction with other agreements or services shall remain unaffected.
- 12.9 The Publisher will at all times indemnify, hold harmless, and at MBAG's request defend MBAG and/or any other Mercedes-Benz Group Companies and each of their respective officers, directors, employees, independent contractors, permitted successors, agents and representatives, from and against any and all third party claims, damages, litigation, judgements, costs and expenses caused by or arising out of any infringement and breach of this Agreement and/or the applicable laws and regulations.

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- 12.10 The Publisher shall support MBAG in product liability relevant cases, especially if the involved customer of the Publisher cannot be incriminated. Therefore, the Publisher shall maintain an updated customer list and shall give on request an appropriate feedback (corresponding to single demands) to MBAG.
- 12.11 The Publisher will maintain updated information, detailing which individual DCS-Certificate has been assigned to which Customer. Furthermore, in case of certificates of the level "Standard" the Publisher ensures, that its customers also maintain updated information, detailing which individual DCS-Certificate has been assigned to which individual user (natural person) ("Mapping Data", for minimum contents see the respective section of Annex 11). Mapping Data regarding an individual DCS-Certificate may not be deleted before 2 years at least have elapsed after the expiration of said individual DCS-Certificate. Publisher will disclose its Mapping Data and disclose or cause its customer to disclose Mapping Data maintained by the customer (in each case corresponding to single demands) to MBAG where relevant to support MBAG especially where necessary for MBAG to ensure network and information security of systems used in connection with DCS-Certificates and product safety, in cases of car damages possibly caused by an DCS-Certificate individual user, in case of legal proceedings involving MBAG, requiring Mapping Data, and product liability relevant cases involving MBAG and/or companies affiliated with MBAG as outlined in section 12.9.

Article 13 – Confidentiality

- 13.1 Publisher shall treat the Contractual Diagnostic Data and DCS-Certificates as confidential and shall not pass it on to third parties, except to the extent needed for the purpose of distribution or manufacturing of the Contractual Goods. All other claims, e.g. claims based on copyright law remain applicable; rights of MBAG to compensation for damage above and beyond the contractual penalty (see section 11.3) remain unaffected.
- 13.2 The DCS-Certificates and any associated information as well as the content of Annex 10 are to be treated strictly confidential. Any use of the DCS-Certificates, information, and agreement content beyond the agreed purpose of the specific DCS-Certificate issued shall always constitute a serious violation of MBAG's company and trade secrets. This does not apply to passing on contractual content to customers, or subcontractors as intended by this Agreement.
- 13.3 The Publisher shall only entrust persons with access to DCS-Certificates who are required to use them according to this Agreement. The Publisher shall prevent any handling of the DCS-Certificates by persons who are not entrusted with such handling according to this Agreement. This particularly applies to personnel who are not assigned to the specific order that requires access to DCS-Certificates and are correspondingly obligated to maintain confidentiality.

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- 13.4 Any possible access by third parties, who are not entrusted with the handling of DCS-Certificates and the use of the necessary software for DCS-Certificates, is strictly prohibited. Also strictly prohibited is any disclosure to third parties of the access information for systems and applications that a user is using for the handling of DCS-Certificates.
- 13.5 The provisions of section 13.1 - 13.4 shall remain in full force even after the end of the term of this Agreement, after termination or after this Agreement has ended in any other way.

Article 14 – Compliance

The Parties hereby confirm that they are aware of the Applicable Laws, and, in connection with the activities of the Parties related to this Agreement, Publisher hereby commits to strict compliance with such Applicable Laws and makes the following representations and warranties as of the date of this Agreement and for the duration of this Agreement in connection with its activities related to this Agreement:

1. Publisher, for itself and on behalf of its Affiliated Persons, represents, warrants and covenants that:
 - a. Publisher and its Affiliated Persons are solely responsible for complying, have to their best knowledge complied, and will comply, with Applicable Laws and have to their best knowledge not taken and will not take or fail to take any action, which act or omission would subject MBAG or its affiliated companies to liability under Applicable Laws;
 - b. neither Publisher nor any of its Affiliated Persons has, to its or their best knowledge, offered, paid, given or loaned or promised to pay, give or loan, or will offer, pay, give or loan or promise to pay, give or loan, directly or indirectly, money or any other thing of value to or for the benefit of any Government Official, for the purposes of corruptly (a) influencing any act or decision of such Government Official in his official capacity, (b) inducing such Government Official to do or omit to do any act in violation of his lawful duty, (c) securing any improper advantage or (d) inducing such Government Official to use his influence with a Government Entity to affect or influence any act or decision of that Government Entity, in each instance to direct business to Publisher or MBAG or its affiliated companies; and
 - c. in case Publisher or any of its Affiliated Persons is or will become a Government Entity or a Government Official whose official duties include decisions to direct business to Publisher, MBAG or its affiliated companies or to supervise, or otherwise control or direct the actions of, Government Officials who are in a position to direct business to Publisher or MBAG or its affiliated companies, Publisher or the respective Affiliated Persons have to make sure, that conflicts of interest will be excluded and to inform MBAG without undue delay about the measures taken.



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2. Publisher shall assist and cooperate fully with the efforts of MBAG to comply with Applicable Laws. In particular, Publisher shall keep accurate books and records and Publisher shall immediately notify MBAG of any information that bribes or other improper payments are being requested, made or offered in connection with this Agreement. Upon request of MBAG, Publisher shall make those records which are necessary for MBAG to verify Publisher's compliance with the Applicable Laws relating to this Agreement available to a sworn auditor who is obligated to observe secrecy and selected by MBAG. If such auditor notices, any failure by Publisher to comply with the Applicable Laws Publisher agrees that the auditor may disclose information relating to Publisher's failure to MBAG and, to the extent required by a legal demand by a competent court of law or government body, to third parties.
3. In no event will MBAG be obligated to Publisher under or in connection with this Agreement to act or refrain from acting if MBAG believes that such act or omission would cause MBAG to be in violation of Applicable Laws. In no event will MBAG be liable to Publisher for any act or omission, which MBAG believes, is necessary to comply with Applicable Laws.
4. If Publisher or any of its Affiliated Persons breaches any of the representations, warranties or covenants in this Article each of which is deemed to be material and continuously made throughout the term of this Agreement, then, in addition to any other rights MBAG may have under this Agreement:
 - a. MBAG may declare a forfeit of any unpaid amounts owing to Publisher and will be entitled to repayment of any amounts paid or credited to Publisher, in each case, which are prohibited by Applicable Laws; and
 - b. MBAG may immediately terminate this Agreement; and
 - c. Publisher shall, upon first written or electronic request (at least advanced electronic signature ("fortgeschrittene elektronische Signatur")) by MBAG, indemnify and hold harmless MBAG in regard to any and all cost and claims brought forward against MBAG arising out of any failure of Publisher to comply with its representations, warranties and covenants of this Article.
5. For purposes of this Article, the following terms have the meanings set forth below:
 - a. "Applicable Laws" means the U.S. Foreign Corrupt Practices Act and German anti-corruption laws, without regard to their jurisdictional limitations, U.S. and German export control laws to the extent applicable the goods and or information which are subject of this Agreement, and all other laws, regulations, rules, orders, decrees or other directives carrying the force of law applicable to any activities engaged in by Publisher or any of its Affiliated Persons in connection with this Agreement, in each case as the same may be amended from time to time;

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- b. "Affiliated Persons" means Publisher's officers, directors, employees, or agents, or any of its stockholders, principals or owners acting on its behalf or in its interests;
- c. "Government Entity" means a government or any department, agency or instrumentality thereof (including any company or other entity controlled by a government), a political party or a public international organization; and
- d. "Government Official" means any officeholder, employee or other official (including any immediate family member thereof) of a Government Entity, any person acting in an official capacity for a Government Entity or any candidate for political office.

Article 15 – No (Re-)Export to Russian Federation or Belarus

(1) 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 incl. 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 Russia or Belarus or for use in Russia 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) 833/2024 that are intended for sale, supply, transfer or export, directly or indirectly, to Russia or for use in Russia.

(2) The Publisher shall undertake its best efforts to ensure that the purpose of Clause (1) 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.

(3) 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 (1).

(4) Any violation of Clauses (1), (2) and (3) shall constitute a material breach of an essential element of this Agreement, and the [Exporter/Seller/IP Owner/Licensor/Logistic principal etc.] shall be entitled to seek appropriate remedies, including, but not limited to termination of this Agreement, and compensation of

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any costs, damage or liability incurred by the Publisher resulting from the infringement, including the imposition of fines.

(5) The Publisher shall immediately inform the [Exporter/Seller/IP Owner/Licensor/Logistic principal etc.] about any problems in applying Clauses (1), (2) or (3), including any relevant activities by third parties that could frustrate the purpose of Clause (1). The Publisher shall make available to the [Exporter/Seller/IP Owner/Licensor/Logistic principal etc.] information concerning compliance with the obligations under Clauses (1), (2) and (3) within two weeks of the simple request of such information.

Article 16 – Data Protection

- 16.1 The Publisher shall conclude any necessary data protection agreements with MBAG regarding the handling of personal data.
- 16.2 MBAG is only responsible for data processing in respect of data privacy in the context of the DCS-Certificate issuing process, DCS-Certificate administration and MBAG network and information security in connection with DCS-Certificates and product safety where such data processing takes place within MBAG's sphere of influence. MBAG is not responsible for data processing within the Publisher's or the Publisher's customer's area of responsibility or sphere of influence. Responsibility for collecting and transmitting data to MBAG for the purposes of this Agreement, as well as for its performance, shall be borne solely by the Publisher. In this regard, the Publisher is also the controller with regard to natural persons entrusted with DCS-Certificates of the level "Standard".
- 16.3 The Publisher must and is solely responsible for providing MBAG's Privacy Statement, provided in Annex 11, to his customers in the same manner as the Publisher's own privacy statement in accordance with applicable privacy laws. A violation of this clause is also considered a violation of material contractual obligations.
- 16.4 The Publisher must comply with Directive (EU) 2016/679 ("General Data Protection Regulation" or "GDPR") as well as other statutory data privacy regulations. A violation of data privacy regulations is also considered a violation of material contractual obligations.

Article 17 - Miscellaneous

- 17.1 This Agreement replaces and supersedes any and all former agreements in respect of its subject matter as of the date of its effectiveness (see section 11.1).

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- 17.2 Any amendments of and supplement or additions to this Agreement shall be in writing or electronic form (at least advanced electronic signature ("fortgeschrittene elektronische Signatur")) in order to be valid. There are no verbal ancillary agreements.
- 17.3 Rights and obligations accruing to a Party under this Agreement may not be assigned to third parties without the prior written or electronic consent (at least advanced electronic signature ("fortgeschrittene elektronische Signatur")) of the other Party.
- 17.4 Should individual provisions of this Agreement be or become invalid, this shall not affect the validity of the remaining provisions. The Parties shall endeavor to replace the invalid provision with a valid provision which comes as close as possible to the sense and purpose of the invalid provision.
- 17.5 This Agreement shall be construed in accordance with and governed by the laws of the Federal Republic of Germany with the exception of the United Nations Convention on the International Sale of Goods dated 11 April 1980. The exclusive place of jurisdiction for any disputes arising from this contractual relationship shall be Stuttgart.
- 17.6 All provisions of this Agreement shall also apply to any legal successor of either party hereto.

Annexes

- **Annex 1:** Contractual Territory
- **Annex 2:** Common understanding to "Contractual Diagnostic Data"
- **Annex 3:** Subsidiaries and affiliated companies
- **Annex 4:** Content of Contractual Diagnostic Data and Persons responsible for Security Access Codes
- **Annex 5:** Theft relevant ECUs
- **Annex 6:** Insurance Certificate
- **Annex 7:** Checklist
- **Annex 8:** Licence Fees
- **Annex 9:** Data security concept
- **Annex 10:** DCS-Certificate Terms



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- **Annex 11:** MBAG Privacy Statement (for Publisher's costumers)
- **Annex 12:** List of server(s) for DCS-Certificates