



General Terms and Conditions Free and Open Source Software (FOSS)

Last revised 04/2019

1. Scope of Application

1.1 Considering these instrument is part of an agreement ("**Main Agreement**") related to the supply of goods or the rendering of services, entered between **Supplier** and **Mercedes-Benz do Brasil** or its affiliated companies ("Principal"). Therefore, considering the Main Agreement mentions a free and open source software ("**FOSS**") owed by Supplier, the parties decided to enter into this instrument in order to authorize and rule the use of Supplier's FOSS in vehicles developed and produced by Principal. The provisions established herein supersedes the provisions of the Main Agreement to that extent. Any amendment therefrom the instrument herein must be agreed in writing and with express reference to the affected provisions.

1.2 Goods or services provided by the Supplier may only use FOSS in vehicles developed and produced by Principal with the express prior approval of the Principal. This applies to software which contains goods or services in any form, whether permanently or for a limited period, on storage media or as a part of devices or components for devices, and irrespective of whether the software is transferred as object and/or source code. Such approval shall be obtained in accordance with the procedure described herein.

The term FOSS as used in this document encompasses all software that is, in principle, available at no cost and which is subject to a license or other contractual provision ("FOSS License") that, as a requirement for modifying and/or distributing the software and/or any other software associated with or derived from this software ("FOSS Derivative"), and which contains at least one of the following conditions:

- a) the source code of such software and/or FOSS Derivatives must be made freely available to third parties; and/or
- b) third parties must be allowed to create products derived from such software and/or FOSS Derivatives; and/or
- c) third parties must be provided with authorization keys required for the installation of such software; and/or
- d) certain information or documents, such as license text, must be included in the product documentation and/or other materials provided along with the software.

FOSS Licenses include, e.g., the "Berkeley Software Distribution License" (BSD license), the "GNU General Public License" Version 2 (GPL V2) or the "GNU

Lesser General Public License" Version 2.1 (LGPL V2.1).

2. Approval of the Principal for Use of FOSS or FOSS Derivatives

2.1 If the Supplier wishes to use FOSS and/or FOSS Derivatives for certain goods or services, the Supplier must obtain the prior approval of the Principal. For such approval, the procedure established herein must be entirely attended. The approval must be obtained for each individual case in which the Supplier shall, or intends to, use or modify FOSS or FOSS Derivatives as part of the provision of goods or services, or otherwise include it in the results of the Supplier's activities that shall remain with the Principal.

2.2 In order to submit the FOSS and/or FOSS Derivatives use to the Principal and for each individual case, the Supplier shall complete the latest form provided by the Principal ("FOSS Disclosure Document"). This form must be completed with all information required for the Principal to obtain a clear overview of the FOSS and/or FOSS Derivatives to be used and the consequences for the goods or services provided by the Supplier and for the Principal. In particular, the FOSS Disclosure Document must contain:

- a) the exact name of the FOSS which shall be covered by the Principal's approval, including the version;
- b) the description of the FOSS itself, with source code and documentation;
- c) the applicable FOSS License, with Version and the text in full;
- d) the source of the FOSS (download site);
- e) the obligations arising from the FOSS License for the Principal as a result of the use of the unchanged or modified FOSS, including a proposal as to which obligations should be assumed by the Supplier and Principal, respectively;
- f) a presentation of the technical reasons for the use of the FOSS (e.g. quality, security, serviceability, documentation, community), in being understood that there shall be no technical examination; instead, this shall remain the responsibility of the Supplier;
- g) in the case of multiple FOSS Licenses, the results of an examination by the Supplier of the compatibility of the Licenses.

Supplier shall complete fully and correctly the FOSS Disclosure Document and submit it to the Principal, at the same time as the offer on the affected goods or services.

2.3 The Principal shall decide at its own discretion on the



use of the FOSS. Supplier shall answer queries without delay. Approval shall only be granted by the Principal expressly and in writing; and silence shall not be deemed as approval.

Approval may be subject to the Supplier observing certain requirements for the use of FOSS or FOSS Derivatives. These requirements shall become part of the Supplier's obligations in accordance with the Main Agreement.

- 2.4 The FOSS and FOSS Derivatives approved by the Principal in each individual case shall be exhaustively listed in the Principal's written approval, including any corresponding requirements ("Approved FOSS").
- 2.5 The Supplier shall submit a fully and correctly completed FOSS Disclosure Document containing the updated status of these goods or services. It is a prerequisite for the provision of the goods or services in full and according to the contract.
- 2.6 This procedure shall apply once more in every event of any changes in the FOSS or FOSS Derivatives, even if this change only involves the release of a new version. This procedure shall also apply once more, if additional goods or services of the Supplier contain the same FOSS or if the FOSS, FOSS Derivatives or FOSS Licenses were already the subject of this procedure.
- 2.7 The Principal shall provide the Supplier with the latest version of the FOSS Disclosure Document to be used (section 2.2). Revised versions shall be requested by the Supplier and provided as needed.
- 2.8 Any costs and efforts of Supplier incurred with this procedure and the obligations resulting here from, and their fulfilment, shall be covered by the remuneration set out in the Main Agreement.

3. Obligations of the Supplier

- 3.1 The Supplier shall fulfil all obligations arising from the use of FOSS in conjunction with the use, modification and distribution of Approved FOSS and FOSS Derivatives, in particular those from the FOSS Licenses, for and on behalf of the Principal, unless this is not allowed under the terms of the respective FOSS License.

Any restrictions thereto may only be agreed in the FOSS Disclosure Document. In addition, the Supplier shall enable the Principal to fulfil all obligations relating to the use of the Approved FOSS and FOSS Derivatives and shall provide for strict compliance with the conditions and obligations agreed with the Principal.

- 3.2 The Supplier shall design and structure its goods or services, in the case of software development or modifications also within the software architecture, in accordance with the requirements of the Principal so that
 - a) Software to be developed or modified for the Principal is not impaired by any FOSS or FOSS Derivatives that is used, in particular not with regard to the so-called "copyleft" or "viral" effect according to which the license of the original

FOSS must be applied to a FOSS Derivative or other software relating to the original FOSS. The Supplier shall only use FOSS and FOSS Derivatives in the goods or services in a manner that does not conflict with the digital signature or authenticated vehicle programming techniques of the Principal; and

- b) the FOSS-Licenses of the FOSS do not require that the Principal or other authorized parties provide any authentication information, encryption keys and/or other information concerning the software used in the vehicles.

Approved FOSS and FOSS Derivatives must be technically implemented into the goods or services in a manner that allows them to be quickly and easily removed and replaced by a different product offering the same functions.

- 3.3 The Supplier shall fulfil all obligations relating to the Approved FOSS, in particular

- a) at the Principal's request, disclose and, where necessary, amend its organizational and technical processes with regard to FOSS (e.g. use of tools to detect FOSS),
- b) provide the Principal, no later than the date on which the goods or services are delivered, with the text of the FOSS Licenses, the information to be included in the product documentation and such other components required the Principal needs to create and use an executable version of the Approved FOSS, in particular modified build scripts and firmware uploaders,
- c) to the extent a FOSS license requires that the source code of a FOSS Derivatives must be published, providing the Principal with this source code, and
- d) acquire and provide, at its own cost, licenses for intellectual property rights and/or other third-party rights that are required for the use of the Approved FOSS in order to ensure that the Principal is granted rights of use as set out in the Main Agreement.

- 3.4 If the Supplier uses several FOSS in the same good or service, Supplier shall undertake appropriate measures to ensure the mutual compatibility of the individual FOSS Licenses and their compatibility as a whole with any other software to be developed or used, e.g. by designing and structuring the goods or services accordingly.

- 3.5 To the extent required by the respective FOSS Licenses or distribution models or if so requested by the Principal, the Supplier shall provide the maintainer of the respective FOSS software project the FOSS-Derivatives created by Supplier. This shall always be done in prior consultation with the Principal and only to the extent that the FOSS-Derivatives are non-differentiating and are classified as commodities, and if there are no conflicting confidentiality agreements, patents or other legal obstacles. In cases of doubt, the Principal shall decide.

4. Continuous Review

- 4.1 The Supplier shall continuously review if the Approved FOSS is used internally in accordance with



the respective FOSS License, the Principal's requirements and these provisions. In particular, the Supplier shall regularly examine if

- a) the FOSS has been published under a new or revised FOSS License;
- b) the FOSS is used in the goods or services in accordance with the conditions of the FOSS License, the FOSS Disclosure Document and the Principal's requirements;
- c) the FOSS is included in the goods or services in full, unless the use of parts of the FOSS is allowed under the corresponding FOSS License;
- d) for the FOSS, there are corrections, patches or new versions available, e.g. at the authors/ maintainers of the respective FOSS, and have the Principal decide if the same shall be used.

4.2 The Supplier shall provide the Principal with all items required to demonstrate the proper fulfilment of the obligations assumed by the Supplier (e.g. FOSS Disclosure Document, source code).

4.3 The Supplier shall report to the Principal on these matters regularly. Unless otherwise agreed, this mean every calendar month.

5. Liability and Warranty

5.1 This document shall not establish a responsibility to the Supplier for the FOSS and FOSS Derivatives. Nevertheless, the Supplier shall be liable and shall provide warranty services in relation to the goods or services, in accordance to the Main Agreement, if FOSS or FOSS-Derivatives are used.

5.2 The Supplier shall, without restriction to its duties under sec. 4 and except for the case that this is not allowed under the terms of the respective FOSS License, provide as part of its warranty obligations and at its own cost, the maintenance services for the FOSS and FOSS Derivatives used, in particular to remedy defects. This also includes the obligation to examine the FOSS and FOSS Derivatives for potential faults prior to initial use, and continuously thereafter, and to remedy such faults, in particular if it is related to security. Such corrections shall be included in the goods or services, if the Principal grants Supplier its consent.

5.3 The Supplier shall provide integration support for the FOSS and FOSS Derivatives as requested by the Principal and in accordance with the provisions of the Main Agreement, unless it is not allowed under the terms of the respective FOSS License.

5.4 The Supplier guarantee that FOSS does not violate any third party patent, copyright or any intellectual property rights, entirely or partially.

5.5 The Supplier shall assure and provide all necessary measures to prevent any damages or conflict to any of the Principal's systems, which might, entirely or partially, affects its regular function.

5.6 If the Supplier breaches an obligation described herein, he shall indemnify the Principal and its affiliated companies and the sales partners, dealers and

customers of the Principal from all claims, losses and costs arising out or as a result of such breach and shall defend the aforementioned parties against any third-party claims. The Principal may also at its solo discretion to defend itself. The Supplier shall bear the costs of court and out-of-court proceedings expenses including appropriate attorney's fees, even if the defence is relates only to an alleged claim.

6. FOSS Representative

The Supplier shall appoint, in writing, a representative and a surrogate who shall be available as contact persons for all questions relating to the use of FOSS, which will be responsible to prepare or distribute reports and, within the Supplier organization, to ensures that the fulfilment of the obligations arising here from is properly organized and documented. These persons must be authorized to make all of the daily routine decisions relating to the use of FOSS and FOSS Derivatives and to accept the corresponding declarations from the other party. Such person must be sufficiently qualified to identify the extent to which FOSS is used and the resulting consequences.

7. Changes

7.1 Any changes to the FOSS approved by the Principal the Supplier shall require the prior approval of the Principal in accordance and the procedure described in this document for the initial use of FOSS. The Supplier shall obtain the Principal's approval for changes promptly and accordance with this procedure, including information on the planned date on which the changes are to be included in the goods or services provided. With regard to the additional consequences of changes to FOSS for the goods or services covered by the Main Agreement, the procedure for changes described therein shall apply.

7.2 The Principal may demand changes and additions to the use of FOSS at any time until the respective goods or services are delivered or accepted, at its own reasonable discretion and in consideration of the Supplier's interests.

8. Duties of Subcontractors

8.1 The provisions of the Main Agreement shall also apply to subcontractors elected by the Supplier. In any case, the commissioning of subcontractors shall not affect Supplier's responsibility before the Principal for the performance of the contracted goods or services, in particular with regard to the granting of rights to use the work results.

8.2 The Supplier shall select any subcontractors carefully attending the requirements set out herein, monitor them and include them in his information and work processes concerning FOSS. This shall be demonstrated by suitable documentation, e.g. excerpts from the corresponding agreements. The Principal shall be entitled to contact the subcontractor in order to clarify queries relating to the FOSS used. The Supplier shall be informed thereof.

8.3 The Supplier shall, at the Principal's request, no



longer use Subcontractor for the Principal in connection with FOSS if the Principal has any evidence to doubt the subcontractors' reliability and willingness to cooperate in terms of compliance with the Principal's requirements for the use of FOSS. Costs and expenses resulting therefrom shall be borne by the Supplier.

9. General Provisions

9.1 The provisions of the Main Agreement on intellectual property rights and rights to use the goods or services shall also apply to modified versions of FOSS unless such modifications are covered by the original FOSS License due to the "copyleft" or "viral" effect. Any restrictions resulting from or arising out of the FOSS Licenses with respect to the distribution of unchanged FOSS on the obligations of the Supplier from the Main Agreement or this document shall require express prior consent in writing. Such agreement must expressly refer to this document and the Main Agreement.

9.2 Upon request, the Supplier shall perform all required measures, which must be performed by the Principal in order to grant rights to third parties (e.g. customers) in accordance with the respective FOSS License, in particular making the source codes publicly availa-

ble. This also includes the preparation and publication of documentation, the archiving and version management of the individual FOSS and FOSS Derivatives, their clear allocation to individual goods or services and, if necessary, the provision and dissemination of the FOSS and FOSS Derivatives to third parties in accordance with the respective FOSS Licenses on behalf of the Principal.

9.3 The Supplier shall give the required information concerning the FOSS in scope of this document. The nature and extent of the information shall be approved by the Principal.

9.4 No separate or additional remuneration shall be paid for the provision of Approved FOSS and FOSS Derivatives. The remuneration according to the Main Agreement shall remain unaffected.

9.5 The arrangements of the parties shall exclusively be governed by the law of the Federal Republic of Germany, excluding the UN purchase right. The exclusive jurisdiction for all disputes is Stuttgart. Places of venue compulsory by law remain unaffected. There is no arbitration or conciliation agreement.

9.6 The English version of this document is determinative. Translations are provided only for convenience.

IN WITNESS WHEREOF, the Parties hereto have caused to execute the present instrument in 02 (two) counterparts of same content in the presence of 02 (twos) witnesses below identified.

São Bernardo do Campo, .

MERCEDES-BENZ DO BRASIL LTDA.

Name:
Position: <at least L4>

Name:
Position: <at least buyer>

<CORPORATE COMPANY NAME>

Name:
Title:

Name:
Title:

Witnesses:

Name:
CPF:

Name:
CPF:

