Mercedes-Benz

> **General Terms and Conditions** regarding the Use of Applications and Data Content – provided by Mercedes-Benz USA, LLC – for After-Sales (hereinafter the "**GTCs**")

1. General provisions and service content

1.1 Mercedes-Benz USA, LLC ("MBUSA") furnishes applications, data content, software, updates, data storage media and other documentation for the After-Sales sector of the Mercedes-Benz and smart brands (hereinafter collectively referred to as the "**Applications and Data Content**") in order to allow users to access those Applications and Data Content. Within the meaning of these GTCs, "users" shall be all authorized service partners of the Mercedes-Benz and smart brands who have been duly authorized under this agreement to use the Applications and Data Content, as well as other companies and businesses operations that are authorized by MBUSA under this agreement to use the same (e.g., authorized national distribution companies of the Mercedes-Benz and smart brands or independent operators).

1.2 The subject matter of these GTCs comprises all services delivered by MBUSA in connection with the provision of Applications and Data Content pursuant to sec. 1.3.

1.3 Currently, depending on the order placed by the user, the services provided include the Applications and Data Content XENTRY Parts Information, XENTRY WIS (incl. XENTRY Integrated Maintenance, Dynamic Wiring Diagram, Wheel Alignment Online) / XENTRY Operation Time (incl. Damage Code), XENTRY Menu Pricing (XMP), XENTRY Tips, XENTRY DSB, XENTRY Portal including the applications XENTRY Cockpit / XENTRY Offer, XENTRY Order, XENTRY Workshop, XENTRY Body&Paint, XENTRY Vehicle Detector, XENTRY Repair Packages, XENTRY Framework Diagnosis, XENTRY Com (DSD), XENTRY Book (DSD), Product Catalog, Wheel Alignment Machine and all further subfunctions of XENTRY Portal, XENTRY Update Service, and XENTRY Diagnosis Software, in all of the product versions thereof, , XENTRY Apps, including data and software updates (hereinafter the "**Updates**") and the hardware-related "XENTRY Application and Tools" software.

1.4 The provision of XENTRY Parts Information, XENTRY WIS (incl. XENTRY Integrated Maintenance, Dynamic Wiring Diagram, Wheel Alignment Online) / XENTRY Operation Time (incl. Damage Code), XENTRY DSB, XENTRY Menu Pricing (XMP), XENTRY Apps, XENTRY Portal including the applications XENTRY Cockpit / XENTRY Offer, XENTRY Order, XENTRY Workshop, XENTRY Body&Paint, XENTRY Repair Packages, XENTRY Framework Diagnosis and all further subfunctions of XENTRY Portal and XENTRY Tips as well as the corresponding Updates is carried out via online access as a standard.

1.5 Access to the XENTRY Diagnosis Software is handled offline *via* local installations on the XENTRY Hardware or on the user's own respective hardware. XENTRY Diagnosis Software Updates are provided online via the XENTRY Update Service.

1.6 Applications and Data Content have to be maintained and repaired at regular intervals and, if necessary, at short notice in order to enable the proper provision of the respective services (e.g. by installing Updates). As a result, the services may be temporarily unavailable in individual cases. MBUSA will inform the users about planned maintenance and repair work and its expected duration in good time, usually at least 48 hours in advance.

1.7 The user of the Applications and Data Content shall act to ensure that the technical prerequisites for operating the Applications and Data Content in question are met. The user may review them under "Connectivity Guide Retail" (in its current version as amended from time to time), which is posted on the "XENTRY Portal" (https://xentry.mercedes-benz.com) or on "Mercedes-Benz B2B Connect" (https://b2bconnect.mercedes-benz.com), under the Applications and Data Content in question.
In connection with the use of the Applications and Data Content with increased security requirements, the user undertakes to apply the prescribed measures to increase the security of user data and applications. These include measures such as a mandatory identification process as a basis for specific access rights and multi-factor authentication during the login process. Further appropriate safeguarding measures may be implemented at any time.

1.8 If the user enters his free timeslots and other offerings into XENTRY Book (DSD), MBUSA and Mercedes-Benz AG ("MBAG") are entitled to record these and to evaluate them for statistics. This applies regardless of whether the user uses the functionality in XENTRY Portal provided for this purpose (XENTRY Book (DSD) or a third-party system connected to XENTRY Book (DSD) via a technical interface (e.g. a dealer management system, capacity planning tool).

1.9 The information provided via the XENTRY Menu Pricing (XMP) application is used exclusively for the calculation of costs and offers. The determination of the correct spare parts information must always be verified via the system provided for this purpose.

2. Parties and General Terms and Conditions of Business

2.1 These GTCs shall apply to the users of the Applications and Data Content within the meaning of sec. 1.1, 2nd sentence. The respective current version of the GTC is available on the Internet at https://xentry-shop.mercedes-benz.com/. Upon request, the user will be sent the current version.

2.2 The user's general terms and conditions of business shall not be deemed incorporated into the parties' contract, even if MBUSA does not object to them.

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3. **Rights of use, contractual penalties and third-party intellectual property**

3.1 The Applications and Data Content are intended for the sole use by each of the users within the meaning of sec. 1.1, 2nd sentence. MBUSA grants these users a simple, non-exclusive, limited in time to the contract term, spatially restricted and non-transferable right of use to exploit the Applications and Data Content only for its own purposes, i.e. for servicing of vehicles. The user may only exercise this right of use if the user, the vehicle, and the hardware on which the Applications and Data Content are used are physically located in the same place, typically at the user's workshop location.
The right of use of the Applications and Data Content is only valid for use in the United States of America and its possessions. The user shall not use or provide usage of the Applications and Data Content via any remote access. Mercedes-Benz vehicles fitted with remote diagnosis by the manufacturer are not affected by the provision contained in preceding sentence, if the manufacturer's remote process is applied. Exceptions to sec. 3.1 require a separate contractual agreement.
In addition, Sec. 3.2 remains unaffected thereby.

3.2 The parties acknowledge and agree that the original software supplier is MBAG, and MBUSA is authorized by MBAG to enter into these GTCs with users. Notwithstanding the foregoing, user's contractual relationship is with MBUSA, and MBAG is not a party to these GTCs.

3.3 Notwithstanding secs. 3.1 and 3.2, all other rights to the Applications and Data Content, including subsequent upgrades and enhancements thereto, shall be retained by MBUSA and/or by MBAG, as applicable.

3.4 The creation of any copies whatsoever of the Applications and Data Content is not permitted; similarly, not permitted is the processing and editing of the Applications and Data Content by the user or by third parties authorized by the user. This rule also relates to publications made under another name. The provided Applications allow it to display individual Data Content via the search masks. For the purpose of permanent availability, such individual Data Content may also be printed out. The user hereby undertakes that it shall use the Applications and Data Content exclusively for the purposes set out in sec. 3.1 of servicing customer vehicles and shall not disclose them to third parties (whether in whole or in excerpts) or make them available to such parties. Any automated retrieval via scripts or systematic copying or the like is not allowed. To the extent permitted by law, the user shall also impose these obligations on its staff. Exceptions to sec. 3.4, e.g. Robotic Process Automation, require testing and individual approval by MBUSA. Section 3.2 shall remain unaffected thereby.

3.5 Upon request of MBUSA, the user shall produce evidence of compliance with the rules governing the rights of use under this agreement.

3.6 Any data storage media, documentation and electronic copies that are no longer required must be duly destroyed in accordance with applicable environmental laws and regulations in force at that location. With respect to device and server installations, action must be taken to ensure that it is not possible for anyone to gain unauthorized access thereto.

3.7 In the event that the Applications and Data Content fall into the hands of third parties, whether this is because the user or the user's employee has intentionally or negligently disclosed them without authorization or has intentionally or negligently failed to secure them from access to third parties, the user shall owe contractual penalties of USD 27,250 for each breach. The assertion of damages taking into account the contractual penalty remains unaffected.

3.8 If and to the extent that individual Applications and Data Content in their offline version (e.g. in the form of a DVD) are no longer offered or made available, especially not in an updated version, the use of the respective versions of the Applications and Data Content shall no longer be permitted and must be discontinued. Any data storage media, documentations and electronic copies shall be deleted and destroyed. Section 3.6 shall apply accordingly.

3.9 Portions of Applications and Data Content containing software may contain Free and Open Source Software (hereinafter "**FOSS**") components. Information about the respective FOSS components - in particular those required to be shared by the respective applying FOSS licenses, are incorporated and/or delivered by other means with the Applications and Data Content. The user takes note that FOSS licenses may apply between the right holder/s of the FOSS component and the user

and that certain usage of the FOSS component requires consent of the user to the applying FOSS licenses. The user acknowledges that the software containing FOSS is not free of third party rights. MBUSA does not confer neither expressly nor implicitly any license or patent rights concerning FOSS, unless obliged by FOSS license obligations.

If any term of this GTCs may be found to contradict any FOSS license governing a FOSS component incorporated into the Applications and Data Content, the latter shall prevail.

4.   Registration and login data

4.1   In connection with the order processing for Applications and Data Content, the user shall forward to MBUSA the information that is required in order to provide access to the Applications and Data Content. All information provided to MBUSA during registration must be truthful.

4.2   Upon dispatch of the access authorization ("StartKey", „Client Credential" or username/password), the order will be deemed to have been accepted.

4.3   Access to the Applications and Data Content is subject to the following conditions:
- the user must place a binding order for access authorization, and
- when placing the order, the user must indicate the scope to which the Applications and Data Content is required.

4.4   Login data for the use of Applications and Data Content (personalized identity (User ID) and passwords) provided by MBUSA shall only be used by authorized users according to section 1.1 sentence 2 and their respective authorized individual employees. The User is also responsible for maintaining the confidentiality of employee logins and will instruct its employees accordingly. A transfer or use of the provided login data as a group or workshop user is not permitted. Any disclosure of personal login data to third parties is prohibited, even if these belong to the authorized user group according to section 1.1 sentence 2. Third parties within the meaning of these GTC are all persons who are not involved in the conclusion of this contract, including group-affiliated companies or associated companies of the user. The user is obligated to use the provided login data exclusively for the Applications and Data Content officially provided by MBUSA for the purposes set out in sec. 3.1 of servicing customer vehicles, not disclosing them or making them accessible to third parties as well as to take all reasonable precautions to prevent accidental disclosure. The disclosure of login data is considered abuse. The use of login data in Applications and Data Content which have not been provided by MBUSA is prohibited (e.g. illegally purchased software). As part of product observation and security data and accesses are monitored in order to counteract improper use.

4.5   Access to MBUSA's systems using TOR network or other VPN or Proxy services, which obfuscate the technical IP address and the origin location of the access is prohibited.
Notwithstanding, users who belong to a company with its own in-house data network are permitted to access via company-internal VPN connections and proxy servers, that are integral part of the in-house data network, as long as these do not obfuscate the user's location, which can be determined from the network protocol data, to such an extent that access from another country is simulated.

If the user uses its own in-house data network, it is necessary to have the company's own network administrator (IT department) verify whether this company network meets the technical conditions mentioned.
In the event that it is determined during this verification that these conditions cannot be met for legitimate technical reasons, an explicit exception from the aforementioned conditions must be requested via the Application Support for the affected users to prevent potential account blocking due to automatically detected suspected account misuse.
Exceptions to sec. 4.5 require verification and individual approval by MBUSA.

4.6   In case of a user's violation or suspected violation of these GTC MBUSA is entitled to temporarily block individual or all of the user's access or products until the facts have been fully clarified. Furthermore, MBUSA is entitled to immediately and permanently block the access data and the Applications and Data Content if a serious violation is confirmed after completion of the investigation. Serious violation in this context is classified as intentional conduct or abusive behavior. The user can avert these measures by submitting suitable evidence at his own expense to dispel the suspicion.

4.7   The user is obligated to immediately inform MBUSA if the user suspects or becomes aware of any violation of section 3 and 4 of these GTC.

4.8   In the event of an interruption of service for which the user is responsible, the user's obligation to pay the contractually agreed remuneration remains unaffected. The user is still obliged to pay the remuneration, even if the applications and data content cannot be used due to the interruption of service for which the user is responsible.

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5. Support for Applications and Data Content

5.1 A right to claim support in the use of Applications and Data Content shall continue as long as the agreement is in force, and only where the data status is up to date. Data status for XENTRY Diagnosis Software shall be deemed up to date if one of the last two Updates provided by MBUSA has been installed locally on the XENTRY Hardware.
An updated data status for all Applications and Data Content is deemed to exist if online access to central servers is available.

5.2 Where Applications and Data Content are installed on the user's own hardware, the user shall have a right to claim support solely relating to MBUSA's Applications and Data Content, provided that the minimum requirements (which may be viewed acc. to sec. 1.7) to the user's own hardware have been satisfied and where, in the case of online access, a standard virus scanner is active. Users of the Applications and Data Content by means of their own hardware must ensure that the virus scanner is regularly updated and that the Windows operating system is regularly supplied with updates. To the extent required in technical terms, support shall be provided for the Applications and Data Content only after a recovery (data recovery, reset of system [= user's own hardware] to its status at the time of delivery), pursuant to which software and data specific to the user could be deleted. The user shall have no further rights to claim support.

5.3 Regular service hours for Support are from 8am to 4pm Eastern Time (EST; "Service Hours"). Support requests submitted via the provided ticketing systems will be handled and executed during the Service Hours. Outside these Service Hours support, requests will usually not be answered or handled.

6. Formation and alteration of contract

6.1 The user shall be bound by its order for 14 days. The user hereby waives the declaration of acceptance of its order. The contract shall be formed upon activation and transmission of the access authorization for the Applications and Data Content.

6.2 The Applications and Data Content are provided in the form and for as long as they are used by MBUSA or are available to MBUSA. Due to the constant further development of the respective systems and system landscapes, the Applications and Data Content provided may change in this respect during the period of use, whereby MBUSA shall provide appropriate compensating measures to the users in the event of significant changes. Further claims shall be excluded.

6.3 Notwithstanding Section 6.2, MBUSA shall be entitled to change these GTC.

If there is a provision in a separate contract for the dynamic inclusion of the current version of these GTC, the current version shall take precedence.

In all other cases, MBUSA will inform users of the intended changes in writing (e.g. e-mail) six (6) weeks in advance. If the user does not object to the changes in writing within four (4) weeks after receipt of the respective change notice, the changes shall be deemed accepted and mutually changed with expiration of the above-mentioned period of six (6) weeks and unopposed continuation of use of the services. Should the user object to the changes, both Mercedes-Benz AG and the user shall have the right to terminate these GTC or the corresponding order with a notice period of four (4) weeks. MBUSA undertakes to inform the user of the effect of silence or non-objection when informing of the changes.

Section 8.6 shall remain unaffected.

7. Contract term and termination

7.1 With respect to Applications and Data Content with online access for the XENTRY PORTAL components XENTRY Parts Information, XENTRY WIS (incl. XENTRY Integrated Maintenance, Dynamic Wiring Diagram, Wheel Alignment Online) / XENTRY Operation Time (incl. Damage Code), XENTRY DSB, XENTRY Tips, XENTRY Menu Pricing (XMP), XENTRY Apps, Wheel Alignment Machine and to central servers, the contract has no fixed expiration date The contract may be terminated with four weeks' notice in writing.

7.2 Notwithstanding the foregoing, for the XENTRY Diagnosis Software the contract shall have a term of 42 months on rented and purchased XENTRY Hardware.
In case of rented XENTRY Diagnosis Hardware the contract term of XENTRY Diagnosis Software will be automatically extended by up to 6 months, if the rented XENTRY Hardware is not returned or not returned in a timely manner.

7.3 A contract term of 42 months shall apply to the procurement of XENTRY Diagnosis Software on the user's own hardware (such as own laptop) if the hardware is combined with hardware components of MBUSA (Multiplexer). The software products, „XENTRY Diagnostics for IMO" and "XENTRY Diagnostics Open Shell" are excluded - for these software products, a contract term of 12 months shall apply which can be repeatedly extended or renewed by the user by a further 12 months each time during the entire hardware support term.

If hardware components of MBUSA (Multiplexer) are not in use, the contract term of 12 months shall apply.

7.4 Notwithstanding the foregoing, for the XENTRY Update Service the contract shall have a term of 42 months on purchased retail data storages from generation "Retail Data Storage 2" or newer. The contract term shall not be automatically extended. In order to continue using the XENTRY Update Service on the Retail Data Storage, the user may extend or renew the contract by 12 months at a time for a fee. The extension of the contract for the XENTRY Update Service on purchased Retail Data Storage only includes the software operation and data supply of the device including the necessary software support. The warranty for the hardware of the Retail Data Storage as well as the corresponding hardware support are explicitly not part of this contract and cannot be extended.

MBUSA reserves the right to refuse contract extensions for outdated Retail Data Storages that no longer meet the technical requirements of the XENTRY Update Service. In this case, the purchase of a current Retail Data Storage is required. The use of the XENTRY Update Service without Retail Data Storage on own hardware or XENTRY hardware shall remain unaffected thereby.

7.5 If Applications and Data Content in the form or scope (e.g. certain data packages of individual divisions) are no longer used or distributed by MBUSA or no longer available to MBUSA the contract may be terminated by MBUSA in writing (notwithstanding secs. 7.1-7.4) before the expiry of the respective contract terms with a notice period of six (6) weeks.

7.6 The contract may be terminated without notice in writing by MBUSA if there is good cause. Good cause shall include, *inter alia*, situations in which the user
- violates the provisions in particular in accordance with secs. 3 and 4 by using, reproducing, producing or having produced the Applications and Data Content without authorization,
- discloses the Applications and Data Content or provided login data to third parties without authorization or uses the Applications and Data Content for remote access,
- uses provided login data in Applications and Data Content not officially provided by MBUSA (e.g. illegally purchased software)
- uses its own hardware or XENTRY Hardware which does not satisfy the technical requirements for operating the Applications and Data Content in question pursuant to secs. 1.7 and 5 hereof, and/or this XENTRY Hardware is no longer
supported by MBUSA,
- discontinues its business operations with or without a successor,
- no longer belongs to the authorized group of users within the meaning of sec. 1.1, 2nd sentence or changes role within this authorized group,
- fails to pay the compensation when due and after receiving a dunning notice.

7.7 The user is advised that, after the end of this Agreement and irrespective of the grounds thereof, the user shall have no claim for a so-called "Software Freeze".

8. Compensation and payment

8.1 The costs of the Applications and Data Content and of regular Updates (online via the XENTRY Update Service, via OneAPI or mailed on data storage media, e.g. on DVDs, Blu-Ray discs) shall be borne by the user. The costs shall be calculated in line with the price lists and are to be paid electronically. The costs shall be invoiced generally on a monthly basis unless other invoicing terms have been agreed. The applicable price lists for independent operators are uploaded to the Mercedes- Benz B2B Connect and XENTRY Shop for the user.

Unless otherwise agreed all payments shall be made at the payment date shown on the invoice ("Due Date"). Payment shall be deemed made when it has been credited to the account quoted by MBUSA. User shall promptly obtain and continuously maintain any governmental or other approvals required to effect any payments to MBUSA and settle all necessary taxes and surcharge payments.

In the event of termination of the online applications XENTRY Parts Information or XENTRY Tips by the user before the end of the already paid annual period, no (partial) refund of the paid annual fee will be made. The user is not entitled to a partial refund of the annual fee for the remaining months of the current annual period.

All banking charges and fees shall be borne by the user.

In the event of delay in any payment, MBUSA shall be entitled to claim damages by charging interests at a rate on the amount due for the period of delay as specified by applicable laws. That amount may be increased if MBUSA is able to prove greater damage, or reduced if user can prove that the damage is lower. Delay in payment of more than 60 days from the Due Date of the invoice will constitute a gross breach of contract.

The user must pay the agreed remuneration for the access authorizations ordered, irrespective of whether the Applications

and Data Content will actually be used with the ordered number of access authorizations or not.

8.2   The prices as indicated and agreed are net prices quoted without VAT, and may in each case be increased by the amount of the national VAT that is applicable or by any other indirect taxes, if neither a tax exemption nor a zero rate or reverse charge procedure is applicable. In respect thereof, the user shall support MBUSA and MBAG in obtaining shipment and transport documentation in order to ensure its ability to invoice on a VAT-exempt basis for cross-border delivery of goods (e.g. DVD), provided that the other prerequisites thereto are met.

   If an exemption from statutory VAT or other indirect taxes depends on further requirements, MBUSA or MBAG may charge a respective VAT amount or VAT-deposit amount as a security, which shall be refunded without interests upon proved fulfilment of the requirements, i.e. receipt of proper documentation and proofs.

8.3   If the user fails in a timely manner to pay the compensation owed, then it shall be deemed in default following the first dunning notice.

8.4   MBUSA reserves the right to withhold/reduce the services, which it owes, until the user has paid its invoice and, where applicable, to terminate the contractual relationship with that user.

8.5   Users may exercise a right of set-off against claims of MBUSA only if the user's counterclaim is undisputed or has been adjudicated with *res judicata* effect. The foregoing shall not apply to counterclaims of the user based on the same contract. The user may only exercise a right of retention if it is based on claims from the same contract. User may assert a right to offset claims or a right of retention for any invoice for 3 months following user's receipt of the applicable invoice.

8.6   MBUSA reserves the right to make price changes, even within existing agreements. MBUSA 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 user will have the right to terminate the agreement in writing 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 user.

9.   Tax clause

9.1   All taxes or levies of any kind whatsoever in connection with payments made by user and imposed on MBUSA by applicable tax authorities will be borne by MBUSA. All taxes or levies of any kind whatsoever in connection with payments made by user and imposed or to be paid in its home state will be borne by user. The foregoing sentence does not apply to tax on income that is imposed or deducted at source in accordance with applicable law.

   In case the user is required to withhold taxes in accordance with domestic law and applicable Tax Treaty, if any, from payments under these GTCs, the user shall exercise its best efforts to attain that the payment to MBUSA will be taxed at any reduced rate under the applicable Tax Treaty or under domestic law at the time of payment. So far as user is required to withhold taxes in accordance with applicable law from the payments under these GTCs, user will do everything within its power to ensure that the payment to MBUSA is taxed at the lowest possible rate under applicable law at the time of payment.

   In case the user is required to withhold taxes from payments under these GTCs, the user shall provide MBUSA without undue delay with any applicable documents that evidence calculation and payment of the tax. So far as applicable law requires user to withhold and pay over taxes from payments under these GTCs, user shall, without culpable delay, provide MBUSA with original tax receipts issued by the tax authority and any other documents that specify MBUSA as taxpayer and show the amount of tax paid, the tax law and the legal regulation on which such tax payment is based, the tax rate or the basis on which the tax payment is assessed, and the date on which the tax was paid.

10. Security warning

10.1 The user must strictly comply with all warning notices and safety-related information disclosures as well as user disclosures that are communicated in the respective Applications and Data Content. The user will be liable for any damages caused by a violation of the foregoing mandate.

10.2 Any subsequent supplements or developments to the delivered Applications and Data Content must be observed unconditionally.

10.3 The user must always keep the Applications and Data Content on an up-to-date data status. Pursuant to secs. 5.1, sentences 2 and 3, an up-to-date data status exists.

11. Liability

11.1 The Applications and Data Content also contain links to other Internet sites. MBUSA has no influence on the structure or content of the pages to which the links are connected. Consequently, no guarantee can be given with regard to the currentness, correctness, completeness or quality of the information made available on those sites. Based on the foregoing, MBUSA hereby distances itself from all content on these linked pages. This declaration applies to all links that are contained in Applications and Data Content and that lead to external sites and the content thereof.

11.2 It is the user's responsibility to check and ensure that the use of the applications and data content does not cause any damage to any workshop infrastructure. If MBUSA provides the Applications and Data Content to the user operation in accordance with the contract, MBUSA shall not be responsible for corresponding damages.

11.3 If MBUSA must compensate for damages based on the statutory provisions and if such damages were caused by simple negligence, then MBUSA's liability shall be limited as follows:

The liability will arise only when there has been a breach of material contractual duties, such as those that the contract seeks to impose on MBUSA based on its content and purpose or the fulfillment of which cannot even arise unless or until the contract is duly performed and upon which the user can and should be able to routinely rely. This liability is limited to typical damages that were foreseeable at the time the contract was concluded.
The personal liability of the legal representatives, vicarious agents and employees of MBUSA for damages caused by simple negligence is excluded.

11.4 The aforementioned limitation of liability and the aforementioned exclusion of liability shall not apply to damages resulting from a grossly negligent or intentional breach of duties by MBUSA, its legal representative or its vicarious agent or in the event of death, personal injury or damage to health. In such cases, MBUSA shall be liable in accordance with applicable law.

11.5 Irrespective of any fault on the part of MBUSA, MBUSA shall remain liable for any fraudulent concealment of a defect, for the issuance of a guarantee or for a procurement risk and shall remain liable as prescribed under applicable product liability law.

11.6 In the event of system failures of the Applications and Data Content, MBUSA shall not be liable for any damage (including damage due to loss of business profits, interruption of operations, loss of business or other loss of assets) unless caused by intent or gross negligence on the part of MBUSA. Clauses 11.3, 11.4 and 11.5 shall apply mutatis mutandis.

11.7 MBUSA shall also only be liable for the loss of data to the extent that the respective user has ensured by standard procedures that the data can be restored with reasonable effort. This includes in particular proper and regular data backups by the user. This does not apply where data backup is an agreed obligation of MBUSA.

11.8 Provision and use of the Applications and Data Content as well as its support services may also be subject to certain restrictions, interruptions and/or inaccuracies beyond the control of MBUSA, which might be caused in particular by force majeure events, including strikes, epidemics, lockouts, natural catastrophes, orders by the authorities, or result from technical or other measures or occurrences (e.g., lack of internet access, repairs, maintenance, software updates and enhancements) that need to be carried out on systems of MBUSA.

11.9 In the event of the occurrences mentioned in clause 11.8, the service obligations of MBUSA are temporarily suspended. In such cases, no claims for damages or other secondary claims shall arise against MBUSA.

12. Compliance with applicable laws

12.1 The user is obligated not to engage in any acts or omissions that could lead to criminal liability based on fraud or breach of trust, insolvency crimes, anti-competitive criminal acts, the granting of advantages or to the corruptibility of persons employed by the user or third parties. Where there have been such acts or omissions, MBUSA will be entitled to rescind or terminate all legally consequential transactions with the user and to break off any and all dealings and negotiations.

12.2 Notwithstanding the foregoing, the user will be obligated to comply with all statutes and regulations impacting him and the business relationship with MBUSA.

12.3 It is the user's sole responsibility to assess whether using the Applications and Data Content as provided hereunder will be in line with applicable laws and to carry out any measures needed in order to be able to use the Applications and Data Content in compliance with law.

12.4 The Applications and Data Content and all related documentation, information or materials may be subject to export control regulations. The user will strictly comply with all legal requirements established under these regulations and will not export, re-export, divert, transfer or disclose, directly or indirectly the Applications and Data Content, or any related technical documentation, information or materials without the prior approval of MBUSA.

12.5 The User 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.
The User 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 User 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.

12.6 The User shall undertake its best efforts to ensure that the purpose of Clause 12.5 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.

12.7 The User 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 12.5.

12.8 Any violation of Clauses 12.5, 12.6 and 12.7 shall constitute a material breach of an essential element of this Agreement, and MBUSA 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 MBUSA resulting from the infringement, including the imposition of fines.

12.9 The User shall immediately inform MBUSA about any problems in applying Clauses 12.5, 12.6 or 12.7, including any relevant activities by third parties that could frustrate the purpose of Clause 12.5. The User shall make available to MBUSA information concerning compliance with the obligations under Clauses 12.5, 12.6 and 12.7 within two weeks of the simple request of such information.

13. Governing law and judicial forum

The place of performance is Atlanta, Georgia, and jurisdiction and venue shall lie exclusively with the competent courts of Atlanta, Georgia. The laws of the State of Georgia shall apply, to the exclusion of any conflict of law rules. The contracting parties agree to exclude the application of the uniform United Nations (UN) law of sales that is based on the UN Convention on Contracts for the International Sale of Goods of 11 April 1980.