

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

Last revised 11/2011

1. Scope of Application

1.1 These provisions supplement an agreement ("Main Agreement") between the Contractor and Daimler AG or its affiliated companies within the meaning of sec. 15 AktG ("Principal") with respect to the use of so-called free and open source software ("FOSS"). They supersede the provisions of the Main Agreement to that extent. Individual deviations therefrom must be agreed in writing and with express reference to the affected provisions.

1.2 Goods or services provided by the Contractor may only contain FOSS with the express prior approval of the Principal. This applies to software contained in 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"), 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 Contractor wishes to use FOSS and/or FOSS Derivatives for certain goods or services, he must obtain the prior approval of the Principal. For such approval, the following procedure must be observed. The approval must be obtained for each individual case in which the Contractor 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 Contractor's activities that shall remain with the Principal.

2.2 The Contractor shall use 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 comprehensive overview of the FOSS resp. FOSS Derivatives to be used and the consequences for the goods or services provided by the Contractor and for the Principal. In particular, the FOSS Disclosure Document must contain:

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- a) the exact name of the FOSS which shall be covered by the Principal's approval, including the version;
- b) 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 Contractor 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 Contractor;
- g) in the case of multiple FOSS Licenses, the results of an examination by the Contractor of the compatibility of the Licenses.

The fully and correctly completed FOSS Disclosure Document must be received by the Principal, at the latest, 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. The Contractor shall answer queries without delay. Approval shall only be granted expressly and in writing; silence shall not be deemed to constitute approval. Approval may be made contingent on the Contractor observing certain requirements for the use of the relevant FOSS or FOSS Derivatives. These requirements shall become part of the Contractor'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 Contractor shall submit a fully and correctly completed FOSS Disclosure Document for the current status of these goods or services when providing the 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 again in the event of any changes in the FOSS or FOSS Derivatives, even if this change only involves the release of a new version, and in case of any changes in the intended use by the Principal. This shall also be the case, if additional goods or services of the Contractor 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 Contractor with the latest version of the form to be used (section 2.2). Revised versions shall be requested by the Contractor and provided as needed.

2.8 Any costs and efforts of Contractor incurred in conjunction 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. Duties of the Contractor

3.1 The Contractor 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

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Licenses, for and on behalf of the Principal, unless this is not permitted under the terms of the respective FOSS License. Any restrictions thereto may only be agreed in the FOSS Disclosure Document. In addition, the Contractor 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 Contractor 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 Contractor 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 for them to be quickly and easily removed and replaced by a different product offering the same functions.

3.3 The Contractor must 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, provide the Principal with this source code, and d) acquire and provide, at its own cost, licenses for industrial 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 Contractor uses several FOSS, he 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 Contractor shall provide the maintainer of the respective FOSS software project the FOSS-Derivatives created by Contractor. 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.

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4. Continuous Review

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

4.3 The Contractor 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 of the Contractor for the FOSS and FOSS Derivatives per se, save where permitted by the respective FOSS License. Nevertheless, the Contractor shall be liable and provide warranty services in relation to the goods or services, just as under the Main Agreement, if FOSS or FOSS-Derivatives are used.

5.2 The Contractor shall, without restriction to its duties under sec. 4 and except for the case that this is not permitted under the terms of the respective FOSS License, provide as part of its warranty obligations and at its own cost, maintenance services for the FOSS and FOSS Derivatives used, in particular for the remediation of 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 they relate to security. Such corrections shall be included in the goods or services, if the Principal grants its consent.

5.3 The Contractor 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 not permitted under the terms of the respective FOSS License.

5.4 If the Contractor 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 as a result and shall defend the aforementioned parties against third-party claims. The Principal may also opt to defend itself. The Contractor shall bear the costs of court and out-of-court proceedings including appropriate attorney's fees, even if the defence relates only to an alleged claim.

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6. FOSS Officer

The Contractor 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, who prepare or distribute reports and, within the Contractor's organization, 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 day-to-day decisions relating to the use of FOSS and FOSS Derivatives and to accept the corresponding declarations from the other party. They 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 shall require the prior approval of the Principal in accordance and the procedure described in this document for the initial use of FOSS shall apply accordingly. The Contractor shall obtain the Principal's approval for changes in good time and in 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 Contractor's interests.

8. Duties of Subcontractors

8.1 With respect to the use of subcontractors, the provisions of the Main Agreement apply. In any case, the commissioning of subcontractors shall not affect Contractor's responsibility to 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 Contractor shall select any subcontractors carefully with respect to 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 Contractor shall be informed thereof.

8.3 The Contractor shall, at the Principal's request, no longer use Subcontractor for the Principal in connection with FOSS if the Principal has good cause to doubt the subcontractors' reliability and willingness to cooperate in terms of compliance with the Principal's requirements for the use of FOSS. Costs resulting therefrom shall be borne by the Contractor.

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 therefrom or from FOSS Licenses with respect to the distribution of unchanged FOSS on the duties of the Contractor

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arising 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 Contractor 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 available. 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 Contractor shall give the required information concerning the FOSS in scope of this document. The nature and extent of the information shall be agreed with the Principal.

9.4 No separate 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 India. The exclusive jurisdiction for all disputes is Chennai.