

MBUSA SCAN TOOL DATA LICENSE AGREEMENT

This MBUSA Scan Tool Data License Agreement (the “**Agreement**”) is entered into as of _____ (the “**Effective Date**”), by and between _____, a _____ with its principal office located at _____ (“**Licensee**”), and Mercedes-Benz USA, LLC, a Delaware limited liability company with its principal office located at One Mercedes-Benz Drive, Sandy Springs, GA 30028 (“**MBUSA**”). Licensee and MBUSA are each referred to herein as a “**Party**” and, together, the “**Parties**”.

RECITALS

WHEREAS, MBUSA has MBUSA Scan Tool Data (defined below), which provides uses for vehicle diagnostic scan tools;

WHEREAS, pursuant to a Data Services Agreement with the Equipment and Tool Institute (“**ETI**”), MBUSA has authorized ETI to facilitate access to the MBUSA Scan Tool Data to members of ETI who have entered into this Agreement with MBUSA; and

WHEREAS, Licensee desires to obtain Licensed Data (defined below) for use by Licensee as permitted herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

1. Definitions.

(a) “**Applicable Law**” means all applicable federal, state and local codes, orders, decrees, laws, statutes, ordinances, guidelines, rules, and regulations of any jurisdiction, including, without limitation, those of the U.S. Environmental Protection Agency (“**EPA**”) and the California Air Resource Board (“**CARB**”) pertaining to the dissemination of emission-related service information, as applicable to the subject matter of this Agreement, and the U.S. Export Administration Laws and Regulations (“**EAR**”).

(b) “**ETI Agreement**” means the Data Services Agreement between ETI and MBUSA.

(c) “**Licensed Data**” means the MBUSA Scan Tool Data that is provided to Licensee, such as by ETI pursuant to the ETI Agreement.

(d) “**MBUSA Scan Tool Data**” means electronic messages transmitted between a scan tool and an electronic control unit (“**ECU**”) on-board a Mercedes-Benz vehicle for the purposes of performing diagnosis, tests and repairs of a Mercedes-Benz vehicle, and includes, without limitation: (a) read only, data stream information (e.g. sensor values, I/O switch states, etc.); (b) bi-directional control, data stream information (e.g., operation of actuators, initiation of self-checks, etc.); (c) special diagnostic test routine requirements (e.g. VIN initialization, cylinder balance test, etc.); (d) vehicle data communication requirements (e.g., vehicle connector terminal/pin out definitions, physical layer definitions, etc.); (e) ECU data communication requirements (e.g. diagnostic protocols, data link layer definitions, etc.); and (f) vehicle application

information (e.g. ECU information charts, etc.).

2. **Licensed Data.**

Subject to the terms of this Agreement, during the Term (defined below), MBUSA grants to Licensee a non-exclusive, non-transferable, non-sublicensable revocable right and license to the Licensed Data for the development, manufacture and sale of vehicle diagnostic service tools solely for the purposes of performing diagnosis, tests and repairs of Mercedes-Benz vehicles (the “Purposes”). The Licensee expressly acknowledges and agrees that, as between the parties, MBUSA (or its third party licensors) exclusively retain all ownership rights, title in and interest to the Licensed Data. Licensee’s exercise of its rights under this Agreement shall not cause such ownership to merge for the benefit of Licensee or deprive or impair MBUSA of its ownership in and to any Licensed Data. Licensee shall not at any time do any act that impairs MBUSA’s intellectual property and other rights therein. Licensee shall not use the Licensed Data for any purpose other than the Purposes, as defined herein. Licensee further agrees to not disclose such Licensed Data to any third party, except as expressly authorized herein or in a separately executed agreement. In addition, Licensee agrees not to duplicate, compile or reverse engineer all or any portion of the Licensed Data or provide the same in any form to any third party.

3. **Confidentiality.**

(a) **Obligation of Confidentiality.** The Parties may exchange Confidential Information under this Agreement during the Term. For purposes of this section, “Confidential Information” means information disclosed by a Party (the “Discloser”) to the other (the “Recipient”), whether in oral, written, or other tangible form, that could reasonably be considered confidential or proprietary, including the terms and conditions of this Agreement; business plans; pricing data and information, including pricing formulas; projected activities and results of operations; names of customers, counterparties, and employees; means, methods and processes of manufacture and assembly; intellectual property rights; existing and proposed products; computer software; ideas and concepts; data, drawings, designs, plans, specifications, materials and documents; and, business records. Confidential Information will not include information that (A) is or becomes publicly known through no act or omission of the Recipient in breach of this Agreement; (B) was in Recipient’s lawful possession prior to the disclosure, as demonstrated by written records; (C) is rightfully received by Recipient from a third party without an accompanying secrecy obligation or breach of any duty or agreement by which the third party is bound, and imposes no obligation of confidentiality upon Recipient; or (D) is shown, by clear and convincing evidence, to be independently developed by Recipient’s employees without having any access to Confidential Information and without any reliance in any way upon Discloser’s Confidential Information.

A Recipient will use Discloser’s Confidential Information exclusively for the purposes of performing Recipient’s obligations under this Agreement (the “Authorized Use”). Recipient will (i) treat as confidential the Confidential Information and protect the Confidential Information in the same manner and at a minimum with the same degree of care that Recipient protects its own trade secrets and other confidential business information; (ii) not alter, modify, disassemble,

reverse engineer or decompile any of the Confidential Information; (iii) not, directly or indirectly, disclose, report or transfer Confidential Information to any third party without Discloser's prior written consent, except as explicitly provided herein; (iv) not, directly or indirectly, disclose, report or transfer Confidential Information to employees, directors or agents of Recipient or its affiliates, except for those employees, directors or agents who must have the information in order to accomplish the Authorized Use and who owe a duty or contractual obligation of confidentiality to Recipient; and (v) not use Confidential Information in any manner or form which will be in competition with Discloser or its business.

(b) **Permitted Disclosure.** If Recipient is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose Confidential Information, Recipient will provide Discloser with prompt written notice thereof so that Discloser may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If, in the absence of a protective order or other remedy or the receipt of a waiver, Recipient is nonetheless legally compelled to disclose Confidential Information to any tribunal or else stand liable for contempt or suffer other censure or penalty, Recipient may, without liability hereunder, disclose to such tribunal only that portion of the Confidential Information which Recipient is legally required to be disclosed, *provided* that Recipient exercises its best efforts to preserve the confidentiality of the Confidential Information (including by cooperating with Discloser, at Discloser's expense, to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information by such tribunal).

4. **Data Security.**

Licensee represents and warrants that it will comply with Exhibit B of this Agreement ("Data Protection Addendum") to protect the Licensed Data and any Confidential Information from unauthorized access or disclosure.

5. **Representations & Warranties.**

Each Party represents and warrants to the other Party that:

(1) it is duly organized, validly existing and in good standing as a corporation or other entity as represented in this Agreement under the laws and regulations of its jurisdiction of incorporation, organization or chartering;

(2) it will comply with all Applicable Laws in connection with their performance under this Agreement;

(3) it has the right, power and authority to enter into this Agreement, to grant the rights and licenses granted and to perform its obligations;

(4) the undersigned is authorized to execute this Agreement; and

(5) when executed and delivered, this Agreement will constitute the legal, valid and binding obligation of each Party, enforceable against each Party in accordance with its terms.

6. **Indemnity.**

(a) **Licensee Indemnification.** Licensee will defend, indemnify and hold harmless MBUSA and its affiliates and their respective officers, directors, employees, and agents (collectively, the “MBUSA Indemnitees”), from and against all third party actions, claims, suits, judgments, damages, liabilities, losses, penalties, costs and expenses (including attorneys’ fees and disbursements) (collectively, “Losses”) incurred or suffered by any MBUSA Indemnitee arising out of or relating to (i) any breach of this Agreement by Licensee; (ii) any actual infringement of a third-party’s intellectual property rights including any patents, copyrights and copyrightable works (including computer programs), trade secrets or confidential information by Licensee; and (iii) any intentionally wrongful or grossly negligent acts or omissions by Licensee and its officers, directors, employees and agents, provided, that this clause (a) will not obligate Licensee to indemnify any MBUSA Indemnitee for any portion of damages (except for damages based on theories of strict liability) directly attributable to, and directly caused by, the negligence of an MBUSA Indemnitee.

(b) **MBUSA Indemnification.** MBUSA will defend, indemnify and hold harmless Licensee and its affiliates and their respective officers, directors, employees, and agents (collectively, the “Licensee Indemnitees”), from and against all third party Losses incurred or suffered by any Licensee Indemnitee arising out of or relating to (i) any breach of this Agreement by MBUSA; (ii) any actual infringement of a third-party’s intellectual property rights including any patents, copyrights and copyrightable works (including computer programs), trade secrets or confidential information by MBUSA; and (iii) any intentionally wrongful or grossly negligent acts or omissions by MBUSA and its officers, directors, employees and agents, provided, that this clause (a) will not obligate MBUSA to indemnify any Licensee Indemnitee for any portion of damages (except for damages based on theories of strict liability) directly attributable to, and directly caused by, the negligence of an Licensee Indemnitee.

7. **License Fee and Insurance.**

(a) **License Fees.** Licensee will pay MBUSA an annual license fee as set forth on Exhibit A of this Agreement (“License Fee”). No Licensed Data will be provided to Licensee until Licensee has paid the License Fee. As set forth in the ETI Agreement, the License Fee shall be invoiced and collected by ETI, and ETI will subsequently remit the License Fee to MBUSA.

(b) **Insurance/Bonds.** Licensee agrees to provide and maintain, and shall require any agent or subcontractor it retains to provide and maintain, during the term of this Agreement and any extensions thereof, insurance coverage with companies acceptable to MBUSA as follows:

- (1) Comprehensive general liability insurance covering bodily injury, property damage, personal and advertising injury, independent contractors and contractual liability, host liquor liability, products and completed operations liability for \$1,000,000 each occurrence.
- (2) Business automobile liability insurance covering all owned, hired and non-owned vehicles for a combined single limit bodily injury and property damage for \$2,000,000 each occurrence.
- (3) Workers' compensation insurance according to statutory limits, including employers' liability Insurance for \$1,000,000 each accident, each disease, each employee, including within the policy a waiver of subrogation in favor of MBUSA.
- (4) Umbrella Liability/Excess Liability providing coverage in excess of the Limits noted in subsections (1), (2) & (3) above at minimum Limits of Liability of \$2,000,000. The Umbrella/Excess Policy must follow form of the Primary Policies noted in subsections (1), (2) & (3) above and be extended to "drop down" to become primary in the event the primary limits are reduced or the aggregate limits are exhausted.

(c) Licensee will add MBUSA as an additional insured on the commercial general liability and business automobile liability and umbrella/excess liability policies stated herein. Licensee agrees and understands that this insurance will be primary over any other insurance that MBUSA maintains as respects to this Agreement. Licensee will include waiver of subrogation clauses in favor of MBUSA in all policies noted above including workers' compensation insurance.

(d) Licensee will furnish MBUSA certificates of insurance, upon execution of this Agreement evidencing the required coverages stated herein. Such certificates of insurance will provide for thirty (30) days advance written notice of cancellation, material change in coverage or non-renewal of coverage.

8. **Limitation of Liability.**

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER (OR ANY OTHER PERSON OR ENTITY) FOR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES RESULTING FROM LOSS OF PROFITS OR LOSS OF BUSINESS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THEIR POSSIBLE EXISTENCE.

BOTH PARTIES FURTHER AGREE THAT IN NO EVENT SHALL ETI BE LIABLE TO EITHER OF THEM FOR ANY LIABILITY OR LOSSES OF ANY TYPE SUFFERED IN

CONNECTION WITH ANY ACTS OR OMISSIONS BY THE PARTIES RELATED TO THIS AGREEMENT.

9. **Term and Termination.**

(a) **Term.** Subject to clause (b) below, this Agreement will commence on the date hereof and will continue until the third anniversary of the date hereof (the “**Initial Term**”). The Initial Term will automatically renew for successive three-year periods (each, a “**Renewal Term**” and together with the Initial Term, each a “**Term**”) unless a written notice of non-renewal is given by either Party at least 90 days prior to the end of the then-applicable Term.

(b) **Termination.** Each Party will have the right to terminate this Agreement, effectively immediately upon written notice, if the other Party fails to cure a material breach or default in the performance of its obligations under this Agreement within 14 days after receipt of written notice of such material breach or default from the non-defaulting Party.

10. **Force Majeure.**

Neither Party shall be responsible or liable for losses arising out of the delay or interruption of its performance of obligations under the Agreement due to any act of God, act of public enemy, act of governmental authority or due to riot, war, flood, terrorism, civil commotion, insurrection, severe weather conditions or any other cause beyond the reasonable control of the delayed Party.

11. **Entire Agreement.**

This Agreement, together with all Exhibits (or other attachments to this Agreement), and any other documents incorporated by reference to this Agreement, constitute the entire agreement between the Parties.

12. **Assignment.**

Neither Party may assign, transfer or delegate any or all of its rights or obligations under this Agreement without the prior written consent of the other Party. An assignment will not relieve the assigning Party of any of its obligations.

13. **Headings.**

Headings are inserted in this Agreement for reference purposes only, and may not be used to interpret this Agreement.

14. **Severability.**

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

15. **Governing Law; Jurisdiction.**

This Agreement will be governed by and construed in accordance with the laws of the State of Georgia without giving effect to any choice or conflict of law provision or rule that would cause the application of laws of any jurisdiction other than those of the State of Georgia. Venue will be in the state or federal courts of Fulton County, Georgia.

16. **Counterparts.**

This Agreement may be executed in counterparts, each of which will be considered an original, but together will be considered one and the same agreement. A signed copy of this Agreement delivered by e-mail will be considered to have the same legal effect as delivery of an original signed copy of this Agreement.

17. **Marks.**

Neither Party may use the other Party's name, trade name, trademark, service mark, logo(s), or other identifying information or image, for any purpose unless specifically authorized in this Agreement or in writing by the other Party. In the event MBUSA authorizes such use under this Agreement or otherwise, such use shall be revocable at any time by MBUSA at MBUSA's sole discretion. The parties agree to adhere to the logo and trademark usage guidelines of the other Party when using that Party's name, logo(s), or other identifying information or image.

18. **Notice.**

All notices required to be given pursuant to this Agreement shall be in writing and shall be deemed effective: (i) when received in the event of service by certified mail, return receipt requested; (ii) when received by the Party at the address shown in this Agreement in the event of an overnight courier; or (iii) when sent via facsimile transmission (with a written copy sent simultaneously by United States mail). Any facsimile transmittal of any document related to this Agreement shall be treated in all manner and respects as the original document.

IN WITNESS WHEREOF, the parties have entered into this Agreement by having it signed by their duly authorized representatives.

LICENSEE

(Licensee's Name)

(Licensee's Address)

By: _____
(Signature)

(Printed Name)

Title: _____

Date: _____

Mercedes-Benz USA, LLC

By: _____
(Signature)

(Printed Name)

Title: _____

Date: _____

Exhibit A

License Fees

The amount stated in the schedule below, annually, is to be paid in advance to ETI on behalf of MBUSA pursuant to Section 7 of the Agreement. MBUSA reserves the right to change the fees set forth in the below schedule prior to any renewal of this Agreement. Licensee acknowledges and agrees that the below schedule that determines a lump sum annual License Fee based on Licensee's annual sales is a reasonable and expeditious way of approximating royalties in lieu of a per unit royalty.

	Annual Sales of Automotive Equipment and Tools in North America	Annual License Fee
<input type="checkbox"/>	Under \$10,000,000	\$10,500
<input type="checkbox"/>	\$10,000,000 to \$49,999,999	\$12,500
<input type="checkbox"/>	\$50,000,000 and over	\$15,500

Exhibit B

Data Protection Addendum

This Data Protection Addendum (the “Addendum”) supplements the MBUSA Scan Tool Data License Agreement (the “Agreement”) by and between Mercedes-Benz USA, LLC (“MBUSA”) and the Licensee (as such term is defined in the Agreement, “Licensee”) to which this Addendum is attached and/or incorporated by reference. All capitalized terms used in this Addendum shall have the meanings ascribed to them herein or, if not so ascribed herein, the meanings ascribed to them in the Agreement.

1. Definitions.

1.1 **MBUSA Data** means all data provided to or hosted by Licensee or which Licensee otherwise has access to while performing the Services, and which may include, without limitation, individual records or compilations thereof that include any or all of the following: (a) any commercially sensitive information about MBUSA, including, without limitation, information regarding mergers, acquisitions, consumer marketing preference data, lead generation source or other related sales data, or MBUSA employee compensation information; (b) MBUSA PII; and (c) information regarding MBUSA’s information security program or infrastructure, including, without limitation, MBUSA Systems.

1.2 **MBUSA PII** means any MBUSA Data that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household. MBUSA PII includes, without limitation, data regulated as personal information or personal data by Privacy and Security Laws.

1.3 **MBUSA Systems** means any computer, computer network, computer application, imaging device, storage device, mobile computing device, or software that is owned, licensed, or leased by MBUSA or operated by a third party on behalf of MBUSA, which: (a) connects to or otherwise interacts with Licensee systems; or (b) is enabled or intended to access or interact with MBUSA Data created or Processed in connection with the Agreement.

1.4 **Privacy and Security Laws** means any and all international, local, country-specific, or U.S. State or Federal laws, regulations, directives, standards, guidelines, policies, or procedures, as amended, applicable to Licensee pertaining to the security, confidentiality, or privacy of MBUSA Data.

1.5 **Process** means to perform any operation or set of operations on MBUSA Data, including, without limitation, to: (a) collect, receive, input, upload, download, record, reproduce, store, host, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate, or make other improvements or derivative works; (b) analyze, output, consult, use, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available; or (c) block, erase, delete, or destroy.

1.6 **Security** means technological, physical, organizational, and procedural safeguards, including, without limitation, policies, procedures, guidelines, practices standards, controls, hardware, software, firmware, and physical security measures, the function or purpose of which is, in whole or part, to protect the confidentiality, integrity, or availability of MBUSA Data.

1.7 **Security Breach** means any actual or reasonably suspected: (a) inability to access MBUSA Data due to an attack or exploit; (b) unauthorized or accidental access, acquisition, alteration, disclosure, use, theft, destruction, or loss to or of MBUSA Data; or (c) introduction of unauthorized code into MBUSA Systems.

1.8 **Secure Development Practices** refers to the utilization of methods or processes to ensure that software is free of vulnerabilities at anytime during the software life cycle. Secure Development Practices include, without limitation, observance of the OWASP framework and SANS Top 25 guidelines.

1.9 **Security Framework** refers to the ISO 27001 family of standards for Information Security Management Systems, the NIST Framework for improving Critical Infrastructure Cybersecurity, the Cloud Security Alliance Security Guidance, or other security framework approved in writing by MBUSA.

1.10 **Security Incident** means the successful or attempted exploitation of an existing vulnerability resulting in negative impact on the confidentiality, integrity, or availability of MBUSA Data, MBUSA Systems, or Licensee systems involved in the Processing of MBUSA Data.

1.11 **Services** means the service(s) that Licensee provides to MBUSA under the terms of the Agreement or any applicable SOW thereunder.

2. Data Processing.

2.1 Licensee shall only Process MBUSA Data to the extent necessary to provide the Services to MBUSA or as otherwise expressly permitted in the Agreement, the applicable SOW, or other written instructions from MBUSA, and for no other purpose.

2.2 Except as explicitly provided in the Agreement, Licensee shall make best efforts to provide MBUSA with unfettered, uninterrupted, and constant access to MBUSA Data, and shall make best efforts to delete, correct, or block any such data, or allow MBUSA to do the same, upon MBUSA's written request.

2.3 Upon request, Licensee shall provide to the MBUSA Information Security contact a list of each and every physical location at which either Licensee or and each of Licensee's subcontractor(s) will Process MBUSA Data.

2.4 Licensee shall make reasonable efforts to assist MBUSA as needed to respond to requests from authorities, data subjects, customers, or others to provide information (including details of the Services provided by Licensee) related to Licensee's Processing of MBUSA Data.

3. Information Security; Compliance.

3.1 Licensee is responsible for the Security of any MBUSA Data to the extent it Processes such data. Licensee shall, at its sole cost and expense, implement Security that is no less rigorous than, and shall only Process MBUSA Data in such a manner so as to comply with: (a) the Security Framework; (b) Privacy and Security Laws; and (c) any other requirements of this Addendum or the Agreement. Licensee shall immediately notify MBUSA if Licensee knows that any written instruction by MBUSA would cause either or both parties to violate Privacy and Security Laws.

3.2 At a minimum, Licensee's Security shall include: (a) access controls; (b) physical security; (c) protection of MBUSA Data at rest and in transit; (d) segregation of MBUSA Data from other

data; (e) privacy and security awareness training; (f) record maintenance, including, without limitation, incident and compliance recordkeeping consistent with the Security Framework; (g) Secure Development Practices with regard to applications that Process MBUSA Data; and (i) incident, vulnerability, and vendor management programs.

3.3 Remote access to MBUSA Data or MBUSA Systems is only allowed upon prior written approval by MBUSA, and must occur through access points approved by MBUSA. Licensee systems used for such remote access must be protected according to the requirements of this Addendum.

3.4 [Intentionally omitted].

3.5 Licensee shall ensure only Licensee-owned or leased devices are used by Licensee and its subcontractors to Process MBUSA Data and shall promptly notify MBUSA of any lost or stolen device that was used to Process MBUSA Data.

3.6 Licensee shall obtain MBUSA's prior written consent before implementing any change to the Processing of MBUSA Data that constitutes a material change in Licensee's Security. Licensee shall use commercially reasonable efforts to provide MBUSA at least ninety (90) days' notice in advance of the proposed effective date of such change. To the extent Licensee implements any such change without MBUSA's written consent, MBUSA shall have the right to terminate the Agreement, the applicable SOW, or this Addendum effective immediately upon written notice to Licensee.

3.7 Licensee shall assign a knowledgeable employee working for Licensee that shall act as its Security Coordinator, who will be the security liaison between MBUSA and Licensee.

3.8 During the term of the Agreement, Licensee shall implement and maintain additional Security, as mutually agreed upon by Licensee and MBUSA, in the event of: (a) any material changes to Services; (b) any Security Breach or Security Incident; or (c) any material decreases to Licensee's Security; provided, that the failure of MBUSA to make a request of Licensee shall not impact, eliminate, or decrease Licensee's obligations under this Addendum.

3.9 Licensee shall cooperate with MBUSA's reasonable requests to assist MBUSA with its own compliance objectives pursuant to Privacy and Security Laws, including, without limitation, completing any documentation, assessments, or questionnaires provided to Licensee regarding the same with complete and accurate information and complying with any data subjects' requests to block, correct, or delete their data from Licensee's systems.

3.10 Licensee shall, to the extent permitted by law, notify MBUSA immediately upon receipt of any request from a regulator to access MBUSA Data, including any request to access locations where such information is stored.

3.11 In the event of any conflict among any of Licensee's obligations as required herein or as required in the Agreement, Licensee shall comply with the obligation that provides the most protective Security.

4. Security Breach Procedures.

4.1 Licensee shall notify MBUSA as soon as practicable, and in any event within twenty-four (24) hours, after Licensee becomes aware of any Security Incident or Security Breach.

4.2 Licensee shall, at its sole cost and expense, use best efforts to immediately remedy any

Security Incident or Security Breach and use best efforts to prevent any further Security Incident or Security Breach.

4.3 Licensee shall, at its sole cost and expense: (a) promptly preserve all relevant records, logs, files, data reporting, and other materials relevant to any Security Incident or Security Breach, and shall provide the same to MBUSA upon request; and (b) diligently investigate any Security Incident or Security Breach and shall fully cooperate with MBUSA in its own investigation of and response to any such Security Incident or Security Breach.

4.4 If a Security Incident or Security Breach arises, in whole or in part, from an act or omission of Licensee, Licensee shall reimburse MBUSA for all reasonable costs incurred by MBUSA in responding to, and mitigating damages caused by, any such Security Incident or Security Breach, including, without limitation, all costs of notice and credit monitoring and identity theft protection services.

4.5 Unless otherwise required by law, Licensee agrees that it shall not inform any third party of any Security Incident or Security Breach without first obtaining MBUSA's prior written consent, other than to inform a complainant that the matter has been forwarded to MBUSA's legal counsel. Further, Licensee agrees not to include MBUSA's name, logo, or any other identifiable information about MBUSA or its affiliates in any notice or public statement concerning any Security Incident or Security Breach without MBUSA's prior written approval.

5. Confidentiality.

Licensee shall hold any information or data communicated to or otherwise obtained by Licensee by virtue of Licensee's delivery of Services in confidence and adhere to industry best practices for securing such information or data.

6. Subcontractors.

6.1 Licensee shall only provide access to MBUSA Data or to Licensee's systems that would allow access to MBUSA Data to subcontractors to the extent necessary for Licensee to perform the Services for MBUSA. Once any such subcontractor no longer needs access to MBUSA Data in order for Licensee to perform Services for MBUSA, Licensee shall immediately terminate such subcontractor's access to such MBUSA Data, or, if applicable, shall immediately request that MBUSA terminate such access.

6.2 Prior to providing any subcontractor with access to MBUSA Data or to Licensee's systems or network that would allow access to MBUSA Data, Licensee shall: (a) conduct a reasonable investigation of such subcontractor's Security measures to determine that such Security is reasonable and consistent with Licensee's obligations under this Addendum; and (b) ensure that such subcontractor is obligated by law or contract to protect MBUSA Data in a way that is consistent with Licensee's obligations to protect MBUSA Data under this Addendum. Notwithstanding anything to the contrary herein, in all events, Licensee is and shall remain fully responsible for any act, error, or omission of any subcontractor to whom Licensee grants access to MBUSA Data or to Licensee's systems or network that would allow access to MBUSA Data with respect to compliance with this Addendum, as if such act, error, or omission was undertaken by Licensee.

6.3 Licensee shall provide to MBUSA at the outset of the Agreement a complete list of all subcontractors who will Process MBUSA Data in furtherance of Licensee's provision of Services

to MBUSA, and shall update such list as necessary throughout the term of the Agreement; provided, however, that Licensee shall not engage any subcontractor to Process MBUSA Data except as explicitly set forth in this Section 6.

7. Monitoring & Audits.

7.1 Licensee agrees to allow MBUSA and its representatives to, and shall secure MBUSA and its representatives' rights to, monitor, log, and analyze access by Licensee and each of its subcontractors within MBUSA Systems as a condition of allowing such access.

7.2 Upon MBUSA's written request, Licensee must permit MBUSA or its representative to annually audit any and each of Licensee's privacy and security controls in relation to any MBUSA Data being Processed by Licensee. Licensee shall fully cooperate with such audit by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, and application software relevant to Licensee's compliance with this Addendum. Licensee shall make available documentation from its subcontractors to support MBUSA's audit upon MBUSA's request.

7.3 Licensee shall, at its sole cost and expense, maintain sufficient and current external security assessments of controls relevant to the Processing of MBUSA Data to demonstrate Licensee's compliance with this Addendum ("Assessments") and provide a copy of such Assessments to MBUSA upon request. Sufficient Assessments include a SOC-2 Type 2 report, ISO 27001 certification, CSA Security Trust Assurance and Risk (STAR) Level 2 certification, or other external audit or report that may be agreed upon by MBUSA. Licensee will notify MBUSA immediately if Licensee fails an Assessment.

7.4 Following any audit by MBUSA or MBUSA's review of Licensee's most recent Assessment, Licensee shall, as soon as reasonably practicable and at its sole cost and expense, implement any measures requested in writing by MBUSA which are reasonably necessary for Licensee to meet its obligations under this Addendum.

8. Term and Termination.

8.1 This Addendum shall be effective as of the Effective Date of the Agreement, and shall remain in effect until the later of either: (a) the duration of the Agreement; or (b) for so long as Licensee or any of its subcontractors continues to Process MBUSA Data, provided that MBUSA may reasonably assume that Licensee's and its subcontractors' Processing activities are continuing until MBUSA receives written confirmation from Licensee to the contrary.

8.2 This Addendum may be terminated by MBUSA for any reason upon thirty (30) days' written notice to Licensee.

8.3 Promptly upon expiration or termination of the Agreement or anytime earlier upon MBUSA's prior written request, Licensee shall, at its sole cost and expense, permanently delete or migrate to MBUSA or any third-party vendor of MBUSA (the choice to be made by MBUSA in its sole discretion), and shall cause its subcontractors to do the same, any and all MBUSA Data in Licensee's or its subcontractors' possession or control, including, without limitation, from backup and archival sources, in compliance with industry standards, Privacy and Security Laws, and otherwise as specified in this Addendum. To the extent MBUSA Data is to be permanently deleted under this provision, Licensee will, upon MBUSA's request, provide written certification of the permanent deletion of such MBUSA Data. To the extent MBUSA Data is to be migrated to

MBUSA or another third-party vendor under this provision, such MBUSA Data will be in a format specified by MBUSA or, if not specified, in a platform-agnostic format, and Licensee shall, at its sole cost and expense, reasonably cooperate with MBUSA and the recipient third-party vendor (if applicable) as necessary to carry out such migration.

8.4 A Security Breach arising, in whole or in part, from an act or omission of Licensee or breach of Licensee's obligations under this Addendum shall constitute an event of default under the Agreement entitling MBUSA to terminate the Agreement or the applicable SOW immediately and without opportunity to cure by providing written notice of such termination to Licensee. Without limitation to any other right or remedy set forth in this Addendum, the Agreement, or the applicable SOW, in the event that the Agreement or any SOW thereunder is terminated by Licensee pursuant to this Section 8.4, MBUSA shall be entitled to recover from Licensee the reasonable costs incurred by MBUSA in obtaining services from an alternate vendor to replace the terminated Services. Additionally, if MBUSA so elects in its sole discretion, Licensee shall, upon written notice from MBUSA, continue to provide the terminated Services in accordance with the Agreement and the applicable SOW until such time as MBUSA can obtain such replacement services from an alternate vendor, provided that: (a) Licensee shall be entitled to standard compensation as set forth in the applicable SOW for its performance of the terminated Services during such period; and (b) in no event shall Licensee have any obligation under this provision to provide the terminated Services past the date that the term of the applicable SOW would have otherwise expired.

9. Miscellaneous.

9.1 **Insurance Coverage.** In addition to any insurance requirements specified in the Agreement or any Exhibit thereto, Licensee shall also maintain Privacy and Network Security (otherwise known as Cyber Liability) coverage which includes providing protection against liability for: (a) system attacks; (b) denial or loss of service attacks; (c) spread of malicious software code; (d) unauthorized access and use of computer systems; (e) crisis management and customer notification expenses; (f) privacy regulatory defense and penalties; and (g) liability arising from the loss or disclosure of data that would encompass MBUSA Data; in each case, with coverage limits of not less than \$5,000,000 per claim. Prior to commencing any performance under the Agreement, Licensee shall provide MBUSA with a certificate of insurance evidencing the insurance coverage required in this Section 9.1.

9.2 **Equitable Relief.** Licensee recognizes that serious and irreparable injury could result to MBUSA if Licensee breaches its obligations under this Addendum. Therefore, Licensee agrees that MBUSA will be entitled to a restraining order, injunction, or other equitable relief if Licensee breaches its obligations under this Addendum, in addition to any other remedies and damages that would be available at law or in equity.

9.3 **Indemnification.** Without limitation to any other indemnification obligation under the Agreement, Licensee shall defend, indemnify, and hold harmless MBUSA, its affiliates, and each of their respective employees, officers, directors, agents, and representatives from and against all liabilities, losses, damages, judgments, settlements, obligations, fines, costs, and expenses of any nature (including, without limitation, reasonable attorneys' fees and litigation costs) incurred in connection with any claim, action, cause of action, suit, demand, or proceeding threatened or asserted by any third party (including, without limitation, any government entity) arising out of, relating to, or resulting from (i) any Security Incident or Security Breach arising, in whole or in

part, from an act or omission of Licensee or (ii) any failure by Licensee to comply with any of the requirements set forth in this Addendum.

9.4 Liability. MBUSA'S DAMAGES RESULTING FROM (i) ANY SECURITY INCIDENT OR SECURITY BREACH ARISING, IN WHOLE OR IN PART, FROM AN ACT OR OMISSION OF LICENSEE OR (ii) ANY FAILURE BY LICENSEE TO COMPLY WITH ANY OF THE OBLIGATIONS SET FORTH IN THIS ADDENDUM ARE NOT SUBJECT TO ANY LIMITATIONS OR EXCLUSIONS OF LIABILITY SET FORTH IN THE AGREEMENT. FURTHER, THE FOLLOWING REASONABLE COSTS SHALL BE CONSIDERED DIRECT DAMAGES IF SUSTAINED BY MBUSA ARISING OUT OF ANY SUCH SECURITY INCIDENT OR SECURITY BREACH OR ANY FAILURE BY LICENSEE TO COMPLY WITH ANY OF THE OBLIGATIONS SET FORTH IN THIS ADDENDUM: (a) COSTS ARISING FROM PROCURING SERVICES FROM AN ALTERNATIVE SOURCE; (b) COSTS ARISING FROM CREATING OR RELOADING LOST OR DAMAGED MBUSA DATA; (c) COSTS ARISING FROM MBUSA'S INVESTIGATION OR REMEDIATION OF SUCH SECURITY INCIDENT OR SECURITY BREACH OR FAILURE OF LICENSEE TO COMPLY WITH THE OBLIGATIONS SET FORTH IN THIS ADDENDUM, INCLUDING, WITHOUT LIMITATION, FORENSIC INVESTIGATION, PREPARATION AND DELIVERY OF NOTIFICATION, AND PROVISION OF CREDIT MONITORING AND IDENTITY THEFT PROTECTION SERVICES; AND (d) LEGAL FEES ASSOCIATED WITH EACH OF THE FOREGOING.

10. State-Specific Provisions.

10.1 California Consumer Privacy Act Provisions.

(a) **Scope.** The provisions of this Section 10.1 are included in this Addendum for the purpose of ensuring compliance with the California Consumer Privacy Act of 2018, Cal. Civ. Code § 1798.100 *et seq.* (the "CCPA"). Except as modified in this Section 10.1, all other provisions of this Addendum shall remain in full force and effect.

(b) **Definitions.** For purposes of this Section 10.1 only, the following terms shall have the following meanings: (i) "MBUSA Personal Information" means any personal information that MBUSA discloses to Licensee for any business purpose pursuant to the Agreement; (ii) "personal information" has the meaning set forth in Cal. Civ. Code § 1798.140(o); (iii) "business purpose" has the meaning set forth in Cal. Civ. Code § 1798.140(d); (iv) "commercial purpose" has the meaning set forth in Cal. Civ. Code § 1798.140(f); (v) "sell" has the meaning set forth in Cal. Civ. Code § 1798.140(t); and (vi) "service" has the meaning set forth in Cal. Civ. Code § 1798.140(u).

(c) **Restrictions on MBUSA Personal Information.** Licensee is prohibited from: (i) selling any MBUSA Personal Information; (ii) retaining, using, or disclosing any MBUSA Personal Information for any purpose other than for the specific purpose of performing the Services, including retaining, using, or disclosing the MBUSA Personal Information for any commercial purpose other than providing the Services; and (iii) retaining, using, or disclosing any MBUSA Personal Information outside of the direct business relationship between MBUSA and Licensee.

(d) **Certification.** By signing the Agreement, Licensee certifies that it understands the

restrictions in Section 10.1(c) and will comply with them.