

03.27.2023  
Daimler North America Corporation and Subsidiaries ("Taxpayer")  
Section 25137 Petition  
FTB's Exhibits

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March 10, 2021

State of California  
Franchise Tax Board  
Claims for Refund Section  
P.O. Box 942857

**RE: Claims for Refund**  
**Taxpayer: Daimler North America Corporation and Subsidiaries**  
**CCN: 2230130**  
**Tax Years Ending: December 31, 2017 – December 31, 2019**

To Whom It May Concern:

Pursuant to California Revenue and Taxation Code (“CRTC”) sections 19301 and 19322, Daimler North America Corporation and its subsidiaries (“Taxpayer” or “DNAC”) file these claims for refund in the amount of \$1 or more, plus any related interest and penalties with regards to Taxpayer’s California tax returns for taxable years ended December 31, 2017, December 31, 2018 and December 31, 2019 (“Tax Years at Issue”).

## **I. Background**

DNAC is Daimler AG’s United States subsidiary and the parent company for Daimler AG’s United States operations. DNAC is headquartered in Farmington Hills, Michigan and provides services to Daimler Group subsidiaries in North America in areas such as Treasury, Tax, Accounting, Corporate Communications, Government Relations, Legal and Human Resources.

Daimler AG<sup>1</sup> is one of the biggest producers of premium cars and the world’s biggest global manufacturer of commercial vehicles. It has been lauded as one of the world’s most successful automotive companies to date. In fact, the company’s founders are credited in history as the inventors of the automobile. As the pioneers of automotive engineering, Daimler AG continues to shape the future of mobility worldwide. As of 2019, Daimler AG has production facilities in 19 countries and 298,655 employees all over the world.

Under the corporate umbrella of Daimler AG, Daimler AG’s operating activities are managed under the following three legally separate units: (1) Mercedes-Benz AG (Cars & Vans), (2) Daimler Truck

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<sup>1</sup> The main business of Daimler AG is the development, production and distribution of cars, trucks and vans in Germany and the management of the Daimler Group. The Daimler Group is a globally leading vehicle manufacturer with an unparalleled range of premium automobiles, trucks, vans and buses.



AG (Trucks & Buses) and (3) Daimler Mobility AG.<sup>2</sup> The two main operating business units, the Cars & Vans business and the Trucks and Buses business operated separately and independent from each other.

**1. Daimler’s Cars & Van Business Operated Separately and Independently from its Trucks & Buses Business.**

*a. Cars & Vans Business*

The Cars & Vans business is part of the Mercedes-Benz AG unit which is responsible for the global business of Mercedes-Benz Cars and Mercedes-Benz Vans. The Cars & Vans business focuses on the development, production and sales of passenger cars, vans and vehicle-related services. The product portfolio comprises of the Mercedes-Benz brand with the sub-brands of Mercedes-AMG, Mercedes-Maybach, Mercedes-EQ, and G-Class . These vehicles range from compact models to a highly varied portfolio of off-road vehicles, roadsters, coupes and convertibles, and to the S-Class luxury sedans. Mercedes-Benz AG has production facilities in numerous countries.

In the United States, several Mercedes-Benz models are manufactured at the Mercedes-Benz U.S. International (“MBUSI”) plant located in Tuscaloosa County, Alabama. MBUSI is the first large Mercedes-Benz production plant outside Germany and has been located in Tuscaloosa County, Alabama since 1995. Daimler AG initially invested \$300 million to build the MBUSI plant in Alabama. Construction of the plant was completed in July 1996 and MBUSI produced its first Mercedes-Benz M-Class Sport Utility Vehicle in 1997.

In 1993, original projections were for 65,000 M-Class vehicles to be built at the Tuscaloosa plant each year. Because of overwhelming demand, MBUSI invested an additional \$80 million in 1998 and 1999 to expand the plant and increase annual production by 20 percent to 80,000. During the first eight years of production, some 350 vehicles a day came off the line, in two shifts. As a result of the worldwide success of the M-Class (now called the GLE), Daimler AG has continually invested, expanded, and more than tripled production at MBUSI.

MBUSI currently employs more than 4,200 Team Members and is responsible for more than 10,000 direct and indirect jobs in the region.<sup>3</sup> MBUSI has, so far, invested more than \$6 billion in the Tuscaloosa plant and is investing an additional \$1 billion to start production of electric passenger cars, expand the plant’s logistics activities, and to build a battery factory. Construction activities for the battery factory started at the end of 2018 with the goal of going into operation at

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<sup>2</sup> Daimler Financial Services AG was renamed to Daimler Mobility AG as of July 24, 2019. Daimler Mobility is headquartered in Farmington Hills, Michigan and supports the sales of the Daimler Group’s automotive brands by offering financing, leasing, fleet management, investments and insurance brokerage, as well as innovative mobility services. Its product portfolio primarily consists of customized financing and leasing packages for its customers and dealers.

<sup>3</sup> *Mercedes-Benz US International*, DAIMLER, available at: <https://www.daimler.com/company/north-america/mercedes-benz-us-international.html>.



the beginning of the next decade. Future battery production will be part of the global network of Mercedes-Benz Cars, both for the U.S. local market and for export.

MBUSI builds the GLS, GLE, GLE Coupe sport utility vehicles, as well as the C-Class sedan for U.S. and world market. Around two-thirds of SUVs produced in Alabama are being exported to almost every country in the world, making MBUSI the second largest automotive exporter in the United States.

b. *Trucks & Buses Business*

The Trucks & Buses business is the Daimler Truck AG unit which is one of the world's largest commercial vehicle manufacturers, with more than 35 primary locations around the world and around 100,000 employees. The Trucks & Buses business brings seven vehicle brands under one roof: Mercedes-Benz, Setra, Freightliner Trucks, Western Star, Thomas Built Buses, FUSO and BharatBenz. Daimler Truck AG has production facilities in numerous countries, including the United States.

North America is the largest market for Daimler Trucks. It manufactures, assembles or remanufactures trucks and buses at facilities across the United States and in Mexico. Daimler Trucks North America, headquartered in Portland, Oregon, is the leading heavy-duty truck manufacturer in North America. Daimler Trucks North America can be traced back to Consolidated Freightways founded in the Pacific Northwest more than 70 years ago.

Daimler Trucks North America produces and markets commercial vehicles under the Freightliner, Western Star and Thomas Built Buses nameplates. Daimler Trucks North America is a Daimler company, the world's leading commercial vehicle manufacturer, and has United States manufacturing facilities in Oregon, Michigan, South Carolina, North Carolina, Kansas, Utah, and Ohio.<sup>4</sup>

c. *The Two Businesses Operated Separately and Independently From Each Other*

During the Tax Years at Issue, Taxpayer's Cars & Van business operated separately and independently from the Trucks & Buses business. The two businesses were managed separately with different products and services provided, brands, distribution channels, and profile of customers. Furthermore, the two businesses have separate headquarters, no overlap of customer lists for wholesale distribution, and separate manufacturing facilities, processes and technologies required for production and used in the products. In fact, the two businesses were so divergent that Daimler AG underwent an internal restructuring that resulted in deconsolidation of the Trucks & Buses and Cars & Vans groups for United States tax purposes in preparation for a long-planned spinoff of the Trucks & Bus business. The Trucks & Buses group filed a separate federal consolidated return beginning with a short period 2018 tax return.

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<sup>4</sup> *Daimler Trucks North America*, DAIMLER, available at: <https://www.daimler.com/company/north-america/daimler-trucks.html>.



On February 3, 2021, Daimler AG’s Supervisory Board and the Board of Management of Daimler announced the sale of its majority stake in the Truck & Bus business and formal separation of the group through a “spin-off” of its Truck & Bus business and that it would begin preparations for a separate listing of Daimler Truck.<sup>5</sup> As noted by Ola Källenius, Chairman of the Board of Management of Daimler and Mercedes-Benz, “Mercedes-Benz Cars & Vans and Daimler Trucks & Buses are different businesses with specific customer groups, technology paths and capital needs. Mercedes-Benz is the world’s most valuable luxury car brand, offering the most desirable cars to discerning customers. Daimler Truck supplies industry leading transportation solutions and services to customers.”<sup>6</sup> Manfred Bischoff, Chairman of the Supervisory Board of Daimler has also stated that Daimler is “convinced they will emerge even stronger as independent companies, serving their respective customers. With their different return profiles and capital needs, the rationale for two independent entities is evident.”<sup>7</sup>

By the end of 2021, the Daimler Trucks & Buses business will have fully independent management, stand-alone corporate governance including an independent Chairman of the Supervisory Board.

## **2. The Sale of Vehicles Later Leased to Customers Duplicates Sales in the Sales Factor Numerator and Denominator.**

Mercedes-Benz USA, LLC (“MBUSA”), a disregarded entity of Taxpayer headquartered in Atlanta, Georgia, acts as a wholesale distribution company for the United States market. MBUSA purchases, imports, and distributes vehicles and parts from Daimler AG and other related and/or unrelated parties in order to resell these products to (third-party) authorized dealers and other related parties in the local market.

Authorized dealers receive compensation from Taxpayer for servicing vehicles under manufacturer warranty and for facilitating lease agreements between Daimler Mobility and end user consumers. Daimler Mobility provides leasing services to end user consumers willing to purchase Daimler

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<sup>5</sup> *Daimler plans separation into two pure-play companies*, DAIMLER (Feb. 3, 2021), available at: <https://www.daimler.com/investors/reports-news/financial-news/20210203-project-focus.html> (“This is a historic moment for Daimler. It represents the start of a profound reshaping of the company. Mercedes-Benz Cars & Vans and Daimler Trucks & Buses are different businesses with specific customer groups, technology paths and capital needs. Mercedes-Benz is the world’s most valuable luxury car brand, offering the most desirable cars to discerning customers. Daimler Truck supplies industry leading transportation solutions and services to customers. Both companies operate in industries that are facing major technological and structural changes. Given this context, we believe they will be able to operate most effectively as independent entities, equipped with strong net liquidity and free from the constraints of a conglomerate structure.”).

<sup>6</sup> *Id.*

<sup>7</sup> *Daimler Plans Separation Into Two Pure-Play Companies and Majority Listing of Daimler Truck to Accelerate into Zero-Emissions and Software-Driven Future*, Automotive World (Feb. 3, 2021), available at: <https://www.automotiveworld.com/news-releases/daimler-plans-separation-into-two-pure-play-companies-and-majority-listing-of-daimler-truck-to-accelerate-into-zero-emissions-and-software-driven-future/>.



products from certain affiliated or unaffiliated dealers. In 2020 alone, Daimler Mobility financed or leased approximately 50 percent of the vehicles sold by Daimler AG.

In practice, when the end-user consumer chooses to lease a vehicle rather than purchase it, the authorized dealer sells the vehicle back to Daimler Mobility. Daimler Mobility then enters into a leasing or financing contract with the end-user consumer in relation to that *same* vehicle.<sup>8</sup> During the leasing period, Daimler Mobility retains title of the leased vehicle.

When MBUSA sells a car to an authorized dealer, the receipts from the sale of the car to the dealership is included in the Taxpayer's sales factor. When the end-user consumer chooses to lease a vehicle rather than purchase, the payments the consumer makes towards the lease to Daimler Mobility are for the *same car* Taxpayer initially sold to the authorized dealer. These lease payments are also included in Taxpayer's sales factor as a gross receipt resulting in duplicate gross receipts for each car that is leased.

## II. GROUNDS FOR REFUND CLAIM

For the specified Tax Years at Issue, Taxpayer states the following grounds for its refund claim:

- 1. The standard single sales factor apportionment formula as applied to Taxpayer does not fairly represent the factors used to produce income in this State.**

A fair apportionment formula "must actually reflect a reasonable sense of how income is generated."<sup>9</sup>

Drafted in 1957, the Uniform Division of Income for Tax Purposes Act ("UDITPA") set the standard for the allocation and apportionment of income for multi-state businesses. UDITPA called for the uniform adoption of the three-factor apportionment formula based on property, payroll and sales, to equitably divide a business' income among all the states it generated income in. California formally adopted UDITPA in 1966, and with it, the equally weighted three-factor apportionment formula. The property and payroll factors were intended to emphasize the activity of the manufacturing state, while the sales factor was intended to recognize the contribution of the consumer state, toward the production of the income of the business. The purpose of the sales factor is to balance the property and payroll factors by giving weight to elements not reflected by those factors and to assist in making a reasonable apportionment of the unitary business income among the states in which the business is conducted. In November of 2012, California voters adopted Proposition 39: California Clean Energy Jobs Act, which made single-sales factor apportionment mandatory for most multistate businesses for years beginning on and after January 1, 2013.

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<sup>8</sup> The authorized dealer assigns the lease to Daimler Trust, an affiliate of Daimler Mobility.

<sup>9</sup> *Container Corp. of America v. Franchise Tax Bd.*, 463 U.S. 159 (1983).



The California Supreme Court in *McDonnell Douglas Corporation v. Franchise Tax Board* articulated the purpose of the apportionment formula by stating that “[i]n the apportionment of a unitary business the formula used must give adequate weight to the essential elements responsible for the earning of the income.”<sup>10</sup> In other words, the goal is to assess if the standard formula fairly represents the company’s business activity in California.

If a taxpayer can demonstrate that the standard apportionment formula does not fairly represent its business activity within California, then the taxpayer may petition for alternative apportionment pursuant to CRTC section 25137. The party invoking the relief pursuant to CRTC section 25137 “has the burden of proving by clear and convincing evidence that (1) the approximation provided by the standard formula is not a fair representation, and (2) its proposed alternative is reasonable.”<sup>11</sup>

Here, California’s standard apportionment formula does not fairly represent the extent of Taxpayer’s business activities in California. As applied to Taxpayer’s business, the single-sales factor overstates the impact of California sales on income and understates the impact of Taxpayer’s out-of-state production activities.

The standard formula assigns zero value to the contributions of Taxpayer’s manufacturing employees as well as the capital investments in its manufacturing infrastructure needed to build vehicles. The single sales factor formula also provides zero value to the extensive support provided by Taxpayer’s headquarters and Daimler Mobility in Michigan. By ignoring the industrial infrastructure developed and maintained by Taxpayer, Taxpayer’s apportionment percentage does not fairly reflect Taxpayer’s business activities within and without the State. While there is no dispute that the California marketplace contributes to Taxpayer’s taxable income, there is also no dispute that Taxpayer’s production activities outside of California also contribute to the income California wants to tax.

*Microsoft Corporation v. Franchise Tax Board* makes clear that business activities which are qualitatively different from the taxpayer’s main line of business should be excluded from the apportionment formula, while those business activities that are part of the taxpayer’s “main line of business” are not qualitatively different and should be reflected in the apportionment formula in order to fairly reflect a taxpayer’s business activities in the state.<sup>12</sup> In *Microsoft*, it was distortive to include the gross receipts from the taxpayer’s treasury function in the taxpayer’s apportionment formula because the treasury activity was qualitatively different from the taxpayer’s software activity. Taxpayer’s business model presents the inverse situation wherein the activities excluded are qualitatively part of its main line of business and should therefore be reflected in the apportionment formula.

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<sup>10</sup> *McDonnell Douglas Corp. v. Franchise Tax Bd.*, 69 Cal.2d 506, 512 (1968).

<sup>11</sup> *Microsoft Corp. v. Franchise Tax Bd.*, 39 Cal. 4th 750, 765 (2006).

<sup>12</sup> *Id.*



As applied to Taxpayer, the failure to reference all of those factors responsible for the production of income subject to tax, including property and payroll outside of California, is not fair and merits a remedy under the authority of CRTS section 25137. The three-factor formula “has been recognized as embracing factors sufficiently diversified to reflect ‘the relative contribution of the activities in the various states to the production of the total unitary income’ so as to allocate to California, its just proportion of the profits earned from a unitary business.”<sup>13</sup> In sum, the three-factor formula reflects all of the activities that Taxpayer relies on to generate income and fairly reflects its business activities both inside and outside of California.

**2. Taxpayer overreported its California and everywhere sales by including sales of the same products in the sales factor twice for leasing arrangements.**

The inclusion of duplicate receipts for the same activity was specifically addressed by the Idaho Supreme Court in *Union Pacific Corporation v. Idaho State Tax Commission* when the taxpayer attempted to include in the sales factor the amount received with respect to the sales of its account receivables to a third party.<sup>14</sup> The Tax Commission was ultimately successful in excluding the receipts arising from the sales of the accounts receivables under section 18 of UDITPA on the grounds that including the sales twice would not result in a fair reflection of the taxpayer’s activities in Idaho. Specifically, “double-counting was an unusual fact situation . . . which distorts the apportionment of UPC’s income.”<sup>15</sup>

Here, receipts in relation to Taxpayer’s leasing services are counted twice in Taxpayer’s sales factor. As described above, when MBUSA sells a car to an authorized dealer, the receipts from the sale of the car to the dealership is included in the Taxpayer’s sales factor. When the end-user consumer chooses to lease a vehicle rather than purchase it, the authorized dealership sells the vehicle to Daimler Mobility. Daimler Mobility then directly enters into a leasing or financing contract with the end-user consumer.<sup>16</sup> The payments the consumer makes towards the lease to Daimler Mobility are for the *same* car Taxpayer initially sold to the authorized dealer. These lease payments are included in Taxpayer’s sales factor as a gross receipt. In short, each vehicle lease represents a single economic output (i.e., an automobile), yet the standard apportionment formula requires Taxpayer to include two duplicate gross receipts for each car that is leased.

The initial sale to the dealer and subsequent re-purchase by Taxpayer does not itself produce any income for Taxpayer. Conversely, the lease payments from the end-user consumer produces income for Taxpayer. The fact that the initial sale of the vehicle to the dealer may indirectly

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<sup>13</sup> *John Deere Plow Co. of Moline v. Franchise Tax Bd.*, 38 Cal.2d 214 (1951).

<sup>14</sup> *Union Pacific Corp. v. Idaho State Tax Com’n*, 139 Idaho 572 (2004).

<sup>15</sup> *Id.* at 577.

<sup>16</sup> The dealer assigns the lease to Daimler Trust, an affiliate of MBFS.





contribute to the income producing activity (i.e., lease) is irrelevant when doing so overstates the activity in the State.<sup>17</sup>

Because a higher proportion of California consumers lease rather than buy vehicles from Taxpayer, duplicating receipts for leased vehicles overstates Taxpayer's activity in the state. This distortion is further exacerbated by application of the standard single-sales factor formula.

Further, the inclusion of two sales of the very same product misstates what the sales factor was intended to measure, which is the marketplace for a taxpayer's goods and not the marketplace for its vendor's services. Since the first transfer was not to a customer but instead to an authorized dealer, such transfers do not reflect the marketplace for Taxpayer's goods.

To cure such distortion, pursuant to CRTC section 25137, Taxpayer hereby petitions to remove all sales to authorized dealers that were later resold to Taxpayer to fairly reflect its activities for apportionment purposes in this State. It should be emphasized that Taxpayer is not asking for all sales to authorized dealers to be removed from the sales factor, only those sales of automobiles to authorized dealers that were later leased to consumers.

### **3. Application of a mandatory single sales factor is unconstitutional.**

Taxpayer also asserts that the proposition enacted to require taxpayers to apportion income using a single sales factor apportionment regime is invalid and unenforceable because it violates California's constitutional requirement that voter initiatives must only relate to a single subject. This constitutional requirement is also known as the "single-subject rule."

Proposition 39, titled, "The California Clean Energy Jobs Act", was a ballot initiative approved by voters in the November 6, 2012 general election. The initiative proposed to move the multistate business tax regime to a single sales factor, or in other words, require multistate businesses to pay income taxes solely based on the percentage of their sales in California, and ignore the contributions of property and payroll factors to the production of income. In addition, Proposition 39 provided that for five years, approximately half of the increased revenues from the single sales factor regime would be designated for clean/efficient energy projects in order to create jobs in that sector.

However, also within the text of Proposition 39 is a tax break for cable companies. More specifically, Proposition 39 allows cable companies that spend \$250 million or more on certain expenditures in California to exclude fifty percent of their California sales from certain cable services from being assigned to California for purposes of apportionment. Thus, the effect is to lower large cable companies' California tax by approximately fifty percent. While this tax loophole

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<sup>17</sup> General Mills, Inc. v. Franchise Tax Bd., 208 Cal.App.4th 1290, 1301 (2012) (holding that including gross receipts from hedging transactions in the sales factor denominator was distortive despite the fact that hedging constituted "a support activity integral to the company's main line of business.").



is a major benefit to cable companies, it bears no rational relationship to Proposition 39's stated goal of increasing tax revenue for California and creating jobs in the clean energy space. In other words, while voters believed they were closing tax loopholes, increasing revenue from out of state taxpayers, and creating clean energy jobs, the voters were also unknowingly creating a major tax break for cable companies.

Under the California Constitution, the "single-subject rule" states, "an initiative measure embracing more than one subject may not be submitted to the electors or have any effect."<sup>18</sup> The purpose of this provision is to minimize the risk of voter confusion and deception.<sup>19</sup>

Courts have struck down initiatives containing hidden provisions benefiting special interests. In *California Trial Lawyers*, the petitioners challenged the "Insurance Cost Control Initiative of 1988" under the single-subject rule.<sup>20</sup> The initiative's purpose was to halt the constantly increasing premiums charged to California purchasers of liability insurance.<sup>21</sup> The court found that one provision bore no reasonable relation to the primary purpose of controlling the cost of insurance.<sup>22</sup> The provision related to the regulation of campaign contributions and stated, "(a) Any consumer protection organization, insurer, licensee, or trade association shall have no greater or lesser right to make any campaign contributions to any public official than is enjoyed by any other citizen of this state; (b) Any elected state official who receives any lawful campaign contribution from or the benefit of any expenditure made by any consumer protection organization, insurer, licensee, or trade association shall not be disqualified thereby from participating in any decision affecting any interest of the donor."<sup>23</sup> In other words, the hidden provision protected the right of special interest groups, including insurers, to continue to make campaign contributions to state officials, without disqualifying those officials from participating in decisions affecting those special interest groups.

In Proposition 39, the cable company tax break can be analogized to *California Trial Lawyers* because it is similarly an inconspicuous provision that does not further the stated purpose of the initiative (i.e., to increase tax revenue and contribute to green energy) and therefore violates the single-subject rule. The ballot materials for Proposition 39, called the proposition, "Tax Treatment for Multistate Businesses. Clean Energy and Energy Efficiency Funding. Initiative Statute."<sup>24</sup> Arguments listed in support of Proposition 39 as listed in the ballot materials state that a yes vote on Proposition 39, "[c]loses unfair tax loophole letting out-of-state corporations avoid taxes by keeping jobs out of California" and that the funds would be "used for job-creating energy efficiency projects at schools and for deficit reduction."<sup>25</sup>

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<sup>18</sup> Cal. Const., art. II, § 8, subd. (d).

<sup>19</sup> *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal. 3d 208, 231 (1978).

<sup>20</sup> *California Trial Lawyers Assn. v. Eu*, 200 Cal.App.3d 351, 356 (abrogated on other grounds by *Lewis v. Superior Court*, 19 Cal. 4th 1232, 970 P.2d 872 (1999)).

<sup>21</sup> *Id.* at 355-56.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Voter Information Guide for 2012 General Election*, pg. 69.

<sup>25</sup> *Id.*



The text of Proposition 39 and the ballot materials provide no explanation for the tax break for cable companies. Further, the Legislative Analyst’s Office analysis, provided in the ballot materials, inconspicuously provides a brief summary of the tax break as follows: “This measure also includes rules regarding how all multistate businesses calculate the portion of some sales that are allocated to California for state tax purposes. These include a set of specific rules for certain large cable companies.”<sup>26</sup> The Legislative Analyst’s Office did not provide a breakdown of the fiscal effect for the tax break.

Ironically, the cable company tax break, by itself, constitutes a new tax loophole and contradicts the stated purpose of the initiative to close tax loopholes. Moreover, the cable company tax break has no rational relationship to the creation of jobs in the clean energy field, nor does it or further the goal of deficit reduction.

To the contrary, the cable company tax break *reduces* revenue. While there was no analysis of the fiscal effect of the cable company tax break for Proposition 39, the same tax break was previously analyzed in Senate Bill 116 (a failed senate bill) and showed that the cable company tax break would reduce revenue by significant amounts. Because the cable company tax break contained within Proposition 39 is unrelated to the purpose of closing loopholes and creating clean energy jobs, Proposition 39 fails the single subject rule and, pursuant to the California Constitution, cannot be enforced against the Taxpayer.

#### **4. Not Unitary: Taxpayer’s Trucks & Buses Group is Separate and Distinct from the Cars & Vans Group.**

The California Supreme Court has applied two tests to determine whether a unitary business exists: the three unities test or the contribution or dependency test. These tests for the existence of a unitary business are widely accepted and have been incorporated by the FTB in California Regulations.<sup>27</sup> The existence of a unitary business is generally established if one of the two tests are met.<sup>28</sup>

Under the three unities test, the existence of a unitary business may be established by the presence of all three of the following circumstances: (1) unity of ownership; (2) unity of operation as evidenced by centralized purchasing, advertising, accounting and management divisions; and (3)

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<sup>26</sup> Legislative Analyst’s Office, *Summary of Legislative Analyst’s Estimate of Net State and Local Government Fiscal Impact*, available at [https://lao.ca.gov/ballot/2012/39\\_11\\_2012.aspx](https://lao.ca.gov/ballot/2012/39_11_2012.aspx).

<sup>27</sup> See, e.g., CAL. CODE OF REGS. §25110(b)(5) (stating that “[a]ctivities constitute a ‘unitary business’ if unity of ownership, unity of operation, and unity of use are present, or if the activities carried on within the state contribute to or are dependent upon the activities carried on without the state, or if there is a flow of value between the activities.”).

<sup>28</sup> See *A.M. Castle & Co. v. Franchise Tax Bd.*, 36 Cal.App.4th 1794 (1995).



unity of use as evidenced by a centralized executive force and general system of operation.<sup>29</sup> The test is satisfied if all of the three unities are found to be present.

To establish unity of ownership, it is necessary that there be "some bond of ownership or control" uniting the otherwise unitary business.<sup>30</sup> In the context of partnerships, "[w]hen a partnership agreement provides that a partner has voting power over the voting stock held in partnership, that partner will be treated as the only entity in control of such stock."<sup>31</sup> Unity of operation generally refers to staff functions and is evidenced by central purchasing, common advertising, centralized accounting, legal, or personnel functions, common insurance policies, pension plans or employee benefits, sharing of technology or information relating to products produced by the group, and intercompany financing.<sup>32</sup> Unity of use relates to the integration and control of executive forces and operational systems.<sup>33</sup> The presence of unity of use is reflected in the integration of executive control over major policy matters of the business.<sup>34</sup>

Under the contribution or dependency test, a unitary relationship may exist where the operation of the business conducted within the state depends upon or contributes to the operation of the business outside of California.<sup>35</sup> Further, the United States Supreme Court has emphasized that unitary groups are characterized by functional integration, mutual interdependence, economies of scale, and a flow of value.<sup>36</sup>

During the Tax Years at Issue, Taxpayer's Trucks & Buses business operated separately and independently from the rest of the automobile business and was managed separately with different products and services provided, brands, distribution channels, and profile of customers. The groups have separate headquarters, no overlap of customer lists for wholesale distribution, and separate manufacturing facilities, processes and technologies required for production and used in the products.

The two businesses were so divergent that the Trucks & Buses group started filing a separate federal consolidated return beginning with a short period 2018 tax return. On February 3, 2021, Daimler AG announced the sale of its majority stake in the Trucks & Buses business and formal separation of the group, although the two groups have historically already operated independently including the Tax Years at Issue.

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<sup>29</sup> *Butler Bros. v. McColgan*, 17 Cal. 2d 664, 678 (1941), *aff'd*. 315 U.S. 501 (1942).

<sup>30</sup> *Container Corporation of America v. Franchise Tax Bd.*, 463 U.S. 159, 166 (1983), *aff'g* 117 Cal.App.3d 988 (1981).

<sup>31</sup> Franchise Tax Board, Legal Ruling 1991-1, Sec. 13.

<sup>32</sup> *See Chase Brass & Copper Comp. v. Franchise Tax Bd.*, 10 Cal.App.3d 496, 502 (1970).

<sup>33</sup> *A.M. Castle & Co. v. Franchise Tax Bd.*, 36 Cal.App.4th 1794 (1995).

<sup>34</sup> *Id.*

<sup>35</sup> *Edison Cal. Stores v. McColgan*, 30 Cal. 2d 472 (1947).

<sup>36</sup> *Container Corp. v. Franchise Tax Bd.*, 463 U.S. 159, 178-179 (1983).



While Daimler AG owned 100 percent of the Trucks & Buses group during the tax years at issue, ownership alone is not nearly enough to indicate unity. For example, the California Court of Appeal, in *F.W. Woolworth Co. v. Franchise Tax Board*, analyzed whether a U.S. corporation was unitary with its wholly owned Canadian subsidiary.<sup>37</sup> For the 1961-1964 tax years, the FTB asserted that the United States parent (hereafter “Woolworth U.S.”) and its Canadian corporate subsidiary (hereafter “Woolworth Canada”) were unitary. Woolworth U.S. and Woolworth Canada operated similar chains of retail variety stores and discount department stores in their respective countries. In the years in question, all of Woolworth Canada’s directors were also directors and officers of Woolworth U.S., and all but one were also members of the executive committees of both Woolworth U.S. and Woolworth Canada. The board of directors of Woolworth U.S. selected the board of directors and officers of Woolworth Canada, and determined whether or not Woolworth Canada would pay dividends to Woolworth U.S.

The Court of Appeal found that “the degree of centralization of management between Woolworth U.S. and Woolworth Canada was no more than could be expected between any parent company and a wholly-owned subsidiary.”<sup>38</sup> In finding that “there was no integration or unitary operation between Woolworth U.S. and Woolworth Canada,” the Court of Appeal noted that the State was attempting to reach income “wholly unrelated to the business of Woolworth stores in California” and that Woolworth Canada operated a “discrete business enterprise” from that of Woolworth U.S.<sup>39</sup> Despite the similarities in the businesses and the substantial overlap in management, the “separate accounting and advertising departments, financial staffs, outside legal counsel and auditors” and lack of “centralized purchasing, manufacturing, or warehousing of merchandise” persuaded the court that Woolworth U.S.’s operations “were not functionally integrated” with those of Woolworth Canada.<sup>40</sup>

In *Tenneco West, Inc. v. Franchise Tax Board*,<sup>41</sup> Tenneco sought to combine its oil and gas business as well as its packaging, shipbuilding, automotive parts manufacturing, and heavy equipment businesses. Tenneco had various ties with its oil and gas business including corporate approval of certain expenditures; centralized corporate policy and procedure manual; centralized human resource functions; centralized accounting, tax, and internal auditing; common employee magazine; intercompany financing; and intercompany transactions. In spite of a common executive group, shared services and intercompany financing, the court concluded that the oil and gas business was separate from the rest of Tenneco’s businesses primarily because such ties merely represented corporate level activities that “exist in most parent-subsidary relationships.”<sup>42</sup>

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<sup>37</sup> *F.W. Woolworth Co. v. Franchise Tax Bd.*, 160 Cal.App.3d 1154 (1984).

<sup>38</sup> *Id.* at 1161.

<sup>39</sup> *Id.* at 1162.

<sup>40</sup> *Id.* at 1161. Prior to the California Court of Appeal’s decision in this case, the United States Supreme Court decided a unitary dispute between the same taxpayer and New Mexico and held that Woolworth U.S. was not unitary with its foreign subsidiaries. *F.W. Woolworth Co. v. Taxation & Revenue Dept. of New Mexico*, 458 U.S. 354 (1982).

<sup>41</sup> *Tenneco West, Inc. v. Franchise Tax Bd.*, 234 Cal.App.3d 1510 (1992).

<sup>42</sup> *Id.* at 1528.



Multiple authorities make clear that “the *potential* to operate a company as part of a unitary business is not dispositive when [the income] *in fact* is ‘derive[d] from “unrelated business activity” which constitutes a “discrete business enterprise.””<sup>43</sup> This unitary concept was relied on by the California State Board of Equalization (SBE) in the *Appeal of Mark Controls* in determining the character of income from the sale of an interest in a subsidiary.<sup>44</sup> In the *Appeal of Mark Controls*, the taxpayer (Mark Controls) purchased a 49.5 percent ownership interest in a foreign investment (Weir) with an option to purchase the remainder of the outstanding shares, and intended to integrate the businesses. Mark Controls and Weir executed a licensing agreement which allowed Weir to manufacture some of Mark Controls’ products, and there were intercompany sales between Weir and Mark Controls annually. Further, Mark Controls appointed one of its directors to Weir’s board of directors, and later provided two executives to Weir in the hopes of improving Weir’s operations and performance. However, Mark Controls did not receive cooperation from Weir in making the changes necessary to improve the business, and because of animosity between the corporations, the integration never came to pass. In discussing the lack of unity, the SBE found that the taxpayer’s actions and intent “were, at most, preparatory to integrating” the subsidiary into its unitary business and did not actually result in a unitary relationship.<sup>45</sup>

### *Three Unities Test Not Satisfied*

The Truck & Bus group and the Cars & Vans group do not satisfy the three unities test for unity. Although unity of ownership exists because of DNAC’s 100 percent ownership interest of the Truck & Bus entities, there is no unity of operation or unity of use between the two companies.

The unity of operation is generally described as the sharing of the daily operations functions between the businesses, including accounting, advertising, procurement, personnel, and intercompany financing. The groups maintain separate day to day and corporate functions, with headquarters, manufacturing and research and development in separate geographic locations. In short, the operations are separate, and unity of operation is not met.

The unity of use is generally described as the sharing of a general system of operation and a centralized executive force. As detailed above, the Trucks & Buses group and Cars & Vans group are run as two independent organizations and do not share a general system of operation. With respect to a centralized executive force, there is some degree of centralization of executives that is expected between any parent and a wholly-owned subsidiary. As discussed in *Woolworth*, the existence of overlapping board members does not satisfy the unity of use, as it is expected for a parent to appoint board members to a subsidiary’s board of directors for regular review and oversight.<sup>46</sup> Much like the two entities at issue in *Woolworth*, the Trucks & Buses group and the Cars & Vans group maintain separate and distinct full-time management and staff, and any overlap

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<sup>43</sup> F.W. Woolworth Co. v. Taxation & Revenue Dept. of New Mexico, 458 U.S. 354 (1982).

<sup>44</sup> Appeal of Mark Controls Corp., 86-SBE-204 (1986).

<sup>45</sup> *Id.*

<sup>46</sup> F.W. Woolworth Co. v. Franchise Tax Bd., 160 Cal.App.3d 1154 (1984) (citing F.W. Woolworth Co. v. Taxation & Revenue Dept. of New Mexico, 458 U.S. 354, 366-69 (1982)).



of executives or board of directors is no more than would be expected of any parent in oversight of a wholly-owned subsidiary. Therefore, the unity of use is not met.

*Contribution or Dependency Test Not Satisfied*

The Trucks & Bus group and the Cars & Vans group also do not meet the contribution or dependency test for unity. There are no significant centralized operations or administrative functions. In addition, the operations of the Trucks & Buses group are not dependent upon the operations of the Cars & Vans group. Rather, each business operates independently. Furthermore, there is no full-time management personnel who oversee operations or sales at both groups; each maintains separate and distinct day to day full-time management. Therefore, the contribution or dependency test is not met.

*No Unitary Flow of Value*

The United States Supreme Court has emphasized that "[t]he prerequisite to a constitutionally acceptable finding of unitary business is a *flow of value*...."<sup>47</sup> There was no flow of value or synergies resulting from the common ownership of the Trucks & and Buses group and the Cars & Vans group. The companies operate autonomously and do not have any significant characteristics of a unitary business.

For the same reasons that the Trucks & Buses group and the Cars & Vans group are being separated to protect shareholder value, the Trucks & Buses group is also not unitary with the Cars & Van group because there is no substantial mutual interdependence, economies of scale or a flow of value.

\* \* \*

**FACTUAL AND LEGAL GROUNDS**

All documents including, but not limited to all letters, memoranda, briefs, exhibits, and transcripts previously, concurrently or subsequently submitted in this matter, or otherwise in reference to, constitute Taxpayer's legal and factual support of this Claim for Refund.

**RIGHT TO SUPPLEMENT**

Taxpayer hereby reserves the right to supplement this claim with additional issues, arguments, and factual support, including the identification of the specific tax refund amounts sought, at a later date. Taxpayer also requests an oral hearing pursuant to California Code of Regulations section 19322(d).

If you have any questions or need additional information, please contact me at (310) 739-3146.

---

<sup>47</sup> Container Corp. v. Franchise Tax Bd., 463 U.S. 159, 178 (1983).



Sincerely,

*Christopher A. Whitney, CPA*

Christopher A. Whitney  
Partner-NTS, State and Local Tax  
PricewaterhouseCoopers LLP

cc: Janice Manston, Daimler North America Corporation  
Chris Leader, Daimler North America Corporation  
Jon Sperring, PwC  
Mike Kammann, PwC  
Jiwon Jeong, PwC



# Business Entity or Group Nonresident Power of Attorney Declaration

## 3520-BE

Use this legal document to authorize a specific individual(s) to receive confidential information and represent you in all matters before the Franchise Tax Board (FTB).

### Part I - Business Entity Information

Check only one box below. If you select both boxes, your POA Declaration will be invalid and will be rejected.

**Business Entity**  
(A subsidiary not included with the unitary taxpayer's group tax return must file its own POA Declaration)

**540NR Group Nonresident Return**  
(If the POA Declaration is related to matters for the 540NR group nonresident tax return)

Full legal business name

Daimler North America Corporation & Subsidiaries

CA corporation number: 2230130  
CA SOS number (or FTB issued number):  
FEIN:  
Phone:

Street address (number and street) or PO box: 36455 Corporate Drive  
Apt. no./ste. no.:

City (If the business entity has a foreign address, see instructions.): Farmington Hills  
State: MI  
ZIP code: 48331

Foreign country name:  
Foreign province/state/county:  
Foreign postal code:

### Part II - Representative(s)

Only individuals may be named as representative(s). You must list a primary representative below. The business entity in Part I appoints the following individual(s) as attorney(s)-in-fact. To appoint additional representative(s), complete Side 4. Each representative listed on your POA Declaration will have the ability to remove a representative from your POA Declaration.

Primary representative's name (first name, middle initial, and last name)

Chris Whitney

CA CPA: 64907  
CA state bar number:  
CTEC:  
Enrolled agent number:  
PTIN:

Street address (number and street) or PO box: 400 Capitol Mall  
Apt. no./ste. no.: Suite 600

City (If the representative has a foreign address, see instructions.): Sacramento  
State: CA  
ZIP code: 95814

Email (include your representative's email address to ensure they receive email notifications): chris.whitney@pwc.com  
Phone: (310) 739-3146  
Fax:

Additional representative's name (first name, middle initial, and last name)

Jon Sperring

CA CPA:  
CA state bar number: 186183  
CTEC:  
Enrolled agent number:  
PTIN:

Street address (number and street) or PO box: 400 Capitol Mall  
Apt. no./ste. no.: Suite 600

City (If the representative has a foreign address, see instructions.): Sacramento  
State: CA  
ZIP code: 95814

Email (include your representative's email address to ensure they receive email notifications): jon.a.sperring@pwc.com  
Phone: (916) 601-9707  
Fax:

**Part III – Authorization for All Years or Specific Income Periods Your POA Declaration Covers**

You must check either the “Yes” or “No” box below. Your selection authorizes representatives in Part II and on Side 4 to contact FTB about your account, receive and inspect your confidential information, represent you in all FTB matters, and request information we receive from the Internal Revenue Service (IRS) for either question 1 or 2 indicated below.

If you authorize “all years” and “specific income periods,” the specific income periods privilege prevails. Enter “NA” (not applicable) or strike through any blank year fields in question 2a through 2d. If you do not check either the “Yes” or “No” box or check both the “Yes” and “No” box, we will process the authorization as a “No.” This may cause your POA Declaration to be invalid, and it may be rejected. If you authorized all years, this will include previous, current, and future years up to the expiration date. If you authorized “specific income periods,” you can designate future years or income periods up to **five years** from the POA Declaration signature date.

1. Authorized All Years .....  Yes  No  
 Or  
 2. Authorized Specific Income Periods\* .....  Yes  No

**Year Begins:** (mm/dd/yyyy)      **Year Ends:** (mm/dd/yyyy)

2a.  –   
 2b.  –   
 2c.  –   
 2d.  –

\* For example,  
 Single Year: 01/01/2019-12/31/2019  
 Year Range: 01/01/2019-06/30/2019  
 Multiple Years: 01/01/2017-12/31/2019

**Part IV – Additional Authorizations**

Check either the “Yes” or “No” box below for additional authorizations you would like to grant your representative(s) in addition to those described in Part III. If you do not check either the “Yes” or “No” box or check both the “Yes” and “No” box for any additional authorizations below, we will process the authorization as a “No.” For more information, see instructions.

1. Add representative(s) .....  Yes  No  
 2. Receive, but not endorse, refund check(s) .....  Yes  No  
 3. Waive the California statutes of limitations (SOL) .....  Yes  No  
 4. Execute settlement and closing agreements .....  Yes  No  
 5. Other acts (describe on Side 5) .....  Yes  No



**Part V – Request or Retain MyFTB Full Online Account Access for Tax Professional(s)**

You must check either the “Yes” or “No” box below. If you check the “Yes” box, you are requesting to authorize or retain full online account access for your tax professional(s), including the ability to view tax returns and take available actions based upon the year(s) designated on this declaration. If you requested full online account access for your tax professional(s) on your POA declaration, a separate notice will be mailed to you with an authorization code and instructions to approve or deny the online account access request. An authorization code will not be sent for tax professional(s) that have existing full online account access.

If you check the “No” box, both the “Yes” and “No” boxes, or do not check any box, we will process the authorization as a “No”, and your tax professional(s) will be granted limited online account access; any existing relationships with full online account access will be changed to limited online account access. Limited online account access includes viewing notices and most correspondence issued by FTB in the last 12 months.

This online account access authorization does not affect their ability to take actions on your behalf or the information your representative can receive by phone, chat, or in person.

If your POA declaration is rejected, this request for online access will not be processed and no updates will be made to online access levels for any existing relationships.

**Note:** Online access is not available for 540NR Group Nonresident Return accounts.

Authorize MyFTB Full Online Account Access for Tax Professional(s) .....  Yes  No

**Part VI – Signature Authorizing Power of Attorney Declaration**

To learn about your privacy rights, how we may use your information, and the consequences for not providing the requested information, go to [ftb.ca.gov/forms](http://ftb.ca.gov/forms) and search for **1131**. To request this notice by mail, call 800.852.5711.

The authority granted to the representative(s) in this POA Declaration will generally expire **six years** from the date this form is signed, or on the date that a POA declaration is revoked, whichever occurs first.

I declare under penalty of perjury under the laws of the State of California that I am a corporate officer, general partner, authorized managing member, or tax matter partner on behalf of the business entity in Part I, and that I have the authority to sign this form on behalf of the business entity.

I understand that submitting this POA Declaration will not revoke any previously submitted POA Declarations with overlapping privileges.

**FTB will reject this POA Declaration if not signed and dated by an authorized individual.**

By signing this POA declaration, I understand that FTB will grant limited online account access to my tax professional representative(s) unless full online account access has been requested in Part V. If you do not want your tax professional representative(s) to have any online access, refer to Part V instructions.

Print Name

Janice Manston

Title (required for business entities)

Senior Manager - Tax Affairs

Signature

X

Date

3/11/2021

The business entity in Part I appoints the following additional representative(s) as attorney(s)-in-fact. Include additional copies of this page as needed to list all representatives. **Do not return this page if blank.**

Additional representative's name (first name, middle initial, and last name)

Mike Kammann

CA CPA CA state bar number CTEC Enrolled agent number PTIN

Street address (number and street) or PO box Apt. no./ste. no.

City (If the representative has a foreign address, see instructions.) State ZIP code

Email (include your representative's email address to ensure they receive email notifications) Phone Fax

Additional representative's name (first name, middle initial, and last name)

Jiwon Jeong

CA CPA CA state bar number CTEC Enrolled agent number PTIN

Street address (number and street) or PO box Apt. no./ste. no.

City (If the representative has a foreign address, see instructions.) State ZIP code

Email (include your representative's email address to ensure they receive email notifications) Phone Fax

Additional representative's name (first name, middle initial, and last name)

Benet Driessen

CA CPA CA state bar number CTEC Enrolled agent number PTIN

Street address (number and street) or PO box Apt. no./ste. no.

City (If the representative has a foreign address, see instructions.) State ZIP code

Email (include your representative's email address to ensure they receive email notifications) Phone Fax

Additional representative's name (first name, middle initial, and last name)

Molly Wachtel

CA CPA CA state bar number CTEC Enrolled agent number PTIN

Street address (number and street) or PO box Apt. no./ste. no.

City (If the representative has a foreign address, see instructions.) State ZIP code

Email (include your representative's email address to ensure they receive email notifications) Phone Fax



**State of California  
Franchise Tax Board**

1 North Franklin STE 400  
Chicago IL 60606  
ftb.ca.gov

**TO:**

Date: 08.13.2021  
Case: 31320765788266543  
Case Unit: 31320765788266696  
In reply refer to: 370:AP:L-01

Regarding: **INFORMATION DOCUMENT REQUEST (IDR)**  
CCN: 2230130  
Taxpayer's Name: Daimler North America Corporation & Subsidiaries  
Taxable Year(s): 12/2017 - 12/2019

**FROM:** Alexander Petrus  
Telephone: 312.982.6913

---

**IDR Number:** 014 **Please Respond By:** 09/13/2021

**Subject:** Sales Factor Elimination Amount (Claim)

---

Please provide a statement and supporting work papers as to how the amounts of \$3,095,210,339, \$3,122,245,465 and \$3,278,284,650 are being proposed to be eliminated from the California sales factor for TYE 12/2017 - 12/2019.

Please provide a statement and supporting work papers as to how the amounts of \$11,883,448,194, \$11,469,071,275 and \$12,018,846,334 are being proposed to be eliminated from the everywhere sales factor for TYE 12/2017 - 12/2019.

Please provide response in electronic format.

# MERCEDES-BENZ USA, LLC

## Mercedes-Benz Passenger Car Dealer Agreement

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**MERCEDES-BENZ USA, LLC**  
**MERCEDES-BENZ PASSENGER CAR**  
**DEALER AGREEMENT**

This PASSENGER CAR DEALER AGREEMENT is effective as of the day last set forth below by and between Mercedes-Benz USA, LLC (“MBUSA”) and the natural person or entity identified as “Dealer” in the Final Paragraph of this Agreement.

**MERCEDES-BENZ STATEMENT OF COMMITMENT**

This Agreement states the commitment of MBUSA and Dealer to each other as well as their relationship to the owners of Mercedes-Benz Passenger Car Products.

MBUSA, the exclusive distributor of Mercedes-Benz Passenger Car Products in the United States of America and its territories and possessions, brings to this relationship the peerless reputation and image of Mercedes-Benz through the embodiment of the “Three-Pointed Star.” Daimler AG (“DAG”) has produced automobiles longer than any other manufacturer in the world. It has never let sheer numbers of production, or the requirement of transportation alone, become the yardstick for the design of its products. Its devoted craftsmen have built, and continue to build, the finest automobiles in the world. Mercedes-Benz automobiles are not made for the affluent only or for a single country. Since 1886, Mercedes-Benz automobiles have been and continue to be the pride of discriminating owners all over the world.

Mercedes-Benz passenger car dealers are community leaders whose reputation, integrity and expertise are essential to the sale and servicing of Mercedes-Benz Passenger Cars. They must have well-located places of business with outstanding sales, service and parts facilities; they must be staffed by courteous and well-trained personnel who are dedicated to serving Mercedes-Benz customers during the acquisition and ownership experience; and they must be focused on attaining the collective long-term goals reflected herein as well as their own individual goals.

Mercedes-Benz owners are loyal, devoted and proud; but they are also demanding towards the factory as far as the product is concerned and towards the dealer as to how it is sold and serviced. MBUSA and Dealer are committed to meeting and, where possible, exceeding those high expectations.

By executing this Agreement, and pursuant to its terms, MBUSA and its Mercedes-Benz passenger car dealers dedicate themselves jointly to serving and satisfying the past, present and future owners of Mercedes-Benz Passenger Car Products.

**A. APPOINTMENT OF DEALER**

MBUSA hereby appoints Dealer and grants it the non-exclusive right to buy and resell Mercedes-Benz Passenger Car Products. Dealer accepts such appointment and understands that its appointment as a Dealer (i) does not grant it an exclusive right to sell Mercedes-Benz Passenger Car Products in its Area of Influence or in any other geographic area, and (ii) does not grant it any right to buy or resell vehicles or other products that are not Mercedes-Benz Passenger Car Products. Dealer acknowledges and agrees to comply with all reasonable requests of MBUSA with respect to the conducting of periodic due diligence reviews of the Dealer.

**B. TERM**

This Agreement shall have a term commencing on its effective date and continuing until the date set forth in the Final Paragraph.

**C. ADDITIONAL PROVISIONS**

The accompanying Mercedes-Benz Passenger Car Dealer Agreement Standard Provisions, Dealer AOI Space Analysis Addendum, Dealer Operating Requirements Addendum, Dealer Area of Influence Addendum, Dealer Improvement Addendum (if applicable), other facility addenda (if applicable) as identified in Paragraph F, and Communications Guidelines and Graphic Standards are hereby incorporated into and made a part of this Agreement. The data requirements reflected in the Dealer AOI Space Analysis Addendum, Dealer Operating Requirements Addendum, and Dealer Area of Influence Addendum are periodically updated with the current related addendum displayed electronically on a website accessible via NetStar. Dealer further agrees to be bound by and comply with the Warranty Manual, Dealership Facility Planning & Corporate Identification Manual and all other manuals, bulletins, instructions and directives issued to Dealer by MBUSA.

**D. DEALER OWNERSHIP**

This is a personal service agreement. MBUSA is entering into this Agreement in reliance upon the personal qualifications, reputation, integrity and expertise of Owners and upon their representation that they are committed to achieving the purposes and goals of this Agreement. Dealer acknowledges and agrees to comply with all reasonable requests of MBUSA with respect to the conducting of periodic due diligence reviews on all current owners of the Dealership.

Dealer agrees that there will be no change in the identity of Owner or in Dealer's ownership, name, identity, business organization or structure without the prior written consent of MBUSA, which consent shall not be unreasonably withheld. If Dealer is a corporation, Dealer agrees to notify MBUSA in writing of any change in the identity of its officers or directors.

## **E. DEALER MANAGEMENT**

MBUSA and Dealer agree that qualified dealership management is critical to the successful operation of the Dealer. Dealer agrees, and MBUSA enters into this Agreement on the condition, that at least one Owner, the Dealer Operator, shall have full managerial authority for Dealership Operations, shall continually provide his or her personal services in operating the dealership, and shall be physically present at the Dealership Facilities on a full-time basis. Dealer acknowledges and agrees to comply with all reasonable requests of MBUSA with respect to the conducting of periodic due diligence reviews on all current Dealer Operators of the Dealership.

If the Dealer Operator has or in the future acquires an ownership interest in another Mercedes-Benz passenger car dealer where he or she desires to serve temporarily as the Dealer Operator, MBUSA shall give Dealer and the other dealer a reasonable period of time within which to designate a separate and distinct Dealer Operator satisfactory to MBUSA for each such dealer. Dealer agrees that there will be no change in the identity of the Dealer Operator without the prior written consent of MBUSA, which consent shall not be unreasonably withheld.

## **F. DEALERSHIP FACILITIES**

Dealer agrees that the Dealership Facilities shall satisfy all applicable provisions of this Agreement, including the facility, space, appearance, layout, equipment and corporate identification requirements in the Dealer AOI Space Analysis Addendum, and Dealership Facility Planning & Corporate Identification Manual. Unless otherwise provided in the Dealer AOI Space Analysis Addendum, MBUSA hereby approves the location(s) of the Dealership Facilities identified in the Final Paragraph for the exclusive purpose of: (i) showroom and sales facility for Mercedes-Benz Passenger Cars and Accessories; (ii) service and parts facility for Mercedes-Benz Passenger Cars; (iii) facilities for display and sale of pre-owned Mercedes-Benz vehicles; and (iv) if applicable, other facilities for such other purpose(s) as may be identified in the Final Paragraph. Additional facilities will operate pursuant to the terms of the Mercedes-Benz Passenger Car Dealer Agreement herein and the following Dealer Agreement Addenda if applicable: Service Center Addendum, Pre-Owned & Service Center Addendum, and Service Annex Addendum. Dealer shall not move, relocate or change the designated usage or function of the Approved Location(s) or any of the Dealership Facilities without the prior written consent of MBUSA. In particular, Dealer shall not add sales, service or parts operations for any other line of vehicles to the Dealership Facilities or at the Approved Location(s) without the prior written consent of MBUSA.

**G. MERCEDES-BENZ DEALER BOARD**

MBUSA and Dealer agree that it is in their mutual interest to create the Mercedes-Benz Dealer Board. Subject to its respective by-laws and procedures, the Mercedes-Benz Dealer Board shall act as liaison between MBUSA and the dealer body, conveying to MBUSA's management the views, recommendations and suggestions of the dealer body on those matters of importance affecting the mutual interests of MBUSA and Mercedes-Benz passenger car dealers. Each Mercedes-Benz passenger car dealer is encouraged to express its views on such issues to MBUSA through the Mercedes-Benz Dealer Board. Dealer agrees to support the Mercedes-Benz Dealer Board.

**H. MODIFICATION OF AGREEMENT**

No waiver, modification or change of any of the terms of this Agreement or change or erasure of any printed part of this Agreement or addition to it (except filling of blank spaces and lines) will be valid or binding on MBUSA unless approved in writing by the President or a Vice President of MBUSA.

**I. EXECUTION OF AGREEMENT**

This Agreement shall not become effective until signed by a duly authorized officer of Dealer, if a corporation or limited liability company, or by one of the general partners of Dealer, if a partnership, or by the named individual if a sole proprietorship, and countersigned by the President or a Vice President of MBUSA.

**J. MUTUAL RELEASE**

Each party hereby releases the other from any and all claims and causes of action that it may have against the other for money damages arising from any event occurring up to and including the effective date of this Agreement, except for any accounts payable by one party to the other reflected on the MBUSA Consolidated Statement or adjustments to any prior payment, credit or other benefit arising from any audit or other examination conducted by MBUSA with respect thereto. This mutual release does not extend to claims that either party does not know or reasonably suspect to exist in its favor as of the effective date of this Agreement or that arise under Section XII of the Standard Provisions to this Agreement.

**K. CERTIFICATION**

By their signatures below, the parties certify that they have read and understand this Agreement, including all of the additional provisions incorporated herein, and agree to be bound by and comply with all of its terms and conditions.

**FINAL PARAGRAPH**

Dealer is \_\_\_\_\_, a (an)  
incorporated or formed under the laws of the State of \_\_\_\_\_  
doing business as \_\_\_\_\_  
("Dealer"). Dealer is located in \_\_\_\_\_,  
City State

The Owners of Dealer (including all shareholders, general and limited partners, and other owners) are as follows:

<u>Name</u>	<u>Residence</u>	<u>Percentage Interest</u>
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The Dealer Operator of Dealer is as follows:

<u>Name</u>	<u>Residence</u>
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Showroom and Sales Facility for Mercedes-Benz Passenger Cars located at:

Service and Parts Facility for Mercedes-Benz Passenger Cars located at:

Facilities for the display and sale of pre-owned Mercedes-Benz Vehicles located at:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at Montvale, New Jersey. This Agreement shall have a term commencing on its effective date and continuing until \_\_\_\_\_.

**Dealer:** MERCEDES-BENZ USA, LLC

By \_\_\_\_\_ Signature Vice President

\_\_\_\_\_  
Type Name and Title Attested by: \_\_\_\_\_

Attested by:

# **MERCEDES-BENZ USA, LLC**

## **MERCEDES-BENZ PASSENGER CAR DEALER AGREEMENT STANDARD PROVISIONS**

### **I. ACQUISITION, DELIVERY AND INVENTORY OF MERCEDES-BENZ PASSENGER CAR PRODUCTS**

#### **A. PRICES AND TERMS OF SALE**

MBUSA shall offer to sell to Dealer and Dealer shall have the right to purchase from MBUSA Mercedes-Benz Passenger Car Products in accordance with the provisions of this Agreement and the prices and other terms of sale that MBUSA shall establish and revise from time to time. Such revised prices or terms shall apply to any Mercedes-Benz Passenger Car Product not invoiced to Dealer by MBUSA at the time the notice of such change is given to Dealer (in the case of Mercedes-Benz Passenger Cars), or upon issuance of a new or modified parts price list or through change notices, letters, bulletins or revision sheets (in the case of Genuine Mercedes-Benz Passenger Car Parts and Accessories), or at such other times as may be designated electronically or in writing by MBUSA.

#### **B. AVAILABILITY AND ALLOCATION OF PRODUCTS**

MBUSA will allocate Mercedes-Benz Passenger Car Products among its passenger car dealers in a fair and equitable manner. MBUSA will, upon Dealer's request, explain the considerations and method used to allocate Mercedes-Benz Passenger Car Products to Dealer.

#### **C. DELIVERY OF PRODUCTS**

MBUSA will ship Mercedes-Benz Passenger Car Products to Dealer by whatever mode of transportation, by whatever route, and from whatever point MBUSA may select. Dealer shall pay MBUSA such charges as MBUSA in its sole discretion establishes for such transportation services.

#### **D. PASSAGE OF TITLE**

Title to each Mercedes-Benz Passenger Car Product shall pass from MBUSA to Dealer, or to the financial institution designated by Dealer, upon MBUSA's receipt of payment for said Product and upon delivery of said Product to Dealer or to a carrier for transportation to Dealer.



**E. RISK OF DAMAGE OR LOSS**

Dealer shall bear the risk of damage to or loss of Mercedes-Benz Passenger Car Products during transportation from the point of shipment; however, MBUSA will, if requested by Dealer in such manner and within such time as MBUSA may specify, prosecute claims for damage to or loss of Mercedes-Benz Passenger Cars during said transportation against the responsible carrier for and on behalf of Dealer. To the extent required by law, Dealer shall notify the purchaser of a vehicle of any damage sustained by such vehicle prior to sale.

**F. DELAY OR FAILURE OF DELIVERY**

MBUSA shall not be liable for delay or failure to deliver Mercedes-Benz Passenger Car Products that it has previously agreed to deliver, where such delay or failure to deliver is the result of any event beyond the control of MBUSA, including but not limited to any law or regulation of any governmental entity, acts of God, foreign or civil wars, riots, interruptions of navigation, shipwrecks, fires, floods, storms, strikes, lockouts, or other labor troubles, embargoes, blockades, or delay or failure of DAG to deliver Mercedes-Benz Passenger Car Products.

**G. DIVERSION AND STORAGE CHARGES**

Dealer shall be responsible for and shall pay all charges for demurrage, storage and other expense accruing after shipment to Dealer or to a carrier for transportation to Dealer. If diversions of shipments are made upon Dealer's request or are made by MBUSA as a result of Dealer's failure or refusal to accept shipments made pursuant to Dealer's orders, Dealer shall pay all additional charges and expenses incident to such diversions.

**H. SECURITY INTEREST**

**1. Grant of Security Interest**

As security for the full payment of all sums from time to time owed by Dealer to MBUSA under this Agreement, whether such sums are now or hereafter become due and owing, Dealer hereby grants to MBUSA a security interest in the following items for which MBUSA has not received payment (collectively referred to as "Collateral"):

- (i) All Genuine Mercedes-Benz Passenger Car Products and other related items delivered by MBUSA to Dealer hereunder on account (all such inventory hereinafter referred to collectively as "Inventory" and individually as "Item of Inventory"); and
- (ii) All proceeds from any of the foregoing, including without limitation, insurance payable by reason of the loss, damage or destruction of any Item of Inventory; and all accounts and chattel paper of Dealer arising from its sale, lease or other disposition of

Inventory now existing or hereafter arising, and all liens, securities, guarantees, remedies and privileges pertaining thereto, together with all rights and liens of Dealer relating thereto.

**2. Default in Payment**

Dealer shall be in default of this Section I.H if: (i) Dealer shall fail to pay any amounts secured hereby when due or fail to perform any obligations under this Section I in a timely manner; (ii) there shall occur any material adverse change in the financial condition of Dealer; or (iii) Dealer shall dissolve or become insolvent or bankrupt; and, in any such case, MBUSA may declare all sums secured by this Section I.H immediately due and payable and MBUSA shall have all the rights and remedies afforded to a secured party after default under the Uniform Commercial Code or other applicable law in effect on the date of this Agreement.

**3. Assembly of Collateral, Payment of Costs and Notices**

Dealer shall, if requested by MBUSA upon the occurrence of any default under Section I.H.2, assemble the Collateral and make it available to MBUSA at a place or places designated by MBUSA. Dealer also shall pay all costs of MBUSA, including without limitation, attorneys fees incurred with respect to the enforcement of any of MBUSA's rights under this Section I.H.

**4. Recording and Further Assurances**

Dealer shall provide any assistance necessary in the preparation of financing statements and such other instruments or documents and take any other action as MBUSA may request in order to create or maintain the security interest intended to be created by this Section I.H, or to enable MBUSA to exercise and enforce its rights hereunder. A carbon, photographic or other reproduction of this Agreement shall be sufficient as a financing statement and may be filed in lieu of a financing statement in any and all jurisdictions which accept such reproductions.

**5. Records and Schedules of Inventory**

Dealer shall keep accurate records itemizing and describing the kind, type and quantity of Inventory and shall furnish to MBUSA within five (5) days of receipt of MBUSA's request therefore, a current schedule of inventory in form and substance satisfactory to MBUSA ("Schedule of Inventory"), which shall be true and accurate in all respects. A physical inventory shall be conducted no less than annually in connection with preparation of year-end financial statements of Dealer and, at MBUSA's request, a report of such inventory shall be promptly provided to MBUSA.

**I. CHANGES OF DESIGN, SPECIFICATIONS OR OPTIONS**

MBUSA may change the design or specifications of any Mercedes-Benz Passenger Car Product or the options in any Mercedes-Benz Passenger Car Product and shall be under no obligation to provide notice of same or to make any similar change to Mercedes-Benz Passenger Car Products previously purchased by or shipped to Dealer. No change shall be considered a model year change unless so specified by MBUSA.

**J. DISCONTINUANCE OF MANUFACTURE OR IMPORTATION**

DAG and/or MBUSA may discontinue the manufacture, importation or distribution of all or part of any Mercedes-Benz Passenger Car Product, whether passenger car parts, options or accessories, including any model, series or body style of any Mercedes-Benz Passenger Car at any time without any obligation or liability to Dealer by reason thereof.

**K. MINIMUM VEHICLE INVENTORIES**

Dealer agrees that it shall, at all times, maintain in showroom ready condition at least the minimum inventory of Mercedes-Benz Passenger Cars that may be established by MBUSA from time to time.

**L. PRODUCT MODIFICATIONS**

Dealer agrees that it will not install aftermarket accessories, equipment, or make any modifications to Mercedes-Benz passenger cars that may impair or adversely affect their safety, emissions, structural integrity, performance or original vehicle warranty applicability. Dealer acknowledges and agrees that it shall be liable for any costs and expenses related to the installation of any aftermarket items that will impair or adversely affect the vehicle as noted.

**II. DEALER'S MARKETING AND SALES OF MERCEDES-BENZ PASSENGER CAR PRODUCTS**

**A. DEALER'S GENERAL RESPONSIBILITIES**

Dealer recognizes that customer satisfaction and the successful promotion and sale of Mercedes-Benz Passenger Car Products are significantly dependent on Dealer's advertising and sales promotion activities. Therefore, Dealer at all times shall:

1. Actively and effectively promote and sell new and used Mercedes-Benz Passenger Car Products to customers located within its Area of Influence;
2. Advertise and merchandise Mercedes-Benz Passenger Car Products, and use current Mercedes-Benz showroom displays, sales materials, other

promotional media, and electronic mediums including dealer website and use of social media applications;

3. Organize a complete sales organization of the highest quality, ensure that its sale personnel meet the educational and management standards established by MBUSA, and, at Dealer's expense, have such personnel as are appropriate attend all training courses prescribed by MBUSA Dealer acknowledges and agrees that it shall register all required dealership personnel into the MBUSA training system.
4. Comply with the Communications Guidelines and Graphic Standards, maintain a high standard of ethics in advertising, promoting and selling Mercedes-Benz Passenger Car Products, and avoid engaging in any misrepresentation or unfair or deceptive practices. Dealer shall discontinue any advertising that MBUSA considers injurious to MBUSA's business or reputation or to the Mercedes-Benz Marks, or that are likely to be violative of applicable laws or regulations; and
5. Accurately represent to customers the total selling price of Mercedes-Benz Passenger Car Products. Dealer agrees to explain to customers of Mercedes-Benz Passenger Car Products the items that make up the total selling price and to give the customers itemized invoices and all other information required by law. Dealer understands and hereby acknowledges that it may sell Mercedes-Benz Passenger Car Products at whatever price Dealer desires.

## **B. EXPORT POLICY**

Dealer is authorized to sell Mercedes-Benz Passenger Car Products only to customers residing in the United States of America and its territories (Guam, Puerto Rico, and Virgin Islands). Dealer agrees that it will not sell Mercedes-Benz Passenger Car Products for resale or use outside the United States of America or its territories. Dealer agrees to be bound by and comply with any export policy established by MBUSA.

## **C. MERCEDES-BENZ DEALER ASSOCIATION**

MBUSA considers participation by Mercedes-Benz passenger car dealers in Mercedes-Benz Passenger Car Dealer Advertising Associations to be a fundamental part of an overall marketing strategy for their businesses and Mercedes-Benz Passenger Car Products. MBUSA urges Dealer to cooperate in the establishment of such an association and to fund its fair share of advertising and merchandising programs undertaken by the association.

**D. PRE-OWNED VEHICLES**

Dealer agrees to display and sell pre-owned Mercedes-Benz vehicles at the Approved Location(s). Dealer shall participate in programs as specified by MBUSA for the sale of such vehicles, and shall maintain the minimum reasonable inventory established by MBUSA from time to time for such operations. Dealer shall conduct its pre-owned Mercedes-Benz vehicle operations in conformance with all standards set forth in this Agreement.

**E. AREA OF INFLUENCE**

MBUSA will assign to Dealer a geographic area consisting of a collection of zip codes or census tracts that is called an Area of Influence (“AOI”). MBUSA may alter or adjust Dealer’s AOI at any time. The AOI is a tool used by MBUSA to evaluate Dealer’s performance of its primary obligations hereunder. Dealer agrees that it has no right or interest in any AOI and that MBUSA may add new dealers to or relocate dealers into Dealer’s AOI. Any such addition or relocation of a dealer will result in an alteration or adjustment of Dealer’s AOI.

**F. EVALUATION OF DEALER’S MARKETING AND SALES PERFORMANCE**

MBUSA will periodically evaluate Dealer’s sales and marketing performance under this Agreement. Dealer’s evaluation will be based on such reasonable criteria as MBUSA may establish, including without limitation: (i) Dealer’s reasonable sales objectives that may be established by MBUSA; (ii) Dealer’s sales of Mercedes-Benz Passenger Cars as a percentage of registrations of Mercedes-Benz Passenger Cars or Competitive Vehicles in Dealer’s AOI; (iii) the registrations of Mercedes-Benz Passenger Cars as a percentage of registrations of Competitive Vehicles in Dealer’s AOI; (iv) Dealer’s sales or registrations of Mercedes-Benz Passenger Cars as compared to sales or registrations of Mercedes-Benz Passenger Cars by authorized Mercedes-Benz passenger car dealers in other areas, including but not limited to the metropolitan area, market and/or region in which Dealer is located; and (v) Dealer’s performance in building and maintaining consumer satisfaction with Dealer and Mercedes-Benz Passenger Car Products. MBUSA will review such evaluations with Dealer, and Dealer shall take prompt corrective action, if required, to improve its performance.

**III. DEALER’S SERVICE OBLIGATIONS**

**A. CUSTOMER SERVICE STANDARDS**

Dealer and MBUSA agree that customer satisfaction and the future growth of their respective businesses is substantially dependent upon the ability of owners of Mercedes-Benz passenger cars to obtain high-quality servicing from Dealer. Therefore, Dealer agrees to:

1. Provide prompt, efficient and courteous service of the highest quality for all Mercedes-Benz passenger cars, regardless of where purchased and/or serviced and whether or not under warranty;
2. Accurately diagnose and advise customers of the necessary repairs, and obtain their consent prior to the initiation of such repairs;
3. Professionally perform the necessary repairs; and
4. Treat customers fairly at all times.

**B. DEALER'S SPECIFIC SERVICE OBLIGATIONS**

**1. Pre-Delivery Inspections and Service**

Dealer shall perform pre-delivery inspections and service on each Mercedes-Benz Passenger Car prior to sale and delivery thereof by Dealer in accordance with the Warranty Manual.

**2. Warranty Repairs and Policy Service**

Dealer shall promptly, courteously and efficiently perform (i) warranty repairs on each Mercedes-Benz Passenger Car Product that qualifies for such repairs under the provisions of any warranty furnished therewith by MBUSA or DAG, and (ii) such other inspections, repairs or corrections on Mercedes-Benz Passenger Car Products as may be approved or authorized by MBUSA to be made at MBUSA's expense (hereinafter "policy service"). Dealer shall perform such repairs and service on each such Mercedes-Benz Passenger Car Product as and when requested by the owner or user (or in the case of policy service when requested by MBUSA), without regard to where such Mercedes-Benz Passenger Car Product was purchased and in accordance with the Warranty Manual. MBUSA agrees to compensate Dealer for all warranty repairs and policy service, including labor, diagnosis and Genuine Mercedes-Benz Passenger Car Parts and Accessories, in accordance with procedures and at rates to be established from time to time by MBUSA. Unless otherwise approved in advance by MBUSA, Dealer shall use only Genuine Mercedes-Benz Passenger Car Parts and Accessories when performing Mercedes-Benz warranty repairs and policy service. Warranty repairs and policy service are provided for the benefit of customers, and Dealer agrees that the customer shall not be obligated to pay any charges for such work or any other services for which Dealer is reimbursed by MBUSA, except as required by law.

**3. Service / Recall Campaign Inspections and Corrections**

Dealer agrees to perform service/recall campaign inspections and/or corrections for owners or users of all Mercedes-Benz Passenger Car Products that qualify for such inspections and/or corrections in accordance with MBUSA's directives and the applicable procedures in the Warranty Manual. MBUSA agrees to reimburse Dealer for all replacement parts and/or other materials required and used in connection with such work and for labor according to such directives and the applicable provisions of the Warranty Manual.

**4. Roadside Assistance Program**

Dealer agrees to participate in the Mercedes-Benz Roadside Assistance Program as specified by MBUSA.

**C. USE OF PARTS AND ACCESSORIES IN NON-WARRANTY SERVICE**

Subject to the provisions of Sections I.L and III.B.2, Dealer has the right to sell, install or use for making non-warranty repairs products that are not Genuine Mercedes-Benz Passenger Car Parts and Accessories.

**1. Quality Standards**

Dealer acknowledges, however, that its customers expect that any parts or accessories that Dealer sells, installs or uses in the sale, repair or servicing of Mercedes-Benz passenger cars are, or meet the high quality standards of, Genuine Mercedes-Benz Passenger Car Parts and Accessories. Dealer agrees that in sales, repairs or servicing where Dealer does not use Genuine Mercedes-Benz Passenger Car Parts and Accessories, Dealer will utilize only such other parts or accessories as:

1. Will not adversely affect the mechanical operation of the Mercedes-Benz passenger car being sold, repaired or serviced; and
2. Are equivalent in quality and design to Genuine Mercedes-Benz Passenger Car Parts and Accessories.

Dealer further agrees that it will not offer to sell any parts or accessories that for reasons of quality or image are reasonably objected to by MBUSA.

**2. Dealer's Disclosures as to Use of and Warranties for Non-Genuine Parts and Accessories**

In order to avoid confusion and to minimize potential customer dissatisfaction, in any non-warranty instance where Dealer sells, installs or uses non-Genuine Mercedes-Benz Passenger Car Parts or Accessories,

Dealer shall disclose such fact to the customer and shall advise the customer that the item is not included in warranties furnished by MBUSA or DAG. Such disclosure shall be written, conspicuous and stated on the customer's copy of the service or repair order or sale document. In addition, Dealer will clearly explain to the customer the extent of any warranty covering the parts or accessories involved and will deliver a copy of the warranty to the customer.

**D. COMPLIANCE WITH SAFETY AND EMISSION CONTROL REQUIREMENTS**

Dealer agrees to comply and operate consistently with all applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966, and the Federal Clean Air Act, as amended, including applicable rules and regulations issued from time to time thereunder, and all other applicable federal, state, and local motor vehicle safety and emission control statutes, rules, and regulations.

In the event that the laws of the state in which Dealer is located require motor vehicle dealers or distributors to install in new or used motor vehicles, prior to their sale, any safety devices or other equipment not installed or supplied as standard equipment by DAG, then Dealer, prior to the sale of any Mercedes-Benz passenger car on which such installations are required, shall properly install such devices or equipment on such Mercedes-Benz passenger cars. Dealer shall comply with state and local laws pertaining to the installation and reporting of such equipment.

In the interest of motor vehicle safety and emission control, MBUSA and Dealer agree to provide to each other such information and assistance as may reasonably be requested by the other in connection with the performance of obligations imposed on either party by the National Traffic and Motor Vehicle Safety Act of 1966, and the Federal Clean Air Act, as amended, and their rules and regulations, and all other applicable federal, state and local motor vehicle safety and emission control statutes, rules and regulations.

Dealer further agrees that should MBUSA place any new Mercedes-Benz Passenger Cars in Dealer's stock on retail hold pending the resolution of any federal or state regulatory compliance issue, MBUSA may, but shall not be required to, elect to repurchase said retail held Mercedes-Benz Passenger Cars. Should MBUSA so elect, Dealer agrees that it shall immediately sell the Mercedes-Benz Passenger Cars back to MBUSA and withhold from retail sale all such Mercedes-Benz Passenger Cars still in its inventory at the time of said election as MBUSA may reasonably determine. In the event of such a repurchase, the price to be paid by MBUSA to Dealer shall be only the price paid by the Dealer to MBUSA for said Mercedes-Benz Passenger Car. MBUSA shall not be obligated to reimburse any other costs to Dealer with respect to Dealer's purchase or MBUSA's repurchase of the Mercedes-Benz Passenger Cars. MBUSA shall make payment to the Dealer immediately upon transfer of title to the Mercedes-Benz Passenger Car to MBUSA. During the period from



MBUSA's repurchase of Mercedes-Benz Passenger Cars until the Mercedes-Benz Passenger Cars resale to Dealer, the subject Mercedes-Benz Passenger Cars shall remain in the possession, custody and control of Dealer as bailee of MBUSA. Upon the occurrence of the resolution of the event requiring the issuance of the retail hold and Mercedes-Benz Passenger Car repurchase via the issuance of appropriate repair instructions to the Dealer, MBUSA shall resell those Mercedes-Benz Passenger Cars to Dealer and Dealer hereby agrees to accept those Mercedes-Benz Passenger Cars and further agrees that it will only retail sell the Mercedes-Benz Passenger Cars upon completion of the work by dealer required to bring the Mercedes-Benz Passenger Car into regulatory compliance."

**E. COMPLIANCE WITH CONSUMER PROTECTION STATUTES, RULES AND REGULATIONS**

Dealer agrees to comply and operate consistently with all applicable provisions of consumer protection statutes, rules and regulations (hereinafter "consumer protection laws"). Because certain customer complaints may impose liability upon MBUSA under consumer protection laws, Dealer agrees to provide prompt notice to MBUSA of such complaints and take such other steps as MBUSA may require. Dealer also agrees to provide applicable required customer notifications and disclosures as prescribed by consumer protection laws. Dealer will do nothing to affect adversely MBUSA's rights under consumer protection laws.

**IV. DEALER'S SERVICE AND PARTS ORGANIZATION**

**A. ORGANIZATION AND STANDARDS**

Dealer agrees to organize and maintain a complete service and parts organization of the highest quality, including a qualified service manager, parts manager, shop foreman, diagnostic specialists, technicians and a sufficient complement of qualified service and parts personnel as recommended by MBUSA. Dealer shall identify all required dealership personnel in the MBUSA training system and all required dealership personnel shall meet the educational, management and technical training standards reasonably established by MBUSA and, at Dealer's expense, will complete all service, parts and customer satisfaction training courses prescribed by MBUSA. Dealer will allow only properly trained personnel to perform warranty repair work on vehicles and systems as prescribed by MBUSA.

**B. SERVICE EQUIPMENT AND SPECIAL TOOLS**

Anything herein to the contrary notwithstanding, if MBUSA determines that Dealer requires Mercedes-Benz Special Tools and Service Equipment to service a model of Mercedes-Benz Passenger Cars, dealer acknowledges that it has no right to purchase such model from MBUSA unless and until it has acquired all such Mercedes-Benz Special Tools and Service Equipment and completed all related training courses prescribed by MBUSA.

**1. Mercedes-Benz Special Tools**

Dealer agrees to purchase from MBUSA all Mercedes-Benz Special Tools of Category A and B (“Category A and B Tools”) as may be reasonably required by MBUSA and which are the minimum required for the service, maintenance, and repair of Mercedes-Benz Passenger Cars regardless of size. Delivery of Category A and B Tools by MBUSA to Dealer will be automatic and via a timetable determined appropriate by MBUSA in its reasonable discretion. Dealer may also acquire, at their own discretion, Mercedes-Benz Special Tools of Category C for larger scale repairs.

Dealer agrees to maintain all Mercedes-Benz Special Tools in operational condition and in calibration as designated by MBUSA. Dealer will manage the inventory of Mercedes-Benz Special Tools using a storage and inventory management system specified by MBUSA. Dealer agrees that such inventory and/or physical inventory documentation will be subject to periodic inspection by MBUSA.

In the event a dealer utilizes its own body shop, dealer agrees to acquire Mercedes-Benz Special Tools of Category K for use in the repair of Mercedes-Benz Passenger Cars as specified by the Mercedes-Benz repair procedure. Dealers that sublet body shop repairs shall use a Mercedes-Benz Certified Body Shop or its best efforts to monitor, advise, and assure these locations are equipped with the necessary Mercedes-Benz tools, repair and instructions, and training support to perform the repairs

**2. Mercedes-Benz Service Equipment**

Dealer agrees to acquire approved Service Equipment designated as Basic Equipment (“BE”) pursuant to the MBUSA Standard Service Equipment Program including the ability to communicate and transfer data electronically with MBUSA. Dealer agrees to maintain this equipment in operational condition and in calibration as designated by MBUSA. Dealer agrees that such equipment and physical inventory documentation will be subject to periodic inspection by MBUSA.

**C. PARTS STOCKING AND SERVICE LEVELS**

Dealer agrees to maintain its parts stock at minimum stocking and service levels reasonably established by MBUSA.

**D. AFTER-HOURS DELIVERY**

Dealer agrees to provide MBUSA, upon request, access to a secure area for after-hours parts or passenger car delivery.

**E. ASSISTANCE PROVIDED BY MBUSA**

**1. Service Manuals and Materials**

MBUSA agrees to make available to Dealer copies of such service manuals and bulletins, publications, computer software and technical data as MBUSA shall deem to be necessary for the needs of Dealer's service and parts organization. Dealer shall be responsible for keeping such manuals and materials current and available for consultation by its employees.

**2. Field Personnel Assistance**

To assist Dealer in handling its responsibilities under this Agreement, MBUSA agrees to make available qualified field personnel who will, from time to time, advise and counsel Dealer on service-related subjects, including service policies, product and technical adjustments, repair and replacement of product components, customer relations, warranty administration, service and parts merchandising, and personnel/management training.

**F. EVALUATION OF DEALER'S SERVICE AND PARTS PERFORMANCE**

MBUSA will periodically evaluate Dealer's: (i) service performance in areas such as dealer's service of Mercedes-Benz Passenger Cars as a percentage of registrations of Mercedes-Benz Passenger Cars in Dealer's AOI, customer satisfaction, warranty administration, service repairs, service management, facilities, operating procedures and new vehicle pre-delivery service; and (ii) parts purchases, sales, operations, facilities, tools and equipment. MBUSA will review such evaluations with Dealer, and Dealer shall take prompt action to improve the service and parts performance to satisfactory levels as MBUSA may require. Such action shall, if requested by MBUSA, include an action plan by Dealer for improvement of service and parts performance within a specific time period approved by MBUSA, including but not limited to the establishment of additional space, facilities or locations for such operations.

**G. ADDITIONAL FACILITIES OR LOCATIONS**

If, with MBUSA's prior written consent, Dealer establishes additional facilities or locations for its service and parts operations, Dealer shall meet the facilities, identification, organizational, equipment, parts stocking and other standards reasonably established by MBUSA from time to time for such facilities or locations.

## **V. CUSTOMER SATISFACTION RESPONSIBILITIES**

The “Three-Pointed Star” is the symbol of automotive excellence. In furtherance of that image and reputation, MBUSA and Dealer agree to conduct their respective businesses in a manner that achieves the highest levels of customer satisfaction by marketing the finest products and providing the best service in the automotive industry.

### **A. DEALER’S CUSTOMER SATISFACTION OBLIGATIONS**

Dealer will be responsible for satisfying Mercedes-Benz customers in all matters except those that are directly related to product design and manufacturing. Dealer will take all reasonable steps to ensure that each customer is completely satisfied with Mercedes-Benz Passenger Car Products and the services and practices of Dealer. Dealer will not engage in any practice or method of operation if its nature or quality may impair the reputation of MBUSA or Mercedes-Benz Passenger Car Products.

#### **1. Dealer’s Customer Satisfaction Plan**

Upon MBUSA’s request, Dealer shall provide a detailed plan of Dealer’s customer satisfaction program to MBUSA and shall implement such program on a continuous basis. This plan shall include an ongoing system for emphasizing customer satisfaction to all Dealers’ employees, for training Dealer employees and for conveying to customers that Dealer is committed to the highest possible level of customer satisfaction.

#### **2. Employee Training**

Dealer agrees to participate and to have its employees participate, at Dealer’s expense, in Mercedes-Benz customer satisfaction training as required by MBUSA. Dealer shall register all required dealership personnel into the MBUSA training system.

#### **3. Customer Assistance Response System**

Dealer agrees to implement a system, approved by MBUSA that will respond immediately to requests for customer assistance from MBUSA.

### **B. EVALUATION OF DEALER’S CUSTOMER SATISFACTION PERFORMANCE**

MBUSA periodically will evaluate Dealer’s customer satisfaction performance based on the following considerations and efforts by Dealer.

1. MBUSA will provide Dealer with Customer Satisfaction Index (“CSI”) reports or such other equivalent data as will permit Dealer to assess its performance and maintain the highest level of customer satisfaction.

Dealer agrees to review with its employees on a regular basis the results of the customer satisfaction reports or other data it receives.

2. Dealer shall continuously develop and implement specific action plans to improve its customer satisfaction performance and results. The plans are to be reviewed with MBUSA on a basis that MBUSA deems appropriate. Dealer will respond on a timely basis to requests from MBUSA to take action on unsatisfactory customer satisfaction matters and to commit necessary resources to remedy deficiencies reasonably specified by MBUSA.

## **VI. DEALERSHIP FACILITIES AND IDENTIFICATION**

### **A. LOCATION AND FACILITIES**

Dealer shall provide Dealership Facilities at the Approved Location(s) that (i) will enable Dealer to effectively perform its responsibilities under this Agreement, (ii) are satisfactory in space, appearance, layout, equipment and corporate identification, and (iii) are otherwise substantially in accordance with the Dealer AOI Space Analysis Addendum, Dealership Facility Planning & Corporate Identification Manual, and such other standards as MBUSA may establish from time to time. Dealer shall conduct its Dealership Operations only from the Approved Location(s). If the Approved Location(s) is comprised of more than one place of business, Dealer shall use each such place of business only for the purposes specified therefore in Paragraph F and the Final Paragraph of this Agreement and, if applicable, in the Dealer AOI Space Analysis Addendum.

### **B. CHANGES AND ADDITIONS**

Dealer shall not move, relocate or change the designated usage or function of the Approved Location(s) or any of the Dealership Facilities, or substantially modify any of the Dealership Facilities, nor shall Dealer or any person named in the Final Paragraph of this Agreement directly or indirectly establish or operate any other locations or facilities for the sale or servicing of Mercedes-Benz Passenger Car Products or for the conduct of any other of the Dealership Operations contemplated by this Agreement, without the prior written consent of MBUSA. Any changes in the Approved Location(s) or the Dealership Facilities that may be agreed to by MBUSA and Dealer may be reflected in a new Agreement or in a new Dealer AOI Space Analysis Addendum.

In particular, Dealer acknowledges that the addition of sales, service or parts operations for another line of vehicles to the Dealership Facilities or at the Approved Location(s) could adversely affect Dealer's sales, service and parts performance with respect to Mercedes-Benz Passenger Car Products. Accordingly, to give MBUSA an adequate opportunity to evaluate the effect of such a proposed addition and to determine whether or not to consent thereto, Dealer agrees to notify MBUSA in writing at least sixty (60) days before Dealer enters into any agreement or letter of intent with respect to the addition of such

sales, service or parts operations to the Dealership Facilities or at the Approved Location(s).

**C. DEALER'S OPERATING HOURS**

Dealer agrees to conduct Dealership Operations during all days and hours that are customary and lawful for such operations in the community or locality in which Dealer is located and in accordance with industry standards. In addition, when necessary to accommodate customer needs, Dealer shall extend its operating hours.

**D. CORPORATE IDENTITY**

Subject to applicable governmental statutes, ordinances and regulations, Dealer agrees to erect, display and maintain, at Approved Location(s) only and at Dealer's sole expense, such standard authorized product and service signs and other corporate identity elements as are specified in the Dealership Facility Planning & Corporate Identification Manual or otherwise required by MBUSA from time to time.

**E. EVALUATION OF DEALERSHIP FACILITIES**

MBUSA will periodically evaluate the Dealership Facilities. In making such evaluations, MBUSA may consider, among other things: the actual building and land provided by Dealer for the performance of its responsibilities under this Agreement; compliance with MBUSA's current requirements for Dealership Operations; the appearance, condition, layout and signage of the Dealership Facilities; and such other factors as in MBUSA's opinion may relate to Dealer's performance of its responsibilities under this Agreement. MBUSA will discuss such evaluations with Dealer, and Dealer shall take prompt action to comply with MBUSA's recommendations and minimum facility standards.

**F. OWNERSHIP AND USE OF MERCEDES-BENZ MARKS**

**1. Validity and Exclusive Ownership of Mercedes-Benz Marks**

Dealer acknowledges the validity and DAG's exclusive ownership of the Mercedes-Benz Marks, and agrees not to contest the same during the term of the Agreement or at any time thereafter. Dealer and MBUSA agree to cooperate with each other in preventing any acts of trademark infringement or unfair competition with respect to any Mercedes-Benz Mark, but DAG or MBUSA shall have sole control over all actions and legal proceedings to redress infringement of or any unfair competition with respect to any Mercedes-Benz Mark.

## **2. Use by Dealer**

MBUSA grants Dealer a non-exclusive license to use the Mercedes-Benz Marks subject to the terms and conditions of the Agreement and the Dealership Facility Planning & Corporate Identification Manual. Dealer agrees that it will use the Mercedes-Benz Marks only in connection with the sale and servicing of Mercedes-Benz Passenger Car Products and only in such manner, at such location, to such extent, and for such purposes as MBUSA may specify from time to time. Dealer shall promptly change or discontinue its use of any Mercedes-Benz Marks upon MBUSA's request. Dealer shall not use the Mercedes-Benz Marks as part of its corporate or business name without MBUSA's prior written consent.

## **3. Discontinuance of Use**

Upon termination of this Agreement, Dealer agrees that it shall immediately:

- a. Discontinue the use of the word Mercedes-Benz and the Mercedes-Benz Marks, or any semblance of same, including without limitation, the use of all stationery, telephone directory listing and other printed material referring in any way to Mercedes-Benz or bearing any Mercedes-Benz Mark;
- b. Discontinue the use of the word Mercedes-Benz or the Mercedes-Benz Marks, or any semblance of same, as part of its business or corporate name, and file a change or discontinuance of such name with appropriate authorities;
- c. Remove all product signs bearing said word(s) or Mercedes-Benz Marks at Dealer's sole cost and expense;
- d. Cease representing itself as an authorized Mercedes-Benz passenger car dealer; and
- e. Refrain from any action, including without limitation, any advertising, stating or implying that it is authorized to sell or distribute Mercedes-Benz Passenger Car Products.

## **4. Enforcement**

In the event Dealer fails to comply with the terms and conditions of this Section VI.F, MBUSA shall have the right, in its sole discretion, to effect compliance through litigation and/or to enter upon Dealer's premises and remove, without liability, all such product signs and identification bearing the word Mercedes-Benz or any Mercedes-Benz Mark. Dealer agrees that it shall reimburse MBUSA for any costs and expenses incurred in such litigation and/or removal, including reasonable attorney fees.

## **VII. WARRANTIES**

The only warranties of MBUSA or DAG applicable to Mercedes-Benz Passenger Car Products shall be the New Vehicle Limited Warranty or such other written warranties that may be expressly furnished by MBUSA or DAG. Except for its express limited liability under such written warranties, MBUSA and DAG do not assume any additional warranty obligations or liabilities in connection with any Mercedes-Benz Passenger Car Products. Dealer is not authorized to assume any additional obligations or liabilities on behalf of MBUSA or DAG. Any such additional obligations assumed by Dealer shall be the sole responsibility of Dealer.

Dealer shall expressly incorporate in full and without modification any warranty furnished by MBUSA or DAG with a Mercedes-Benz Passenger Car as a conspicuous part of each order form or other contract for the sale of such a Mercedes-Benz Passenger Car by Dealer to any buyer. Dealer shall make available to the buyer of each Mercedes-Benz Passenger Car Product prior to the purchase of such Mercedes-Benz Passenger Car Product, copies of such applicable warranties as may be furnished by MBUSA or DAG. Dealer shall also provide to the buyer of each Mercedes-Benz Passenger Car Product, in full and without modification, any owner's manual, warranty booklet or other owner information which MBUSA or DAG may provide to Dealer for delivery with such Mercedes-Benz Product. Dealer agrees to abide by and implement in all other respects MBUSA's warranty procedures then in effect.

## **VIII. CAPITAL, CREDIT, RECORDS AND UNIFORM SYSTEMS**

### **A. NET WORKING CAPITAL**

Dealer agrees to establish and maintain actual net working capital in an amount not less than the minimum net working capital specified by MBUSA. MBUSA will have the right to modify the amount of net working capital required, and Dealer agrees promptly to establish and maintain the required amount.

### **B. FLOORING AND LINES OF CREDIT**

Dealer agrees to obtain and maintain at all times a confirmed and adequate flooring line with a bank or financial institution or other method of financing acceptable to MBUSA to enable Dealer to perform its obligations pursuant to this Agreement.

MBUSA may increase the required amounts of flooring or lines of credit, and Dealer agrees promptly to establish and maintain the increased amount.

Subject to the foregoing obligations, Dealer is free to do its financing business, wholesale, retail or both, with whomever it chooses and to engage in retail financing activity to the extent it desires.



**C. PAYMENT TERMS**

All monies or accounts due Dealer from MBUSA will be considered net of Dealer's indebtedness to MBUSA. MBUSA may deduct or offset any amounts due or to become due from Dealer to MBUSA, or any amounts held by MBUSA, from or against any sums or accounts due or to become due from MBUSA to Dealer; provided, however, that MBUSA shall not deduct or offset such amounts for any transaction where MBUSA has failed to provide written notice to Dealer of the amounts due within six (6) months of the transaction. Payments by Dealer to MBUSA shall be made in such a manner as prescribed by MBUSA and shall be applied against Dealer's indebtedness in accordance with MBUSA's policies and practices. If Dealer disputes any deduction or offset imposed by MBUSA pursuant to this Section VIII.C, it shall provide written notice of such dispute to MBUSA within ninety (90) days of the date on which MBUSA imposed such deduction or offset. If Dealer fails to provide such notice to MBUSA within that 90-day period, it shall be deemed to have waived any right that it may have to challenge such deduction or offset before any court, administrative agency or governmental body.

**D. UNIFORM ACCOUNTING SYSTEM**

Dealer agrees to maintain its financial books and records in accordance with the Mercedes-Benz Accounting Manual, as amended from time to time by MBUSA. In addition, Dealer shall furnish to MBUSA complete and accurate financial or operating information, including without limitation, a financial and/or operating statement covering the current month and calendar year-to-date operations and showing the true and accurate condition of Dealer's business. Dealer shall promptly furnish to MBUSA copies of any adjusted annual statements, including any and all adjusted, year-end statements prepared for tax or any other purposes. All such information shall be furnished by Dealer to MBUSA via MBUSA's electronic communications network and in such a format and at such times as prescribed by MBUSA. If requested by MBUSA, Dealer shall furnish to MBUSA an audited annual financial statement.

**E. RECORDS MAINTENANCE**

Dealer agrees to keep complete, accurate and current records regarding its sale, leasing and servicing of Mercedes-Benz Passenger Car Products for a minimum of seven (7) years, exclusive of any retention period required by any governmental entity. Dealer shall prepare, keep current and retain records in support of requests for reimbursement for warranty and policy work performed by Dealer in accordance with the Warranty Manual.

**F. EXAMINATION OF DEALERSHIP ACCOUNTS AND RECORDS**

MBUSA shall have the right at all reasonable times and during regular business hours to inspect the Dealership Facilities and to examine, audit, reproduce, and have electronic access to all records, accounts and supporting data relating to all

dealership operations for any line of vehicles conducted in the Dealership Facilities or at the Approved Location(s), including without limitation, sales reporting, service and repair of Mercedes-Benz Passenger Car Products by Dealer.

**G. TAXES**

Dealer shall be responsible for and duly pay all sales taxes, use taxes, excise taxes and other governmental or municipal charges imposed, levied or based upon the purchase or sale of Mercedes-Benz Passenger Car Products by Dealer, and shall maintain accurate records of the same.

**H. CONFIDENTIALITY**

MBUSA agrees that it shall not provide any data or documents submitted to it by Dealer to any third party unless authorized by Dealer, required by law, or required to generate composite or comparative data for analytical purposes. Dealer agrees to keep confidential and not to disclose, directly or indirectly, any information that MBUSA designates as confidential. In addition, dealer agrees to comply with all applicable laws relating to the handling, security, and sharing of lead and customer data provided by MBUSA.

**I. MERCEDES-BENZ DEALER COMMUNICATIONS SYSTEM, PROPRIETARY MANUFACTURER SYSTEMS, AND INTERNET CONNECTIVITY**

MBUSA has established the Mercedes-Benz Dealer Communications System (“DCS”) to retrieve information from and disseminate information to Dealer. The DCS (which is presently called NetStar) collects parts, warranty and financial data from Dealer, and provides access to various reports, data bases and administrative messages to Dealer. Dealer shall utilize the DCS to provide such information to MBUSA as MBUSA shall specify from time to time. Dealer shall acquire, install and maintain at its expense the necessary equipment and systems compatible with the DCS, as well as other proprietary manufacturer systems, which are deemed necessary by MBUSA to transact business and serve customers in the most efficient manner. Dealer further agrees to be bound by and comply with the NetStar Terms and Conditions as posted on the NetStar news channel. Dealer shall acquire, install, and maintain technology and internet connectivity to enable a high quality customer experience for communications, transactions, and convenience as defined in the Digital Dealership Guidelines.

**J. SALES AND SERVICE REPORTING**

Dealer agrees to accurately report to MBUSA, with such relevant information as MBUSA may reasonably require, the delivery of each Mercedes-Benz Passenger Car and pre-owned Mercedes-Benz vehicle to an ultimate consumer by the end of the day in which the vehicle is delivered to such ultimate consumer, and to furnish MBUSA with such other reports as MBUSA may reasonably require in accordance with MBUSA’s Ultimate Consumer DDR Reporting Provision or

such other sales reporting requirements (i.e. reporting of sales, customer traffic, and customer order banks) as MBUSA may establish from time to time. Dealer also agrees to accurately report to MBUSA other relevant information as MBUSA may reasonably require including repair order and parts invoice data for Mercedes-Benz customers, and to furnish MBUSA with such other reports as MBUSA may reasonably require and establish from time to time.

## **IX. TRANSFERS**

### **A. SALE OF ASSETS OR OWNERSHIP INTEREST**

This is a personal service agreement that MBUSA has entered into in reliance upon the personal qualifications, reputation, integrity, expertise and commitment of Owners and Dealer Operator. For this reason, Dealer agrees to obtain MBUSA's prior written consent to any proposed sale or transfer of Dealer's principal assets or any ownership interest of Owner, which consent shall not be unreasonably withheld.

In deciding whether to consent to a proposed sale or transfer, and in accordance with MBUSA's then criteria for the evaluation of a proposed purchase or transfer, MBUSA will evaluate the proposed Owners' and proposed Dealer Operators' qualifications, reputation, integrity, commitment, and operational plan, including as demonstrated through the proposed Owners' and proposed Dealer Operators' prior operation or ownership of any other new motor vehicle dealerships, the proposed Owners' and proposed Dealer Operators' capital and access to financing, and the facilities that the proposed Owners' and proposed Dealer Operators' intend to utilize as Dealership Facilities, among other factors pertinent to the evaluation of the proposed sale or transfer.

MBUSA shall not be obligated to execute a new Agreement with a proposed transferee of such assets or ownership interest unless Dealer first makes arrangements acceptable to MBUSA to satisfy any outstanding indebtedness to MBUSA.

## **B. RIGHT OF FIRST REFUSAL OR OPTION TO PURCHASE**

### **1. Rights Granted**

If a proposal to sell Dealer's principal assets used in its Dealership Operations or transfer the majority ownership interest in Dealer with respect to its Dealership Operations is submitted by Dealer to MBUSA, or in the event of the death of the majority Owner of Dealer, MBUSA has a right of first refusal or option to purchase such assets or ownership interest, including any leasehold interest or realty. MBUSA's exercise of its right or option under this Section IX.B supersedes Dealer's right to transfer its interest in, or ownership of, the dealership and may be exercised without regard to the quality of the personal qualifications, reputation, integrity, expertise or commitment of the proposed Owners and proposed Dealer Operators, or whether the proposed buyer meets any of MBUSA's then other criteria for the evaluation of a proposed purchase or transfer. MBUSA's right or option may be assigned by it to any third party and MBUSA hereby guarantees the full payment to Dealer of the purchase price by such assignee. MBUSA may disclose the terms of any pending buy/sell agreement and any other relevant dealership performance information to any potential assignee. MBUSA's rights under this Section IX.B will be binding on and enforceable against any assignee or successor in interest of Dealer or purchaser of Dealer's assets.

Anything herein to the contrary notwithstanding, MBUSA shall not have a right of first refusal or option to purchase Dealer's principal assets or the majority interest in Dealer if the proposed transferee is the spouse or a child of an Owner and such spouse or child meets the criteria then currently used by MBUSA in qualifying owners of Mercedes-Benz passenger car dealers. If the proposed transferee fails to meet such criteria due to insufficient personal qualifications or expertise, MBUSA may, in its sole discretion, approve the transfer subject to the proposed transferee's successful completion of such training as MBUSA may require. If the proposed transferee fails to complete such training successfully or otherwise fails to meet the criteria then currently used by MBUSA in qualifying such owners within the time period prescribed by MBUSA, MBUSA may thereafter exercise its right of first refusal or option to purchase under this Section IX.B.

## **2. Exercise of MBUSA's Rights**

MBUSA shall have sixty (60) days from the following events within which to exercise its option to purchase or right of first refusal: (i) MBUSA's receipt of all data and documentation customarily required by it to evaluate a proposed transfer of ownership; (ii) MBUSA's receipt of notice from Dealer of the death of the majority Owner of Dealer, or (iii) MBUSA's disapproval of any application submitted by Owner's heirs pursuant to Section X. MBUSA's exercise of its right of first refusal under this Section IX.B neither shall be dependent upon nor require its prior refusal to approve the proposed transfer.

## **3. Right of First Refusal**

If Dealer has entered into a bona fide written buy/sell agreement for its dealership business or assets, MBUSA's right under this Section IX.B is a right of first refusal, enabling MBUSA to assume the buyer's rights and obligations under such buy/sell agreement, and to cancel this Agreement and all rights granted Dealer. Upon MBUSA's request, Dealer agrees to provide other documents relating to the proposed transfer and any other information which MBUSA deems appropriate, including, but not limited to, those reflecting other agreements or understandings between the parties to the buy/sell agreement. If Dealer refuses to provide such documentation or to state in writing that no such documents exist, it shall be conclusively presumed that the buy/sell agreement is not a bona fide agreement. If Dealer withdraws its proposal in writing within ten (10) days following Dealer's receipt of MBUSA's notice exercising its right of first refusal, such right shall be null and void.

If, as a result of MBUSA's exercise of its right of first refusal, Dealer is contractually obligated to reimburse the initial buyer for reasonable attorney's fees, broker's fees, title searches, property inspections, and other similar costs and fees that the buyer incurred in connection with the buy/sell agreement, MBUSA shall reimburse Dealer for such costs and fees incurred through the date of MBUSA's exercise of its right of first refusal in an amount up to but not exceeding Fifty Thousand Dollars (\$50,000.00). Dealer shall provide MBUSA with all documents substantiating such costs and fees as MBUSA may reasonably request.

## **4. Option to Purchase**

In the event of the death of the majority Owner or if Dealer submits a proposal which MBUSA determines is not bona fide or in good faith, MBUSA has the option to purchase the principal assets of Dealer utilized in Dealership Operations, including real estate and leasehold interest, and to cancel this Agreement and the rights granted Dealer hereunder. The purchase price of the dealership assets will be determined by good faith negotiations between the parties.

## **5. Dealer's Obligations**

Upon MBUSA's exercise of its right or option and tender of performance under the buy/sell agreement or upon whatever terms may be expressed in the buy/sell agreement, Dealer shall forthwith transfer the affected real property by warranty deed conveying marketable title free and clear of all liens, claims, mortgages, encumbrances, tenancies and occupancies. The warranty deed shall be in proper form for recording, and Dealer shall deliver complete possession of the property and deed at the time of closing. Dealer shall also furnish to MBUSA all copies of any easements, licenses or other documents affecting the property or Dealership Operations and shall assign any permits or licenses that are necessary or desirable for the use of or appurtenant to the property or the conduct of such operations. Dealer also agrees to execute and deliver to MBUSA instruments satisfactory to MBUSA conveying title to all personal property, including leasehold interests, involved in the transfer or sale to MBUSA. If any personal property is subject to any lien or charge of any kind, Dealer agrees to procure the discharge and satisfaction thereof prior to the closing of sale of such property to MBUSA.

## **X. SUCCESSION RIGHTS UPON DEATH OR INCAPACITY**

### **A. SUCCESSION TO OWNERSHIP AFTER DEATH OF OWNER**

In the event that an Owner dies and his or her interest in Dealer passes directly to any person or persons ("Heirs") who wish to succeed to Owner's interest, then Owner's legal representative must notify MBUSA within sixty (60) days of the death of Owner of such Heir's or Heirs' intent to succeed Owner. The legal representative also must then designate a proposed Dealer Operator for MBUSA's approval. The effect of such notice from Owner's legal representative will be to suspend any notice of termination provided for in Section XI.B.4 issued hereunder.

Upon delivery of such notice, Owner's legal representative shall immediately request any person(s) identified by it as intending to succeed Owner and the designated candidate for Dealer Operator to submit an application and to provide all personal and financial information that MBUSA may reasonably and customarily require in connection with its review of such applications. All requested information must be provided promptly to MBUSA and in no case later than thirty (30) days after receipt of such request from Owner's legal representative. MBUSA shall have sixty (60) days after its receipt of all requested information in which to: (i) review such application(s) pursuant to the then current criteria generally applied by MBUSA in qualifying owners and/or dealer operators of Mercedes-Benz passenger car dealers, and (ii) either approve or disapprove the application(s); provided, however, that if MBUSA does not receive such application(s) and all requested information within thirty (30) days of Owner's legal representative's request therefor, MBUSA shall have no

obligation to review and approve or disapprove such application(s). If MBUSA approves the application(s), it shall offer to enter into a new Mercedes-Benz Passenger Car Dealer Agreement with Owner's Heir(s) in the form then currently in use, subject to such additional conditions and for such term as MBUSA deems appropriate.

In the event that MBUSA does not approve the designated Heir(s) or designated candidate for Dealer Operator, or if Owner's legal representative withdraws his or her notice of the intent of Heir(s) to succeed as Owner(s), or if the legal representative or any proposed Owner or Dealer Operator fails to timely provide the required information, MBUSA may reinstate or issue a notice of termination. This Section X.A is subject to, and shall not be deemed to waive, MBUSA's right to exercise its option to purchase as set forth in Section IX.

If MBUSA has notified Dealer that it does not plan to continue to have a Mercedes-Benz passenger car dealer in Dealer's AOI, MBUSA shall have no obligation to execute a new Mercedes-Benz Passenger Car Dealer Agreement with Owner's Heir(s) pursuant to this Section X.

#### **B. INCAPACITY OF OWNER**

The parties agree that, as used herein, incapacity shall refer to any physical or mental ailment that, in MBUSA's opinion, adversely affects an Owner's ability to meet his or her obligations under this Agreement. MBUSA may terminate this Agreement when an incapacitated Owner also is the Dealer Operator identified herein.

Prior to the effective date of any notice of termination, an incapacitated Owner who is also the Dealer Operator, or his or her legal representative, may propose a new candidate for the position of Dealer Operator. Such proposal shall be in writing and shall suspend any pending notice of termination until MBUSA advises Dealer of its approval or disapproval of the new candidate. Upon receipt of such notice, MBUSA and Dealer shall follow the qualification procedures set forth in Section X.A.

#### **C. NOMINATION OF SUCCESSOR PRIOR TO DEATH OR INCAPACITY OF OWNER**

An Owner owning a majority of Dealer's stock may nominate a candidate to assume ownership and/or the position of Dealer Operator of the dealership upon his or her death or incapacity.

As soon as practicable after such nomination, MBUSA will request such personal financial information from the nominated Owner and/or Dealer Operator candidate as it reasonably and customarily may require in evaluating such candidates. MBUSA shall apply criteria then currently used by MBUSA in qualifying owners and/or dealer operators of Mercedes-Benz passenger car dealers. Upon receipt of all requested information, MBUSA shall either approve

or disapprove such candidate. If MBUSA initially approves the candidate, said approval shall be reflected in a Successor Addendum and shall remain in effect for five (5) years if the proposed candidate continues to comply with the then current criteria used by MBUSA in qualifying such candidates. If MBUSA does not initially qualify the candidate, MBUSA agrees to review the reason(s) for its decision with Owner. Owner is free at any time to renew its nomination. However, in such instances, the candidate must again qualify pursuant to the then current criteria. Owner may, by written notice, withdraw a nomination at any time, even if MBUSA has previously qualified said candidate.

## **XI. TERMINATION**

### **A. VOLUNTARY TERMINATION BY DEALER**

Dealer may voluntarily terminate this Agreement at any time by written notice to MBUSA, such termination to be effective thirty (30) days after receipt of the notice by MBUSA unless otherwise mutually agreed in writing.

### **B. TERMINATION FOR CAUSE**

#### **1. Immediate Termination**

Dealer and MBUSA agree that the following conduct is within Dealer's control and is so contrary to the goals, purposes and objectives of this Agreement as to warrant its immediate termination. Accordingly, Dealer agrees that if it engages in any of the following types of conduct, MBUSA shall have the right to terminate this Agreement immediately:

- a. Any attempted or actual sale, transfer or assignment by Dealer of this Agreement or any of the rights granted Dealer hereunder, or any attempted or actual transfer, assignment or delegation by Dealer of any of the responsibilities assumed by it under this Agreement, without the prior written consent of MBUSA;
- b. Subject to the provisions of Section IX, a change by operation of law or otherwise in the direct or indirect ownership of Dealer, whether voluntary or involuntary, from that set forth in the Final Paragraph of this Agreement, except as expressly permitted herein, without the prior written consent of MBUSA;
- c. Removal, resignation, withdrawal or elimination from Dealer for any reason of the Dealer Operator; provided, however, MBUSA shall give Dealer a reasonable period of time within which to replace such person with a Dealer Operator satisfactory to MBUSA;
- d. The failure of Dealer to conduct all Dealership Operations required by this Agreement during and for not less than the customary and



lawful hours for five (5) consecutive business days, except in the event such closure or cessation of operation is caused by some physical event beyond the control of the Dealer, such as strikes, civil war, riots, fires, floods, earthquakes, or other acts of God;

- e. Any undertaking by Dealer to conduct, directly or indirectly, any of the Dealership Operations at a location or facility other than those specified in Paragraph F and the Final Paragraph of this Agreement for that Dealership Operation;
- f. Insolvency of Dealer; voluntary institution by Dealer of any proceeding under the federal bankruptcy laws or under any state insolvency law; institution against Dealer of any proceeding under the federal bankruptcy laws or under any state insolvency law which is not vacated within thirty (30) days from the institution thereof; appointment of a receiver, trustee or other officer having similar powers for Dealer or Dealer's business, provided such appointment is not vacated within thirty (30) days of the date of such appointment; execution by Dealer of an assignment for the benefit of creditors; or any levy under attachment, foreclosure, execution or similar process whereby a third party acquires rights to a significant portion of the assets of Dealer necessary for the performance of Dealer's responsibilities under this Agreement or to the operation or ownership of Dealer, which is not within thirty (30) days from the date of such levy vacated or removed by payment or bonding;
- g. Any material misrepresentation by Dealer or any person named in the Final Paragraph of this Agreement as to any fact relied on by MBUSA in entering into, amending or continuing with this Agreement, including without limitation any representation concerning the ownership, management or capitalization of Dealer;
- h. The conviction in a court of original jurisdiction of Dealer or Owner of a crime affecting the Dealership Operations or of any felony, or any willful failure of Dealer to comply with the provisions of any laws, ordinances, rules, regulations or orders relating to the conduct of Dealership Operations, or violations as provided in Section XIV.I.;
- i. Submission by Dealer to MBUSA of: (i) a knowingly false or fraudulent report or statement; (ii) a knowingly false or fraudulent claim (or statement in support thereof) for payment, reimbursement or for any discount, allowance, refund, rebate, credit or other incentive under any plan that may be offered by MBUSA, whether or not Dealer offers or makes restitution; (iii) false financial information; (iv) false sales reporting data; or (v) any false report or statement relating to pre-delivery inspection,

testing, warranties, service, repair or maintenance required to be performed by Dealer; or

- j. The failure of Dealer to obtain or maintain any license, permit or authorization necessary for the conduct by Dealer of Dealership Operations pursuant to this Agreement, or the suspension or revocation of such license, permit or authorization.

## **2. Termination Upon Sixty Days Notice**

The following conduct violates the terms and conditions of this Agreement and, if Dealer engages in such conduct, MBUSA shall have the right to terminate this Agreement upon sixty (60) days notice if Dealer fails to cure such conduct within the sixty-day period provided in such notice:

- a. Failure of Dealer to pay MBUSA for any Mercedes-Benz Passenger Car Products;
- b. Failure of Dealer to establish or maintain the required net working capital or adequate flooring and lines of credit;
- c. Any dispute, disagreement or controversy among managers, officers or Owners of Dealer that, in the reasonable opinion of MBUSA, adversely affects the ownership, operation, management, business, reputation or interests of Dealer or MBUSA;
- d. Impairment of the reputation or financial standing of Dealer subsequent to the execution of this Agreement;
- e. Refusal to permit MBUSA to examine or audit Dealer's accounting records as provided herein upon receipt by Dealer from MBUSA of written notice requesting such permission or information;
- f. Failure of Dealer to timely furnish accurate sales or financial information and related supporting data; or
- g. Breach or violation by Dealer of any other term or provision of this Agreement.

**3. Termination for Failure of Performance**

If, upon evaluation of Dealer's performance pursuant to Sections II.F, IV.F, V.B or VI.E herein, MBUSA concludes that Dealer has failed to perform adequately its marketing and sales, service or customer satisfaction responsibilities or to provide adequate dealership facilities, MBUSA will endeavor to review promptly with Dealer the nature and extent of such failure(s) and will grant Dealer one hundred eighty (180) days or such other period as may be required by law to correct such failure(s). If Dealer fails or refuses to correct such failure(s) or has not made substantial progress towards remedying such failure(s) at the expiration of such period, MBUSA may terminate this Agreement upon sixty (60) days notice or such other notice as may be required by law.

**4. Termination Upon Death or Incapacity**

Subject to certain exceptions identified in Section X, MBUSA may terminate this Agreement in the event of the death of an Owner or upon the incapacity of any Owner who is also the Dealer Operator, upon written notice to Dealer and such Owner's legal representative. Termination upon either of these events shall be effective ninety (90) days from the date of such notice.

**C. TERMINATION UPON TERMINATION OF DISTRIBUTORSHIP**

MBUSA may terminate this Agreement at any time by written notice to Dealer, such termination to be effective thirty (30) days after receipt of notice by Dealer unless otherwise mutually agreed in writing, if any licensing or distribution agreement pursuant to which MBUSA is distributor for Mercedes-Benz Passenger Car Products in the United States of America shall terminate or be terminated.

**D. TERMINATION FOR FAILURE OF MBUSA TO BE LICENSED**

If MBUSA fails to obtain or maintain any license, permit or authorization necessary for MBUSA's performance of its obligations under this Agreement or if such license, permit or authorization is suspended or revoked, and such suspension or revocation continues for a period of five (5) days, either party may immediately terminate this Agreement by giving notice to the other party.

**E. TERMINATION UPON OFFERING TO ENTER INTO A NEW OR AMENDED PASSENGER CAR DEALER AGREEMENT**

MBUSA may terminate this Agreement at any time by giving Dealer ninety (90) days prior notice thereof and offering to enter into a new or amended form of Passenger Car Dealer Agreement with Dealer in a form being offered generally to Mercedes-Benz passenger car dealers.

## **F. NOTICE OF TERMINATION**

Any notice of termination under this Agreement shall be in writing and shall be mailed to the person(s) designated to receive such notice, via overnight mail, or shall be delivered in person. Such notice shall be effective upon the date of receipt. MBUSA shall state the grounds on which it relies in its termination of Dealer, and shall have the right to amend such notice as appropriate. MBUSA's failure to refer to additional grounds for termination shall not constitute a waiver of its right later to rely upon such grounds.

## **G. CONTINUANCE OF BUSINESS RELATIONS**

Upon receipt of any notice of termination, Dealer agrees to conduct itself and its operation until the effective date of termination in a manner that will not injure the reputation or goodwill of the Mercedes-Benz Marks or MBUSA.

## **H. REPURCHASE PROVISIONS**

### **1. MBUSA's Obligations**

Upon the termination of this Agreement, MBUSA shall have the right to cancel any and all shipments of Mercedes-Benz Passenger Car Products scheduled for delivery to Dealer, and MBUSA shall repurchase from Dealer the following:

- a. New, unused, unmodified and undamaged Mercedes-Benz Passenger Cars then unsold in Dealer's inventory that are of the then current or prior model year. The prices of such passenger cars shall be the same as those at which they were originally purchased by Dealer, less all prior refunds or other allowances made by MBUSA to Dealer with respect thereto.
- b. New, unused and undamaged Genuine Mercedes-Benz Passenger Car Parts and Accessories then unsold in Dealer's inventory that are in good and saleable condition and are listed in the current parts catalog. The prices for such parts and accessories shall be the prices last established by MBUSA for the sale of identical parts or accessories to Mercedes-Benz passenger car dealers in the area in which Dealer is located.
- c. Special service tools recommended by MBUSA and then owned by Dealer and that are especially designed for servicing Mercedes-Benz Passenger Cars. The prices for such special service tools will be the price paid by Dealer less depreciation calculated on a straight-line basis over a three-year period, or such other price as the parties may negotiate.

- d. Signs that MBUSA has recommended for identification of Dealer. The price of such signs shall be the price paid by Dealer less appropriate depreciation calculated on a straight-line basis over a three-year period, or such other price as the parties may negotiate.

## **2. Dealer's Responsibilities**

MBUSA's obligations to repurchase the items set forth in this Section XI.H are contingent upon Dealer fulfilling all of the following obligations:

- a. Within thirty (30) days after the effective date of termination of this Agreement, Dealer shall deliver or mail to MBUSA a detailed inventory of all items referred to in this Section XI.H that it requests MBUSA repurchase and shall certify that such list is true and accurate.
- b. Dealer shall be entitled to request repurchase of only those items that it purchased from MBUSA, unless MBUSA agrees otherwise.
- c. Dealer will deliver to MBUSA at MBUSA's place of business and at Dealer's expense all Mercedes-Benz Passenger Car Products and special service tools to be repurchased by MBUSA. If Dealer fails to do so, MBUSA may transfer such items and deduct the cost therefor from the repurchase price.
- d. Dealer will execute and deliver to MBUSA instruments satisfactory to MBUSA conveying good and marketable title to the aforesaid items to MBUSA. If such items are subject to any lien or charge of any kind, Dealer will procure the discharge in satisfaction thereof prior to their repurchase by MBUSA. Dealer will comply with the requirements of any state or federal laws that relate to the repurchase, including bulk sales or transfer laws.
- e. Dealer will provide to MBUSA in writing the names and addresses of all of its Mercedes-Benz passenger car service customers.
- f. Dealer will deliver to MBUSA at MBUSA's place of business or to a third person designated by MBUSA and at Dealer's expense any and all sales instruction manuals, promotional materials, technical or service literature, advertising and other printed material, computer hardware and software or other media relating to Mercedes-Benz Passenger Car Products then in Dealer's possession and that were acquired or obtained by Dealer from MBUSA.
- g. Dealer will remove, at its own expense, all signage and corporate identification from Dealer's Approved Location(s), including all Mercedes-Benz Marks, before it is eligible for payment hereunder.

### **3. Payment by MBUSA**

MBUSA will pay Dealer for such items as Dealer may request be repurchased and that qualify hereunder as soon as practicable upon Dealer's compliance with all of the obligations set forth herein and upon computation of any outstanding indebtedness of Dealer to MBUSA.

MBUSA shall have the right to offset from any amounts due to Dealer hereunder the total sum of Dealer's outstanding indebtedness to MBUSA.

If Dealer disagrees with MBUSA's valuation of any item herein, and Dealer and MBUSA have not resolved their disagreement within ninety (90) days of the effective date of termination of this Agreement, MBUSA shall pay to Dealer the amount to which it reasonably believes Dealer is entitled.

## **XII. DEFENSE AND INDEMNIFICATION**

### **A. DEFENSE AND INDEMNIFICATION BY MBUSA**

MBUSA agrees to assume the defense of Dealer and to indemnify and hold Dealer harmless in any lawsuit naming Dealer as a defendant and involving any Mercedes-Benz Passenger Car Product when the lawsuit also involves allegations of:

1. Bodily injury or property damage arising out of an occurrence allegedly caused solely by a defect or failure to warn of a defect in design, manufacture or assembly of a Mercedes-Benz Passenger Car Product, provided that the defect could not reasonably have been discovered by Dealer during the pre-delivery inspections and service of the Mercedes-Benz Passenger Car Product or otherwise;
2. Any misrepresentation or misleading statement or unfair or deceptive trade practice of MBUSA; or
3. Any substantial damage to a Mercedes-Benz Passenger Car Product purchased by Dealer from MBUSA that was repaired by MBUSA and where Dealer had not been notified of such damage in writing prior to the delivery of the subject passenger car, part or accessory to a retail customer; and

Provided:

4. That Dealer delivers to MBUSA, in a manner to be designated by MBUSA, within twenty (20) days of the service of any summons or complaint, copies of such documents and requests in writing a defense and/or indemnification therein (except as provided in Section XII.D below);
5. That the complaint does not involve allegations of Dealer misconduct, including but not limited to, improper or unsatisfactory service or repair, misrepresentation, or any claim of Dealer's unfair or deceptive trade practice;
6. That the Mercedes-Benz Passenger Car Product which is the subject of the lawsuit was not altered by or for Dealer;
7. That Dealer agrees to cooperate fully in the defense of such action as MBUSA may reasonably require; and
8. That Dealer agrees that MBUSA may offset any recovery on Dealer's behalf against any indemnification that may be required hereunder.

**B. DEFENSE AND INDEMNIFICATION BY DEALER**

Dealer agrees to assume the defense of MBUSA or DAG and to indemnify and hold them harmless in any lawsuit naming MBUSA or DAG as a defendant when the lawsuit involves allegations of:

1. Dealer's failure to comply, in whole or in part, with any obligation assumed by Dealer under this Agreement;
2. Dealer's negligent or improper inspection, preparation, repair or servicing of a new or used Mercedes-Benz Passenger Car Product, or such other motor vehicles or equipment as may be sold or serviced by Dealer;
3. Dealer's alleged breach of any contract or warranty other than that provided by MBUSA or DAG;
4. Dealer's alleged misleading statements, misrepresentations, or deceptive or unfair trade practices;
5. Any modification or alteration made by or on behalf of Dealer to a Mercedes-Benz Passenger Car Product, except those made pursuant to the express written instruction or with the express written approval of MBUSA;
6. Any change in the employment status or in the terms or conditions of employment of any officer, employee or agent of Dealer or of any Owner

or the Dealer Operator, including but not limited to claims for breach of employment contract, wrongful termination or discharge, tortious interference with contract or economic advantage, and similar claims; and

Provided:

7. That MBUSA delivers to Dealer, within twenty (20) days of the service of any summons or complaint, copies of such documents, and requests in writing a defense and/or indemnification therein (except as provided in Section XII.D below);
8. That MBUSA agrees to cooperate fully in the defense of such action as Dealer may reasonably require; and
9. That the complaint does not involve allegations of liability premised upon MBUSA's separate conduct or omissions.

**C. CONDITIONAL DEFENSE AND/OR INDEMNIFICATION**

In agreeing to defend and/or indemnify each other, Dealer and MBUSA may make their agreement conditional on the continued existence of the state of facts as then known to such party and may provide for the withdrawal of such defense and/or indemnification at such time as facts arise which, if known at the time of the original request for a defense and/or indemnification, would have caused either Dealer or MBUSA to refuse such request.

The party withdrawing from its agreement to defend and/or indemnify shall give timely notice of its intent to withdraw. Such notice shall be in writing and shall be effective upon receipt. The withdrawing party shall be responsible for all costs and expenses of defense up to the date of receipt of its notice of withdrawal.

**D. THE EFFECT OF SUBSEQUENT DEVELOPMENTS**

In the event that subsequent developments in a case make clear that the allegations which initially preclude a request or an acceptance of a request for a defense and/or indemnification are no longer at issue therein or are without foundation, any party having a right to a defense and/or indemnification hereunder may tender such request for a defense and indemnification to the other party. Neither Dealer nor MBUSA shall be required to agree to such subsequent request for a defense and/or indemnification where that party would be unduly prejudiced by such delay.

**E. TIME TO RESPOND AND RESPONSIBILITIES OF THE PARTIES**

Dealer and MBUSA shall have sixty (60) days from the receipt of a request for a defense and/or indemnification to conduct an investigation to determine whether or not, or under what conditions, it may agree to defend and/or indemnify pursuant to this Section.



If local rules require a response to the complaint in the lawsuit prior to the time provided hereunder for a response to such request, the requesting party shall take all steps necessary, including obtaining counsel, to protect its own interest in the lawsuit until Dealer or MBUSA assumes the requested defense and/or indemnification. In the event that Dealer or MBUSA agrees to assume the defense and/or indemnification of a lawsuit, it shall have the right to engage and direct counsel of its own choosing and, except in cases where the request is made pursuant to Section XII.D above, shall have the obligation to reimburse the requesting party for all reasonable costs and expense, including actual attorneys' fees, incurred prior to such assumption.

### **XIII. NOTICE OF BREACH OR FAILURE TO ACT IN GOOD FAITH**

In the interest of maintaining a harmonious relationship between MBUSA and Dealer, if Dealer believes that MBUSA has breached this Agreement or has failed to act in good faith toward Dealer, Dealer shall report its belief and the bases therefor promptly, in writing, to the President or a Vice President of MBUSA. For the purposes of this Section XIII, the term "good faith" shall mean MBUSA and its representatives acting in a fair, honest, commercially reasonable, equitable, and impartial manner toward Dealer. It is the intention of the parties that the purpose of the requirement of such notification by Dealer is to afford MBUSA sufficient opportunity to consider the claim of Dealer and if, in the sole determination of MBUSA, such claim is found to be meritorious, to undertake such measures as may be necessary to correct the condition of which Dealer complains.

### **XIV. GENERAL PROVISIONS**

#### **A. NOTICES**

Except as otherwise specifically provided herein, any notice required to be given by either party to the other shall be in writing, shall be delivered personally or by mail to the party at its address as stated in this Agreement, and shall be effective upon receipt by hand delivery or upon mailing.

#### **B. NO IMPLIED WAIVERS**

The failure of either party at any time to require performance by the other party of any provision herein shall in no way affect the right of such party to require such performance at any time thereafter. The waiver by any party of a breach of any provision herein shall not constitute a waiver of any succeeding breach of the same or any other provision or constitute a waiver of the provision itself.

#### **C. SOLE AGREEMENT OF THE PARTIES**

This Agreement terminates and supersedes all prior agreements between the parties relating to the subject matters covered herein. There are no prior agreements or understandings, either oral or written, between the parties affecting this Agreement or relating to the sale or service of Mercedes-Benz Passenger Car

Products, except as otherwise specifically provided for or referred to in this Agreement. Dealer acknowledges that no representations or statements other than those expressly set forth therein were made by MBUSA or any officer, employee, agent, or representative thereof, or were relied upon by Dealer in entering into this Agreement.

**D. DEALER NOT AN AGENT OR REPRESENTATIVE**

Dealer is an independent business. This Agreement does not constitute Dealer the agent or legal representative of MBUSA or DAG for any purpose whatsoever. Dealer is not granted any express or implied right or authority to assume or create any obligation on behalf of or in the name of MBUSA or DAG or to bind MBUSA or DAG in any manner whatsoever. No fiduciary obligations are created by this Agreement.

**E. ASSIGNMENT OF RIGHTS OR DELEGATION OF DUTIES**

This is a personal service agreement and may not be assigned or sold in whole or in part, directly or indirectly, voluntarily or by operation of law, without the prior written consent of MBUSA. Any attempted transfer, assignment or sale without MBUSA's prior written consent will be void and not binding upon MBUSA.

**F. NO FRANCHISE FEE**

Dealer warrants that it has paid no fee, nor has it provided any goods or services in lieu of same, to MBUSA in consideration of entering into this Agreement. The sole consideration for MBUSA's entering into this Agreement is Owner's and Dealer Operator's ability, integrity, assurance of personal services, and expressed intention to deal fairly and equitably with MBUSA and the public.

**G. BENEFIT**

This Agreement is entered into by and between MBUSA and Dealer for their sole and mutual benefit. Neither this Agreement nor any specific provision contained in it is intended or shall be construed to be for the benefit of any third party.

**H. NEW JERSEY LAW**

This Agreement shall be deemed to have been entered into in the State of New Jersey, and all questions concerning the validity, interpretation, or performance of any of its terms, or of any contractual rights or obligations of the parties hereto, shall be governed by and resolved in accordance with the internal laws of the State of New Jersey, including, without limitation, its statutes of limitations.

**I. COMPLIANCE**

In connection with its activities pursuant to the terms of this Agreement, Dealer is obliged to refrain from any practices which may lead to penal liability due to

fraud or embezzlement, insolvency crimes, crimes in violation of competition, guaranteeing advantages, bribery, acceptance of bribes, or other corruption crimes on the part of persons employed by the Dealer or other third parties. In the event of a violation of the foregoing, MBUSA reserves the right to terminate this Agreement in accordance with the terms of Section XI. and applicable law. Dealer acknowledges and agrees to adhere to all applicable laws and regulations in its commercial relationship with MBUSA as well as to comply with any due diligence requirements as may be established by MBUSA from time to time. Dealer acknowledges and agrees to comply with all applicable federal, state, and local laws and regulations in the conduct of its obligations pursuant to this Agreement.

## **XV. DEFINITIONS**

As used in this Agreement, the parties agree that the following terms shall be defined exclusively as set forth below.

- A. DEALER:** The natural person or entity that executes the Agreement and is authorized by MBUSA to sell and service Mercedes-Benz Passenger Car Products as defined herein.
- B. OWNER:** The persons identified in Paragraph D and the Final Paragraph of this Agreement.
- C. DEALER OPERATOR:** The person identified in Paragraph E and the Final Paragraph of this Agreement.
- D. DEALERSHIP FACILITIES:** The buildings, improvements, fixtures and equipment situated at the Approved Location(s) and identified in Paragraph F and the Final Paragraph of this Agreement.
- E. APPROVED LOCATION(S):** The location(s) and any facilities thereon designated in Paragraph F and the Final Paragraph of this Agreement that MBUSA has approved for the Dealership Operation(s) specified therein.
- F. DEALERSHIP OPERATIONS:** All dealer functions contemplated by this Agreement including, without limitation, sale and servicing of Mercedes-Benz Passenger Car Products, use and display of Mercedes-Benz Marks and Mercedes-Benz Passenger Car Products, rental and leasing of Mercedes-Benz Passenger Cars, sale of pre-owned Mercedes-Benz vehicles, body shop work, financing or insurance services and any other activities undertaken by Dealer in connection with Mercedes-Benz Passenger Car Products whether conducted directly or indirectly by Dealer.
- G. DAG:** DaimlerAktiengesellschaft, a corporation of the Federal Republic of Germany and the manufacturer of Mercedes-Benz Passenger Cars, and any successor thereto.

- H. MERCEDES-BENZ MARKS:** The various Mercedes-Benz trademarks, service marks, names, logos and designs that Dealer is authorized to use in the sale and servicing of Mercedes-Benz Passenger Car Products, including the “Three-Pointed Star.”
- I. MERCEDES-BENZ PASSENGER CARS:** All new Mercedes-Benz passenger cars that MBUSA is authorized to sell to Mercedes-Benz passenger car dealers in the United States of America pursuant to a written distribution agreement between DAG and MBUSA, and that MBUSA, in its sole discretion, sells to Dealer for resale.
- J. GENUINE MERCEDES-BENZ PASSENGER CAR PARTS AND ACCESSORIES:** All Mercedes-Benz passenger car parts and accessories manufactured by or on behalf of MBUSA or DAG and such other parts and accessories specifically approved by DAG for use in servicing Mercedes-Benz Passenger Cars that MBUSA sells to Dealer for resale.
- K. MERCEDES-BENZ PASSENGER CAR PRODUCTS:** All Mercedes-Benz Passenger Cars and Genuine Mercedes-Benz Passenger Car Parts and Accessories that MBUSA sells to Dealer for resale.
- L. COMPETITIVE VEHICLES:** Those new vehicles that are considered by MBUSA to be directly competitive with Mercedes-Benz Passenger Cars.
- M. WARRANTY MANUAL:** The Mercedes-Benz Warranty Policies and Procedures Manual.

## **XVI. ADDITIONAL PROVISIONS**

In consideration of MBUSA’s agreement to appoint Dealer as a Mercedes-Benz passenger car dealer, Dealer further agrees:

If any provision herein contravenes the laws or regulations of any state or other jurisdiction wherein this agreement is to be performed, or denies access to the procedures, forums, or remedies provided for by such laws or regulations, such provision shall be deemed to be modified to conform to such laws or regulations, and all other terms and provisions shall remain in full force.

Motor Vehicle Lease Agreement

The First Class Lease®

Dates

The date of this lease is \_\_\_\_\_ The scheduled date this lease ends is \_\_\_\_\_ ("Lease End").
The scheduled term of this lease is \_\_\_\_\_ months ("Lease Term").

Parties

Lessor (Dealer): \_\_\_\_\_

Address: \_\_\_\_\_

Lessee: \_\_\_\_\_

Lessee: \_\_\_\_\_

Lessee's Billing Address: \_\_\_\_\_

(Include County)

Address of principal garage location, if different from Lessee's Billing Address (no P.O. Box):

(Include County)

Unless otherwise specified, "lease" refers to this Motor Vehicle Lease Agreement; "vehicle" refers to the vehicle described below; "you", "your", and "yours" refer to the Lessee and any Co-Lessee; "we", "us", and "our" refer to the Lessor and, after the lease is assigned, to DAIMLER TRUST, or its successors and assigns; "Assignee" refers to DAIMLER TRUST or its successors and assigns. The "Vehicle Turn-In Fee" is a fee to cover the cost of disposing of the vehicle, commonly referred to as a disposition fee. "Pre-owned" refers to used vehicles. You agree to lease the vehicle from us on the terms and conditions provided for in this lease. The terms and conditions contained in this lease are made on behalf of Lessor and Assignee.

Type of Lease

[ ] Standard Lease [ ] Single Payment Lease

If the Single Payment Lease box is checked above, "Monthly Payments" or "First Monthly Payment" are replaced with the words "Single Lease Payment" throughout this lease and the word "Monthly" in section 6.j. on page 2 is deleted.

Vehicle Information

[ ] New [ ] Pre-owned \_\_\_\_\_ VIN

Year Make Model

Body Style Odometer Reading

Primary Intended Use:

[ ] Personal [ ] Business, Commercial, or Agricultural Purposes

If no box is checked, or if the Personal box is checked, you agree to use the vehicle for personal, family or household purposes.

Electronic Contracting and Signature Acknowledgement

If you are executing this lease using an electronic signature, you agree that (i) this lease agreement is an electronic contract executed by you using your electronic signature, (ii) your electronic signature signifies your intent to enter into this contract and that this contract be legally valid and enforceable in accordance with its terms to the same extent as if you had executed this contract using your written signature, and (iii) the authoritative copy of this contract ("Authoritative Copy") shall be that electronic copy that resides in a document management system designated by us for the storage of authoritative copies of electronic records, which shall be deemed held by us in the ordinary course of business. Notwithstanding the foregoing, if the Authoritative Copy is converted by printing a paper copy which is marked by as the original (the "Paper Contract"), then you acknowledge and agree that (1) your signing of this contract with your electronic signature also constitutes issuance and delivery of such Paper Contract, (2) your electronic signature associated with this contract, when affixed to the Paper Contract, constitutes your legally valid and binding signature on the Paper Contract, and (3) subsequent to such conversion, your obligations will be evidenced by the Paper Contract alone.

## Consumer Leasing Act Disclosures

<b>1. Amount Due at Lease Signing or Delivery</b> (Itemized below)* \$ _____	<b>2. Monthly Payments</b> Your first Monthly Payment of \$ _____ is due on _____, followed by _____ payments of \$ _____ due on the _____ of each month. The total of your Monthly Payments is \$ _____.	<b>3. Other Charges</b> (not part of your Monthly Payment) a. Vehicle Turn-In Fee (if you do not purchase the vehicle at Lease End) \$ _____ b. _____ \$ _____ c. <b>Total</b> \$ _____	<b>4. Total of Payments</b> (The amount you will have paid by the end of the lease) \$ _____
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<b>*5. Itemization of Amount Due at Lease Signing or Delivery</b>  <b>a. Amount Due at Lease Signing or Delivery:</b>  1. First Total Monthly Payment (includes sales/use taxes) . . . . . \$ _____ 2. Capitalized Cost Reduction . . . . . + \$ _____ 3. Acquisition Fee (if not capitalized) . . . . . + \$ _____ 4. Sales/Use Taxes . . . . . + \$ _____ 5. Refundable Security Deposit . . . . . + \$ _____ 6. Title Fees . . . . . + \$ _____ 7. License Fees . . . . . + \$ _____ 8. Registration Fees . . . . . + \$ _____ 9. _____ + \$ _____ 10. _____ + \$ _____ 11. _____ + \$ _____ 12. _____ + \$ _____ 13. <b>Total</b> . . . . . = \$ _____  <b>b. How the Amount Due at Lease Signing or Delivery will be paid:</b>  1. Net Trade-in Allowance . . . . . \$ _____ 2. Rebates and noncash credits . . . . . + \$ _____ 3. Amount to be paid in cash . . . . . + \$ _____ 4. _____ + \$ _____ 5. <b>Total</b> . . . . . = \$ _____	<b>6. Your monthly payment is determined as shown below:</b>  a. <b>Gross Capitalized Cost:</b> The agreed upon value of the vehicle (\$ _____) and any items you pay over the lease term (such as service contracts, insurance, and any outstanding prior credit or lease balance) . . . . \$ _____  b. <b>Capitalized Cost Reduction:</b> The amount of any net trade-in allowance, rebate, noncash credit, or cash you pay that reduces the Gross Capitalized Cost . . . . . - \$ _____  c. <b>Adjusted Capitalized Cost:</b> The amount used in calculating your Base Monthly Payment . . . . . = \$ _____  d. <b>Residual Value:</b> The value of the vehicle at the end of the lease used in calculating your Base Monthly Payments . . . . . - \$ _____  e. <b>Depreciation and any amortized amounts:</b> The amount charged for the vehicle's decline in value through normal use and for other items paid over the lease term . . . . . = \$ _____  f. <b>Rent Charge:</b> The amount charged in addition to the Depreciation and any amortized amounts . . . . . + \$ _____  g. <b>Total of Base Monthly Payments:</b> The Depreciation and any amortized amounts plus the Rent Charge . . . . . = \$ _____  h. <b>Lease Payments:</b> The number of payments in your lease . . . . . + _____  i. <b>Base Monthly Payment</b> . . . . . = \$ _____ j. <b>Monthly Sales/Use Taxes</b> . . . . . + \$ _____ k. _____ + \$ _____ l. <b>Total Monthly Payment</b> . . . . . = \$ _____
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**7. Early Termination.** You may have to pay a substantial charge if you end this lease early. The charge may be up to several thousand dollars. The actual charge will depend on when the lease is terminated. The earlier you end the lease, the greater this charge is likely to be.

**8. Excessive Wear and Use.** You may be charged for excessive wear based on our standards for normal use and for mileage in excess of \_\_\_\_\_ miles (Mileage Allowance) for the term of this lease, at the rate of \_\_\_\_\_ per mile.

**9. Purchase Option at End of Lease Term.** You have an option to purchase the vehicle ("as is") at the end of the lease term for \$ \_\_\_\_\_, plus a Purchase Option Fee of \$ \_\_\_\_\_, plus a processing fee of \$ \_\_\_\_\_, plus all official fees and taxes. See the Purchase Option section on page 7 of this lease for more information.

**10. Other Important Terms.** See your lease documents for additional information on early termination, purchase options, maintenance responsibilities, warranties, late and default charges, insurance, and any security interest, if applicable.

**Consumer Leasing Act Disclosures (Continued)**

**11. Itemization of Gross Capitalized Cost.**

a. Price of Vehicle .....	\$ _____
b. Approved Dealer Installed Equipment .....	\$ _____
c. Service Contract .....	\$ _____
d. Extended Warranty .....	\$ _____
e. Credit Life and/or Credit Disability Premium .....	\$ _____
f. Current Year Taxes, Title, Licenses, Registration .....	\$ _____
g. Acquisition Fee .....	\$ _____
h. Sales/Use Taxes .....	\$ _____
i. Other Tax (describe) _____	\$ <u>  e  </u>
j. _____	\$ _____
k. _____	\$ _____
l. _____	\$ _____
m. _____	\$ _____
n. _____	\$ _____
<b>o. Total Gross Capitalized Cost .....</b>	<b>\$ _____</b>

**12. Estimated Official Fees and Taxes.** The total estimated amount you will pay for official fees, license, title and registration fees, and taxes over the term of your lease, whether included with your Monthly Payment or assessed otherwise is \$ \_\_\_\_\_. This is an estimate and the actual total of Official Fees and Taxes may be higher or lower than this estimate. The actual total of Official Fees and Taxes depends on the rates in effect, the value of the vehicle and the garage location of the vehicle at the time the fees and taxes are assessed.

**13. Mileage Allowance.** The odometer reading in the Vehicle Information section of this lease provides the number of miles existing on the vehicle when you entered this lease ("Existing Miles"). Your Mileage Allowance provided in section 8 refers to miles driven during the Lease Term and does not include the Existing Miles.

If your Mileage Allowance in section 8 on page 2 is greater than \_\_\_\_\_ "Base Mileage Amount", you have chosen to purchase additional miles for your Mileage Allowance determination. If you have purchased additional miles, then at Lease End, except as provided below, you will be eligible for a credit or refund of \_\_\_\_\_ per mile for any unused additional miles between the Base Mileage Amount and your Mileage Allowance over the term of the lease. You will not receive a refund if the vehicle is destroyed or stolen, you are in default, you purchase the vehicle, or the refund is less than \$1.

**14. Missing Records.** If you do not return the vehicle's maintenance booklets as provided in the Maintenance section of this lease, you will owe a missing records fee in the amount of \$ \_\_\_\_\_.

**15. New and Pre-owned Vehicle Warranty.** If the vehicle is new, it is covered by a standard new vehicle warranty from the manufacturer. If the vehicle is pre-owned, it is not covered by a warranty unless indicated by a check in the corresponding box below:

- Remainder of standard new vehicle warranty from manufacturer
- Pre-owned vehicle warranty from manufacturer
- Pre-owned warranty from other third-party provider

We assign to you all rights we have under any of these warranties. You acknowledge that you have received a copy of the indicated warranties.

**We lease the vehicle to you "AS IS". EXCEPT AS EXPRESSLY PROVIDED UNDER THIS LEASE, AND UNLESS PROHIBITED BY LAW, WE MAKE NO WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, AS TO THE VEHICLE'S (OR ANY PART OR ACCESSORY THEREOF) CONDITION, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE AND WE MAKE NO OTHER REPRESENTATION OR WARRANTY WHATSOEVER.**

**Consumer Leasing Act Disclosures (Continued)**

**16. Optional Insurance and Other Products.** You are not required to buy any of the optional insurance or other products listed on this page to enter into this lease, and they are not a factor in our credit decision. These insurance and other products will not be provided unless you are accepted by the provider. By your initials on this page, you agree that you have received a notice of the terms and cost of the insurance or product, and you want to obtain the insurance or product for the premium or charge shown. A portion of the premium or charge shown may be retained by the Lessor (Dealer). These coverages are not provided by the Lessor. You must pursue all matters related to these coverages, including refunds, through the provider. The terms and conditions for these coverages are provided in a separate contract, which you acknowledge that you have received and read.

If the price of these coverages is also included in the Itemization of Gross Capitalized Cost, it will be included in the Base Monthly Payments. If not, you have paid for the coverages in full upon signing this lease.

Unless you receive written notification otherwise, credit life and credit disability insurance end on the original due date of the last payment due under the lease.

**Credit Life Provider:**

\_\_\_\_\_

Initial Coverage: \$ \_\_\_\_\_ Premium: \$ \_\_\_\_\_

Lessee Initials: \_\_\_\_\_

Co-Lessee Initials: \_\_\_\_\_

**Credit Disability Provider:**

\_\_\_\_\_

Maximum Mo. Benefit: \$ \_\_\_\_\_ Premium: \$ \_\_\_\_\_

Lessee Initials: \_\_\_\_\_

Co-Lessee Initials: \_\_\_\_\_

**Service Agreement Provider:**

\_\_\_\_\_

Coverage is for \_\_\_\_\_ months or \_\_\_\_\_ miles, whichever happens first.

Premium or charge: \$ \_\_\_\_\_

Lessee Initials: \_\_\_\_\_

Co-Lessee Initials: \_\_\_\_\_

**Extended Warranty Provider:**

\_\_\_\_\_

Coverage is for \_\_\_\_\_ months or \_\_\_\_\_ miles, whichever happens first.

Premium or charge: \$ \_\_\_\_\_

Lessee Initials: \_\_\_\_\_

Co-Lessee Initials: \_\_\_\_\_

**Important Arbitration Disclosures**

The following arbitration provisions significantly affect your rights in any dispute with us. Please read the following disclosures and the arbitration provision that follows carefully before you sign the contract.

1. If either you or we choose, any dispute between you and us will be decided by arbitration and not in court.
2. If such dispute is arbitrated, you and we will give up the right to a trial by a court or a jury trial.
3. You agree to give up any right you may have to bring a classaction lawsuit or class arbitration, or to participate in either as a claimant, and you agree to give up any right you may have to consolidate your arbitration with the arbitration of others.
4. The information that can be obtained in discovery from each other or from third persons in arbitration is generally more limited than in a lawsuit.
5. Other rights that you and/or we would have in court may not be available in arbitration.

Any claim or dispute, whether in contract, tort or otherwise (including any dispute over the interpretation, scope, or validity of this lease, arbitration section or the arbitrability of any issue), between you and us or any of our employees, agents, successors or assigns, which arises out of or relates to a credit application, this lease, or any resulting transaction or relationship arising out of this lease shall, at the election of either you or us, or our successors or assigns, be resolved by a neutral, binding arbitration and not by a court action. Any claim or dispute is to be arbitrated on an individual basis and not as a class action. Whoever first demands arbitration may choose to proceed under the applicable rules of and be administered by the National Center for Dispute Settlement ([www.ncdsusa.org](http://www.ncdsusa.org)) or any other organization that you may choose subject to our approval.

Whichever rules are chosen, the arbitrator shall be an attorney or retired judge and shall be selected in accordance with the applicable rules. The arbitrator shall apply the law in deciding the dispute. Unless the rules require otherwise, the arbitration award shall be issued without a written opinion. The arbitration hearing shall be conducted in the federal district in which you reside. If you demand arbitration first, you will pay the claimant's initial arbitration filing fees or case management fees required by the applicable rules up to \$125, and we will pay any additional initial filing fee or case management fee. We will pay the whole filing fee or case management fee if we demand arbitration first. We will pay the arbitration costs and fees for the first day of arbitration, up to a maximum of eight hours. The arbitrator shall decide who shall pay any additional costs and fees. Nothing in this paragraph shall prevent you from requesting that the applicable arbitration entity reduce or waive your fees, or that we voluntarily pay an additional share of said fees, based upon your financial circumstances or the nature of your claim.

This lease evidences a transaction involving interstate commerce. Any arbitration under this lease shall be governed by the Federal Arbitration Act (9 USC 1, *et seq.*). Judgment upon the award rendered may be entered in any court having jurisdiction.



## **Important Arbitration Disclosures (Continued)**

Notwithstanding this provision, both you and Lessor and Lessor's successors and assigns retain the right to exercise self-help remedies and to seek provisional remedies from a court, pending final determination of the dispute by the arbitrator. Neither you nor we waive the right to arbitrate by exercising self-help remedies, filing suit, or seeking or obtaining provisional remedies from a court.

If any clause within this arbitration section, other than clause 3 or any similar provision dealing with class action, class arbitration or consolidation, is found to be illegal or unenforceable, that clause will be severed from this arbitration section, and the remainder of this arbitration section will be given full force and effect. If any part of clause 3 or any similar provision dealing with class action, class arbitration or consolidation is found to be illegal or unenforceable, then this entire arbitration section will be severed and the remaining provisions of this lease shall be given full force and effect as if the arbitration section of this lease had not been included in this lease.

## **Notices/Signatures**

**NOTICE TO LESSEE: (1) DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. (2) YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS AGREEMENT WHEN YOU SIGN IT.**

### **LESSEE**

By signing below, you acknowledge that:

- This lease is completely filled out;
- You have received and read all 10 pages of this lease carefully and agree to all of its terms, **INCLUDING THE IMPORTANT ARBITRATION DISCLOSURES ON PAGE 4 AND ABOVE;**
- You have received a completed copy of this lease; and the Lessor may assign all right, title, and interest in this lease, vehicle and Guaranty to anyone.

\_\_\_\_\_  
*Lessee*

\_\_\_\_\_  
*Lessee*

\_\_\_\_\_  
*By*

\_\_\_\_\_  
*By*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Driver's License Number/State*

\_\_\_\_\_  
*Driver's License Number/State*

### **GUARANTY**

The Guarantor(s) named below absolutely and unconditionally guarantee(s) payment of all amounts owed under this lease. This means if the lessee(s) fail(s) to pay any money owed, guarantor(s) will pay it. All Guarantor(s) shall be jointly and severally liable and agree that this guaranty shall not be affected by any changes to this lease. Guarantor(s) also agree to be liable for all fees and costs, including attorneys' fees, that the Lessor incurs in enforcing this lease or guaranty.

Guarantor(s) has/have received a completed copy of this lease and guaranty at the time of signing.

\_\_\_\_\_  
*Guarantor*

\_\_\_\_\_  
*Guarantor*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*Address*

### **LESSOR SIGNATURE AND ASSIGNMENT**

By signing below, the Lessor accepts the terms and conditions of this lease. Lessor assigns all right, title and interest to this lease, vehicle and Guaranty to Daimler Trust, subject to the terms and conditions of Lessor's agreement(s) with Mercedes-Benz Financial Services USA LLC.

\_\_\_\_\_  
*Lessor*

\_\_\_\_\_  
*Title*

**PLEASE REVIEW ALL PAGES OF THIS LEASE FOR ADDITIONAL TERMS AND CONDITIONS.**

## Operation and Maintenance

**17. Maintenance.** You agree to maintain, service and repair the vehicle with genuine Mercedes-Benz replacement parts according to the manufacturer's recommendations and any applicable warranty. You also agree that body-work and collision repairs will be performed by authorized Mercedes-Benz collision facilities. You will keep the vehicle in good operating condition and return the maintenance booklets with the vehicle. You agree to comply with all vehicle recall notices. You agree to pay for all operating costs including, but not limited to gas, oil, inspection and certification fees, fines, towing, and replacement tires. Lessor will not provide maintenance services unless you agree at your option to buy a separate maintenance agreement.

**18. Prohibited Uses of Vehicle.** You agree not to use or allow anyone else to use the vehicle: (a) in a way that violates the law or the terms of your insurance policy or that causes cancellation or suspension of any applicable warranty; and (b) to transport goods or people for pay. You also agree not to take the vehicle outside the United States; however, you may take the vehicle to Canada or Mexico for 30 days or less.

Unless the Primary Intended Use is marked as "Business, Commercial, or Agricultural Purposes", you agree that the vehicle will be used primarily for your own personal, family or household use.

You will not change or modify the vehicle's body or interior in any way unless you first get our written consent. If you add parts to the vehicle that cannot be removed without harming the vehicle's usefulness or value, you understand that these parts become our property. We may inspect the vehicle at any reasonable time.

**You will not assign or sublease any interest in the vehicle or this lease.** You will keep the vehicle and lease free from all liens.

You agree that you and anyone else that uses the vehicle are liable for any injury, death, or damage arising out of the use of the motor vehicle, and that we are not liable for any such injury, death or damage.

## Insurance

**19. Vehicle Insurance.** You agree to provide primary insurance coverage as indicated below during the lease and until the vehicle is returned: (a) liability insurance with limits of not less than \$100,000 per person for bodily injury, \$300,000 per accident for bodily injury and \$50,000 per accident for property damage; (b) collision insurance for the actual value of vehicle and with a deductible no higher than \$2,500; (c) comprehensive fire and theft insurance for the actual value of vehicle and with a deductible no higher than \$2,500; and (d) uninsured motorist coverage as required by law in the state where the vehicle is registered. You may obtain insurance from an insurer of your choice which is reasonably acceptable to us. The insurance policy must name Assignee as additional insured and loss payee and you must provide us with a copy of your policy. If you carry excess or umbrella liability insurance, it will include our interest to the extent provided by law. The policy must require the insurance company to notify us at least 30 days in advance of any changes in coverage or cancellation. You will notify us and your insurance company within 24 hours after any damage, loss, theft, seizure, or impoundment of the vehicle. For claims arising under your insurance that concern physical damage to the vehicle, you appoint us your attorney-in-fact to initiate, settle or release the claim. You authorize us to cash or negotiate checks or drafts or other payments received from your insurance company and endorse your name on such items if you are a payee. You also give us a security interest in any money paid under your insurance.

**No physical damage or liability insurance coverage for bodily injury or property damage caused to others is included in this lease.**

**20. Total Vehicle Loss/Gap Waiver.** If the vehicle is subject to a total loss due to collision, destruction or theft, you will pay us the Gap Amount which is the difference between the Early Termination Liability and the insurance proceeds we receive based on the total loss. We agree to waive the Gap Amount if you had the vehicle insurance required by this lease at the time of total loss, in which case you will pay to us the sum of: (a) all unpaid amounts that are due or past due under this lease; **plus** (b) the amount of your insurance deductible; **plus** (c) any other amounts that were subtracted from the vehicle's actual cash value to determine the insurance proceeds we received for the total loss. If this is a single payment lease, you will receive a refund equal to your lease payment divided by your Lease Term (as shown on page 2 of this lease) times the number of months left in this lease at the time of the loss of the vehicle. If you do not have insurance on the vehicle or your insurance company denies part or all of your claim, you will be in default and will pay us the early termination liability set forth in section 23.

This subsection will not apply and you will be in default if you accept a cash value settlement from your insurance company without first receiving our consent and forwarding any such settlement to us.

## End of Lease

**21. Purchase Option.** If you purchase the vehicle at any time, you agree to re-register and re-title the vehicle in your name no later than 30 days from the time you purchase it. If you fail to do so, we reserve the right to cancel the registration.

**a. Scheduled Termination.** At the end of the scheduled Lease Term, you may purchase the vehicle "as is" for the amount set forth in section 9 of this lease plus any lease payments or other amounts due under the lease at the time of termination.

**b. Before Scheduled Termination.** At any time before the scheduled Lease End, you have an option to purchase the vehicle "as is" for the Early Purchase Option Price (described below).

**1) Standard Lease - Early Purchase Option Price.** If this is a Standard Lease as indicated on page 1 of the lease, the Early Purchase Option Price is the sum of: (a) any lease payments or other amounts due under the lease at the time of termination; (b) all fees and taxes assessed on or billed in connection with this lease or the vehicle; (c) an amount equal to the Vehicle Turn-In Fee on page 2 of this lease; (d) the Adjusted Lease Balance (explained below); and (e) 4% of the Adjusted Lease Balance.

## End of Lease (Continued)

The **Adjusted Lease Balance** is calculated by reducing the Adjusted Capitalized Cost each month, on each monthly payment due date, by the difference in the base monthly payment and the part of the rent charge earned in that month calculated on a constant yield basis.

**2) Single Payment Lease - Early Purchase Option Price.** If this is a Single Payment Lease as indicated on page 1 of this lease, the Early Purchase Option Price is: (a) any lease payments or other amounts due under the lease at the time of termination; **plus** (b) an amount equal to the Vehicle Turn-In Fee on page 2 of this lease; **plus** (c) all fees and taxes assessed on or billed in connection with this lease or the vehicle; **plus** (d) the Residual Value printed on page 2 of this lease; **plus** (e) 4% of the Residual Value; **less** (f) the unearned rent charges you paid calculated on a constant yield basis.

### 22. Return of Vehicle.

**a. Scheduled Termination.** If this lease is not terminated early and you do not purchase the vehicle, you will, at Lease End: (1) return the vehicle to us at the time and place we specify at your expense; (2) complete and sign odometer statement and, if not already signed, the vehicle condition report; (3) pay the following amounts: (a) any amount owed for excess wear and use (explained in section 22.a.2.); **plus** (b) all unpaid amounts that are due or past due under this lease; **plus** (c) the Vehicle Turn-In Fee provided on page 2 of this lease; **plus** (d) any official fees and taxes related to the scheduled termination; **plus** (e) the Missing Records Fee in the amount provided on page 3 of this lease, if any maintenance booklets are not returned with the vehicle. You agree to cooperate in the completion of the condition report, which will be prepared close to or at Lease End. You understand that we may engage a third party to conduct the vehicle inspection and to prepare the condition report.

**1) Failure to Return Vehicle.** If, at Lease End, you do not return the vehicle to us or you do not exercise your option to purchase the vehicle, you will be in default and you must pay the purchase price in section 9 unless we agree to an extension in writing. If this is a Standard Lease, as indicated on page 1 of this lease, you will pay an amount equal to your Total Monthly Payment provided on page 2 of this lease for each month, or part thereof, that you retain the vehicle after Lease End until we receive the purchase price, a written extension agreement, or we repossess the vehicle, in which case you will also owe all expenses incurred recovering the vehicle. If this is a Single Payment Lease, as indicated on page 1 of this lease, you will pay an amount equal to the Total Single Payment divided by the Lease Term for each month, or part thereof, that you retain the vehicle after Lease End until we receive the purchase price, a written extension agreement, or we repossess the vehicle, in which case you will also owe all expenses incurred recovering the vehicle. Our acceptance of any lease payments after Lease End does not give you the right to keep the vehicle and it does not mean that we agree to extend this lease.

**2) Standards for Excess Wear and Use.** Unless you are charged an Early Return of Vehicle Charge determined by Calculation A or C in section 22.b. of this lease, if you do not purchase the vehicle, you agree to pay for excess wear and use. Excess wear and use includes a charge for any miles driven in excess of the Mileage Allowance and the estimated cost of repairs to the vehicle that are the result of excess wear and use, whether or not we actually repair the vehicle, except where limited by law. In addition to miles driven in excess of your Mileage Allowance, excess wear and use includes, but is not limited to: (a) damage to the major driveline components (engine, transmission, differential) not covered by warranty; (b) damage to the electrical system or battery; (c) damage to the frame; (d) missing or broken parts, equipment or accessories, including optional factory equipment, keys or remote keyless entry devices, tool kits, or anything else that was in or on the vehicle when you received it; (e) missing tires, tires that are not equivalent in quality and performance to the original tires, tires on each axle that are not the same size, brand, model, type and speed rating, tires that have sidewall plugs, cuts, exposed cords, or are otherwise damaged, tires that have less than 4/32 inch tread; (f) wheels that are scratched, broken, cracked, or otherwise damaged; (g) non-original equipment manufacturer ("OEM") wheels of lesser quality or value than the vehicle's original OEM wheels, including any such non-OEM wheels installed at your request prior to taking delivery of the vehicle at lease inception; (h) OEM wheels modified from the original factory condition, including modifications performed at your request prior to taking delivery of the vehicle at lease inception; (i) damage to the body, fenders, metalwork, lights, trim or paint, including but not limited to dents or rust; (j) damaged or stained dash, floor covers, seats, or any other part of the interior; (k) non-OEM glass, and nonfunctioning, discolored, or broken glass, including, stars, cracks, holes or plugs; (l) failure to maintain the vehicle according to the manufacturer's specifications and as provided for in this lease; (m) after-market alterations made without our consent; (n) water damage; (o) damage that makes the vehicle run in a noisy, rough, or improper way, or that makes the vehicle unsafe or unlawful; (p) paint, covers, coatings or other alterations to the original finish of the vehicle that change all or any part of the vehicle's color or finish from the original color and finish, including any such alteration performed at your request prior to taking delivery of the vehicle at lease inception; and (q) any other damage to the interior or exterior that is beyond ordinary wear and use.

**b. Early Termination by You.** If you are not in default and you do not purchase the vehicle, you may terminate this lease at any time. If you terminate your lease before the Lease End, you must return the vehicle to us and pay your Early Return of Vehicle Charge (described below).

**1) Standard Lease - Early Return of Vehicle Charge.** If this is a Standard Lease, as indicated on page 1 of this lease, your Early Return of Vehicle Charge is determined by Calculation A or Calculation B, below, whichever is less:

**Calculation A:** (1) All unpaid Monthly Payments that have accrued up to the date of termination; **plus** (2) All other unpaid amounts, other than excess wear and use and mileage charges, due under the lease; **plus** (3) All official fees and taxes related to the lease or the vehicle in connection with lease termination; **plus** (4) The Vehicle Turn-In Fee; **plus** (5) Any positive amount determined by subtracting the vehicle's then Fair Market Wholesale Value from the Adjusted Lease Balance; **plus** (6) An early termination fee of 3.15% of the remaining Base Monthly Payments if the Lease Term is 1-59 months or 4.24% of the remaining Base Monthly Payments if the Lease Term is 60 months or more.

**Calculation B:** (1) All Monthly Payments not yet due under the lease; **plus** (2) All unpaid Monthly Payments that have accrued up to the date of termination; **plus** (3) All other unpaid amounts due under the lease; **plus** (4) All official fees and taxes related to the lease or the vehicle in connection with lease termination; **plus** (5) The Vehicle Turn-In Fee; **plus** (6) The amount, if any, for excess wear and use, which includes a charge for excess mileage.

## End of Lease (Continued)

**2) Single Payment Lease - Early Return of Vehicle Charge.** If this is a Single Payment Lease, as indicated on page 1 of this lease, your Early Return of Vehicle Charge is determined by Calculation C or Calculation D, below, whichever is less:

**Calculation C:** (1) All unpaid amounts due under the lease, other than excess wear and use and mileage charges; **plus** (2) All official fees and taxes related to the lease or the vehicle in connection with lease termination; **plus** (3) The Vehicle Turn-In Fee; **plus** (4) Any positive amount determined by subtracting the vehicle's then Fair Market Wholesale Value from the Residual Value; **less** (5) 88.6% of the unearned rent charge calculated on a constant yield basis if the Lease Term is 1-59 months or 85.1% of the unearned rent charge calculated on a constant yield basis if the Lease Term is 60 months or more.

**Calculation D:** (1) All unpaid amounts due under the lease; **plus** (2) All official fees and taxes related to the lease or the vehicle in connection with lease termination; **plus** (3) The Vehicle Turn-In Fee; **plus** (4) The amount, if any, for excess wear and use, which includes a charge for excess mileage.

**3) Fair Market Wholesale Value.** The Fair Market Wholesale Value will be determined in one of the following ways: (a) in accordance with accepted practices in the automobile industry for determining the wholesale value of used vehicles; (b) by disposing of the vehicle in a commercially reasonable manner; (c) within 10 days of early termination, you may obtain, at your own expense, from an independent third party agreeable to both you and us, a professional appraisal of the wholesale value of the vehicle that could be realized at sale; the appraised value shall be a binding determination of the Fair Market Wholesale Value; (d) if the vehicle is subject to a total loss due to collision, destruction or theft as determined by us, the Fair Market Wholesale Value will equal: (i) the amount of any proceeds we receive from your insurance; plus (ii) the amount of our deductible under such insurance if that amount has been paid to us; if there are no insurance proceeds, the Fair Market Wholesale Value will be zero.

### 23. Default.

**a. Early Termination by Us.** We may terminate this lease at anytime if you are in default (see section 23.b.) and you must pay us your Early Termination Liability. Your Early Termination Liability equals all expenses related to recovering, obtaining, storing and preparing for sale and selling the vehicle, including, but not limited to, reasonable attorney fees, collection costs, and court costs, to the extent not prohibited by law; **plus:** (1) if this is a Standard Lease as indicated on page 1 of this lease, the amount determined by Calculation A in section 22.b.; or (2) if this is a Single Payment Lease as indicated on page 1 of this lease, the amount determined by Calculation C in section 22.b.

**b. Events of Default.** You will be in default if: (1) you fail to make any payment when due, including any amount required to be paid under the sections of this lease entitled RETURN OF VEHICLE, Scheduled Termination or Early Termination by you; (2) you break any promise or conditions in the lease or any other agreement with us; (3) you fail to maintain required insurance or you do anything that invalidates your required insurance; (4) you fail to return the vehicle as we specify; (5) you gave false or misleading information to us on your credit application or other document; (6) you die, are declared incompetent, become insolvent, a bankruptcy petition is filed by or against you, or you dissolve active business affairs; (7) the vehicle is seized, or levied upon by any government or legal process; (8) the vehicle is destroyed, abandoned, stolen or damaged beyond repair; (9) your driver's license expires or is suspended, revoked, or canceled; or (10) anything else happens that we reasonably believe in good faith endangers the vehicle or your ability to pay.

**c. Remedies for Default.** If you are in default, you will owe your Early Termination Liability provided in section 23.a. and we may take any or all of the following actions: (1) terminate this lease and your rights to the vehicle; (2) take possession of the vehicle without prior demand, unless notice or demand is required by law; (3) take reasonable action to prevent the default or our loss; (4) require you to return the vehicle and any related records; (5) make a claim for insurance, service, maintenance or other optional contract benefits or refunds available on your default and apply such amount to the amount you owe under this lease; or (6) use any remedy we have at law or in equity. You agree to reimburse us for any amounts we choose to pay under this lease that you are required to pay, including amounts we pay to cover your default or enforce our right to the vehicle. You agree that in the event we hire an attorney to collect any amount due or enforce any right or remedy under this lease, you shall pay our attorney fees and court costs.

If we take possession of the vehicle as provided in section 23.c.2, we may take any personal property in the vehicle. We will hold the personal property for you for 20 days. If you do not pick up the property within that time, we may dispose of it in any manner.

**24. Interest on Unpaid Amounts.** You understand and agree that upon termination of this lease for any reason, if you do not pay us any amount you owe us upon our demand, you will owe us, in addition to the amount unpaid, interest on such amount at the annual rate of 6% (or such lesser maximum rate as applicable law permits).

## Additional Information

**25. Assignment and True Lease.** You understand that this is a true lease and that you do not have equity or other ownership rights in the vehicle unless you purchase it from us. You may not assign, sell, sublease or arrange an assumption of your interests or rights under this lease or in the vehicle without our written permission. You understand that we may assign our rights and obligations under this lease at anytime or to anyone, including Daimler Trust, without first notifying you. You agree and grant us permission to provide information about you, the vehicle or this lease to our affiliates at any time, subject to the terms of the Assignee's Privacy Policy. Lessor and its employees are not agents of Assignee and have no authority to obligate Assignee. Mercedes-Benz Financial Services USA LLC ("MBFS"), as the servicing agent for Daimler Trust, has the power to act on Daimler Trust's behalf to administer, enforce and defend this lease. You agree to pay all amounts due under this lease to MBFS or as otherwise directed by MBFS.

**26. Late Charges/Returned Payment and Other Fees/Fines and Tickets.** If we do not receive the entire amount of your Monthly Payment within **10** days after it is due, you will pay us a late fee of **\$50** or **5%** of the unpaid amount whichever is less. If any check, draft, order, or other payment instrument is returned to us for any reason, or if any authorized electronic debit is not paid, you will pay us a fee of **\$25**. You agree to pay all fines and tickets imposed on the vehicle or its driver. If you do not pay such fines or tickets and we pay, you will reimburse us, and pay us an administration fee of **\$25** to the extent permitted by law. Unless prohibited by applicable law, you agree to pay a processing fee in connection with any payment you make to us by authorizing us, or a bill payment service, orally or in writing, to write a check on your behalf, use automated clearing house procedures, or use any other commercially accepted practice to make your payment from your checking or other account. The amount of the processing fee will be the amount you agree to, orally or otherwise, at the time you authorize us or the bill payment service to process your payment.

**27. Indemnification.** You will defend, indemnify and hold harmless Lessor and Assignee from and against any loss and all losses or damages to the vehicle and from all claims, losses, suits, actions, liabilities, costs and expenses (including, but not limited to reasonable attorney fees) related to and/or against the use, operation or condition of the vehicle.

**28. Notices/General.** We will send notices and correspondence to you at the billing address you provided on this lease. If this address or the garage address changes, you will inform us, in writing, within **30** days of the change. **To the extent permitted by law, you give us permission to monitor and record any telephone conversation between you and us.** Section headings in this lease are for convenience of reference only and are not part of the lease for any other purpose.

As part of a like-kind exchange program, the Assignee has engaged MBF Account Services, LLC as a qualified intermediary. Dealer is hereby notified that the Assignee has assigned to MBF Account Services, LLC its rights (but not its obligations) in the agreement for the purchase of this vehicle.

In the event the Lessee purchases the vehicle, Lessee is hereby notified that the Assignee has assigned to MBF Account Services, LLC its rights (but not its obligations) in the agreement for the sale of this vehicle.

**29. Refundable Security Deposit.** The Refundable Security Deposit may be used to pay all amounts that you fail to pay under this lease or to satisfy any remedy for Default. Any portion of the Refundable Security Deposit not applied to amounts that you owe will be returned to you after termination of this lease and our determination that the amounts you owed at the end of this lease have been paid. Even if we have refunded to you all or any portion of the Security Deposit, you are still responsible for amounts due and owing after termination of this lease, such as personal property tax. You may not apply any portion of the Security Deposit to a Monthly Payment. You will not earn interest on the Security Deposit. Any interest or monetary benefit to us which may accrue as a result of our retention of the Security Deposit will neither be paid to you nor applied to reduce your obligations under this lease.

**30. Modification.** Any change to this lease must be in writing and signed by Assignee, however, if permitted by law, extensions, deferral, or due date changes may be agreed to orally by you and Assignee and we will send you written confirmation.

**31. Enforceability.** Each person who signs this lease is jointly and severally liable under this lease and for all payments, whether or not we try to collect from the other signers. We do not have to repossess the vehicle to exercise any other rights. We do not give up any of our rights by delaying or failing to exercise them. This lease is subject to the laws of the state where it was signed. This lease is the entire agreement between you and us and is binding on anyone who assumes our interest in it. We are not bound by any statements or representations made by agents or sales people if not contained in this lease. We make no promises regarding any tax benefits to you from leasing. If we waive any provision of this lease or if any provision in this lease is held to be unenforceable, void, illegal or otherwise against applicable law, the other provisions shall survive and be enforceable separately from any voided provisions, unless otherwise provided in this lease.

**32. Delivery.** You accept delivery of the vehicle described in this lease and acknowledge that it is equipped as described, is in good operating order and condition, and has the odometer reading recorded on page 1 of this lease in the Vehicle Information section.

**33. Payment Obligations.** You may not change or stop any lease payments for **any reason**, even if you do not receive an invoice, and even if the vehicle is stolen, destroyed, seized by the government or a court, experiences mechanical problems, or does not satisfactorily perform. If you experience mechanical or other difficulties with the vehicle, you will pursue these issues with the manufacturer.

If any payment received or applied is avoided, set aside, or returned for any reason, including, without limitation, the bankruptcy or insolvency of you or any other payor or person, the indebtedness to which the payment was applied shall for all purposes be deemed to have continued in existence notwithstanding our application of such payment, and the lease shall be enforceable as to that indebtedness as fully as if we had not received or applied the payment.

## Additional Information (Continued)

**34. Taxes, Registration and Titling.** You agree to title, register and license the vehicle in the state in which it is primarily located. You are aware that the vehicle is to be titled in our name. You must request any power of attorney required from us to title, register, or license the vehicle. You agree to promptly pay all title, registration, license, inspection, testing, personal property taxes, and other fees, taxes and charges imposed by government authorities in connection with the vehicle, this lease, or any amounts due or payable arising from this lease. We may pay any or all license, title and registration costs, fees, charges and taxes relating to the vehicle or this lease that you do not pay and you agree to reimburse us for all such amounts. We have no duty to account to you for the fees, charges, or taxes we pay. You are responsible for any fines, penalties, and/or interest if you do not pay a bill when it is due. If the vehicle is primarily located in a state other than a state that bills you directly for personal property tax, we will invoice you for personal property tax, if applicable, after we have been billed by the taxing authority. During the term of this lease, you agree to pay the invoice amount on or before your next Monthly Payment due date. We may receive some bills after this lease has ended. If this lease has ended, you agree to pay us within 10 days of being invoiced, if this is a Standard Lease, or within 10 days of being invoiced if this is a Single Payment Lease. If the vehicle is primarily located in a state that bills you directly for personal property tax, you will pay the state DIRECTLY for the personal property tax owed on the vehicle. If you do not pay, and we pay the personal property tax, you will reimburse us the cost of the personal property tax and any penalties incurred.

**35. Security Interest.** You grant us a security interest, to the extent permitted by law, in the following, to secure performance of your lease obligations: (1) proceeds of any insurance with respect to the vehicle; (2) proceeds of any optional service, maintenance or other contract purchased with this lease; and (3) any unearned premiums, charges or refunds of any of the foregoing.

The conditions, if any, under which you may cancel any such optional contract are contained in the agreement under which the services or coverage are to be provided. In the event you cancel any such contracts purchased with this lease, you authorize MBFS to receive any refund of unearned premiums or charges on your behalf and apply the refund against the amount you owe under this lease.

**You will not allow any lien or encumbrance to attach to the vehicle.**

If this is a standard lease as indicated on page 1 of this lease, Daimler Trust grants a security interest in the vehicle to Daimler Title Co., as collateral agent, pursuant to the Collateral Agency Agreement dated as of August 1, 2007, as amended.

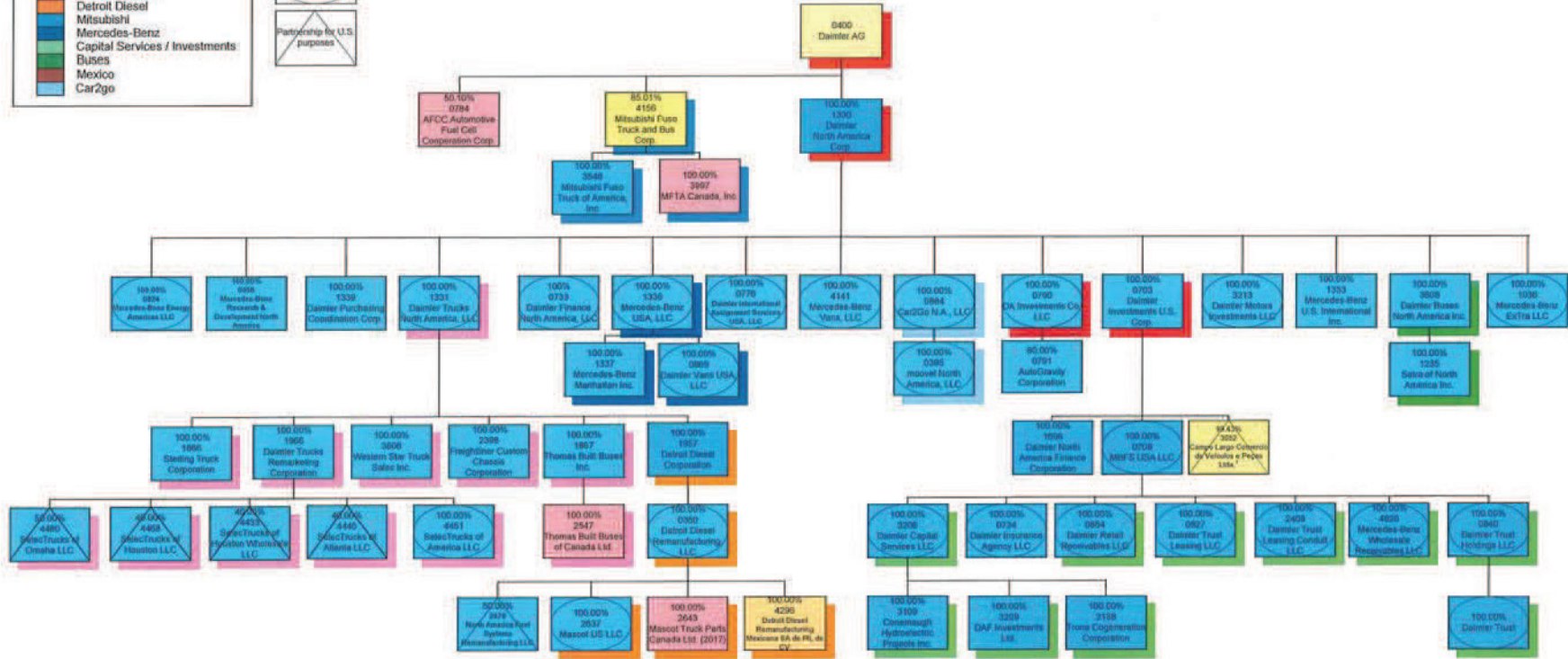
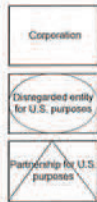
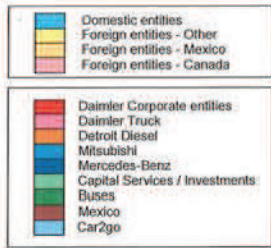
**36. Power of Attorney.** You appoint us, to the extent permitted by law, through our appointed officer or employee, as your attorney-in-fact to act on your behalf in any insurance/coverage matter relating to the vehicle, including, but not limited to, the power to endorse insurance/coverage proceeds checks or drafts on your behalf; and cancel any Credit Life, Credit Disability, Guaranteed Automotive Protection Coverage, Extended Warranty, or other optional insurance/coverage financed under this lease, and apply the refunded premium or cost to your outstanding balance if you are in default. Your grant of this power of attorney is coupled with an interest, and is irrevocable until all obligations you owe under this lease are paid in full.

## VEHICLE LOCATION CONSENT

**For Mercedes-Benz Vehicles:** Notwithstanding anything in the Mercedes-Benz mbrace™ Subscriber Service Agreement (the "Subscriber Agreement") or any other similar agreement or document provided or made available to you in connection with your Mercedes-Benz vehicle, and except as prohibited by applicable law, if you are in default (as defined herein) and your vehicle has a data recorder or the capability to report the vehicle's location through your use of the mbrace™ services or otherwise, you consent and authorize us and our agents, representatives, and affiliates including Mercedes-Benz USA, LLC ("MBUSA") and any service provider acting with it or on its behalf, including ATX Group, Inc. ("ATX") and Verizon Telematics, Inc. ("VTI"), to (a) obtain data from the vehicle including the location of the vehicle, (b) release the data to us, MBUSA, ATX, VTI or their agents, representatives, and affiliates and (c) use such data for the purpose of locating the vehicle, including with respect to the repossession of it. You agree that notwithstanding anything to the contrary in the Subscriber Agreement, MBUSA and its agents, representatives, and affiliates (including but not limited to ATX and VTI) are intended to be protected by the consent you are giving in this document, and that those parties are and will be relying upon such consent as releasing them from any potential liability for such use of any data. You also agree that your consent will supersede any past or future sending of notice by you under the Subscriber Agreement, allowing you to request that certain information retrieved from your vehicle's sensing or diagnostic modules not be used (or any other comparable section of the Subscriber Agreement or other document), and that your consent shall be fully enforceable and effective notwithstanding your sending any such notice, or exercising any such right.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, you, on behalf of you, your successors and your assigns, intentionally, knowingly and irrevocably hereby release and discharge us and our affiliates, officers, directors, managers, members, insurers, shareholders, employees, attorneys, agents, representatives, predecessors, successors, assigns and all others acting by, through, under or in concert with them (the "Releasees") including, without limitation, MBUSA and any service provider acting on MBUSA's behalf, from all claims, liabilities, obligations, damages, losses, costs, expenses, debts, liens, suits, actions and/or causes of action, at law or in equity, of every kind, character and nature whatsoever, whether known or unknown, suspected or unsuspected, contingent or fixed, direct or indirect, which have existed or may have existed, or which do exist or which hereafter can, shall or may exist in any way based upon or related to the subject matter of this consent. This includes, in the case of MBUSA, ATX, VTI and anyone acting with them, any claim based on an allegation that activities to locate or repossess your vehicle as consented to herein were undertaken without you being in default. You represent, warrant and covenant not to sue, or commence an arbitration or other proceeding against any of the Releasees, to enforce any charge, claim or cause of action released herein.

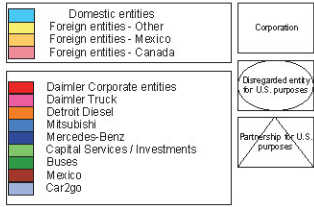
As of December 31, 2017



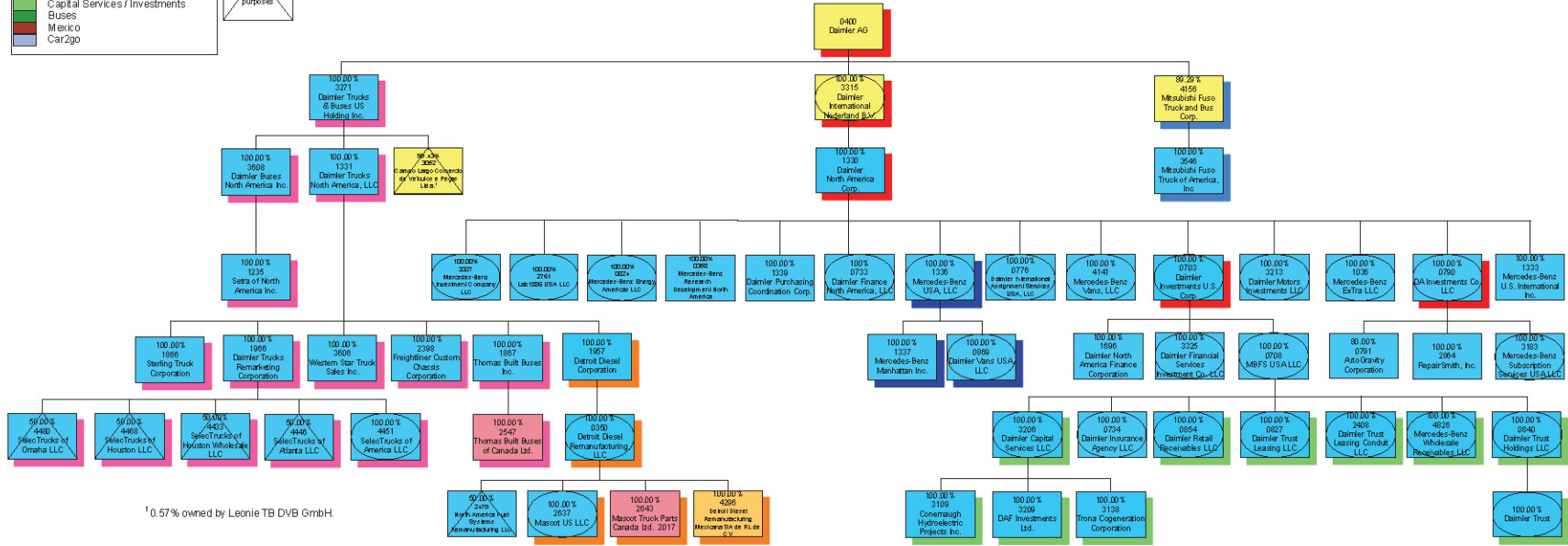
\* 0.57% owned by Daimler North America Corporation.

Dispositions / Dissolutions

<ul style="list-style-type: none"> <li>BYC Acquisition Corporation - dissolved December 31, 2004</li> <li>Daimler North America LLC - dissolved December 31, 2007</li> <li>Chrysler Timberlake Corporation - merged into Daimler Capital Services LLC - 12/19/2008</li> <li>Daimler Asset Management Corporation - merged into Daimler Capital Services LLC - 12/19/2008</li> <li>Daimler Financial Services, Inc. - merged into - 12/19/2008</li> <li>HESPI Inc. - merged into Daimler Capital Services LLC - 12/19/2008</li> <li>Hyper Life Solar IX, LLC - dissolved 2008</li> <li>Harper Life Solar IX Corporation - merged into Daimler Capital Services LLC - 12/19/2008</li> <li>Daimler Financing International, Inc. - dissolved December 31, 2009</li> <li>Mexico Detroit Diesel Allison Corporation - dissolved December 31, 2009</li> <li>Burplus Truck Parts, Inc. - dissolved December 31, 2009</li> <li>FMDG Canada, Inc. - dissolved December 31, 2009</li> <li>Mitsubishi Auto, LLC - dissolved April 2009</li> <li>C.C. &amp; E.L. LLC - dissolved 2008</li> <li>Western Star Truck Fleet Portland, LLC - dissolved 2008</li> <li>Freightliner of Cleveland, LLC - dissolved 2008</li> <li>Gastonia Components &amp; Logistics, LLC - dissolved 2008</li> <li>Freightliner of Mt. Holly, LLC - dissolved 2008</li> <li>Chrysler Foreign Sales Corporation - dissolved 2008</li> </ul>	<ul style="list-style-type: none"> <li>Detroit Diesel Overseas Distribution Corporation - dissolved 2008</li> <li>Detroit Diesel Remanufacturing Central, Inc. - dissolved 2008</li> <li>Detroit Diesel Remanufacturing East, Inc. - dissolved 2008</li> <li>Detroit Diesel Remanufacturing North, Inc. - dissolved 2008</li> <li>Detroit Diesel Remanufacturing West, Inc. - dissolved 2008</li> <li>Daimler MidOcean Foreign Sales Company - dissolved 2008</li> <li>DAF FSC, Inc. - dissolved 2008</li> <li>Star Overseas Limited - dissolved 2009</li> <li>Distribuidora Automotriz GOL, S.A. de C.V. - disposed 6/4/2009</li> <li>DTNA Trucks Vancouver Ltd - merged December 31, 2009</li> <li>Freightliner Properties Ltd. - merged December 31, 2009</li> <li>Detroit Diesel Scholarship Foundation, Inc. - dissolved December 31, 2009</li> <li>Mercedes-Benz Service Corporation - merged into MBUSA LLC effective 9/30/2010</li> <li>Detroit Diesel Realty Utah - merged into Detroit Diesel Remanufacturing LLC 9/30/2010</li> <li>Mercedes-Benz Hybrid LLC, merged into MBRDINA 12-31-2010</li> <li>MB-technology North America LLC - sold December 31, 2011</li> <li>Freightliner Netherlands Holdings B.V. - 4378 - dissolved 10-31-2012</li> <li>Daimler Vehicle Innovations USA LLC - merged into MBUSA LLC December 2012</li> <li>Daimler Meridian Corporation - merged into Daimler Capital Services LLC - December 31, 2012</li> </ul>	<ul style="list-style-type: none"> <li>Atlanta Freightliner Truck Sales &amp; Service Inc. - merged into Daimler Trucks</li> <li>Remanufacturing Corporation December 31, 2012</li> <li>Yar Heel Truck Center - merged into Daimler Trucks Remanufacturing Corporation - December 31, 2012</li> <li>QuRen Diesel Power Ltd. - sold January 12, 2012</li> <li>Detroit Diesel of Canada Limited - merged into Detroit Diesel Corporation October 1, 2012</li> <li>Daimler Credit Realized Inc. - merged into Daimler Capital Services LLC on June 30, 2013</li> <li>Detroit Diesel Overseas Corporation - merged into Detroit Diesel Corporation August 31, 2013</li> <li>Detroit Diesel Realty Inc. - merged into Detroit Diesel Corporation September 30, 2013</li> <li>Daimton Corporation - merged into DTNA LLC November 30, 2013</li> <li>Ade Alliance, LLC - merged into Detroit Diesel Corporation November 30, 2013</li> <li>Detroit Diesel Holding Ltd (Brazil)</li> <li>Wings Aircraft Finance Inc. - liquidated June 12, 2014</li> <li>Columbia Freightliner LLC - merged into Daimler Trucks Remanufacturing Corporation June 30, 2014</li> <li>Florida Detroit Diesel Allison Inc. - merged into Outer Drive Holdings LLC August 1, 2014</li> <li>Atlantic Detroit Diesel Allison LLC - merged into Outer Drive Holdings LLC August 1, 2014</li> <li>Outer Drive Holding LLC - merged into Detroit Diesel Corporation December 15, 2014</li> <li>Daimler Buses North Carolina LLC - dissolved May 18, 2015</li> <li>Daimler Lub- und Raumbahn Holding AG - merged August 13, 2015</li> </ul>	<ul style="list-style-type: none"> <li>Suffolk Leasing Inc. - merged into DCS, LLC September 30, 2015</li> <li>DRIVEest LLC - dissolved October 13, 2015</li> <li>MB Tech Auto Testing Properties LLC - dissolved October 13, 2015</li> <li>SelecTrucks of Los Angeles LLC - liquidated November 6, 2015</li> <li>GlobeSerpis Inc. - merged with Ridescot LLC June XX, 2016 and changed name to moof North America, LLC</li> <li>Daimler Buses North America Ltd - sold out from under and amalgamated with DTCL July 1, 2016</li> <li>Intriged Insurance Company - sold on July 21, 2016</li> <li>6603 Sunbelt Boulevard Inc - dissolved October 2016</li> <li>Motor Vehicle Service Agreement Comp., Inc. - merged into MBUSA December 8, 2016</li> <li>Auto Testing Company Inc. - sold July 6, 2017</li> <li>DCS UTI LLC, Mercedes-Series - sold July 26, 2017</li> <li>Multistate LP/TC Holdings III Limited Partnership - dissolved on December 20, 2017</li> <li>Coxenry Lane Holdings, LLC - dissolved on December 22, 2017</li> </ul>
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As of December 31, 2018



<sup>1</sup> 0.57% owned by Leonie TB DVB GmbH.

**Dispositions / Dissolutions**

- Daimler Financial Services, Inc. – merged into - 12/18/2008	- Daimler MidOcean Foreign Sales Corporation – dissolved 2009	- Detroit Diesel of Canada Limited – merged into Detroit Diesel Corporation October 1, 2012	- North America, LLC
- HILSP R, Inc. – merged into Daimler Capital Services LLC – 12/18/2008	- DAF FSC, Inc. – dissolved 2009	- Daimler Credit Realvest Inc. – merged into Daimler Capital Services LLC on June 30, 2013	- Daimler Buses North America Ltd. – sold out from under and amalgamated with DT CL July 1, 2016
- Harper Lake Solar R, LLC – dissolved 2008	- Star Overseas Limited – dissolved 2009	- Detroit Diesel Overseas Corporation – merged into Detroit Diesel Corporation August 31, 2013	- Interlog Insurance Company – sold on July 21, 2016
- Harper Lake Solar R, Corporation – merged into Daimler Capital Services LLC – 12/18/2008	- Distribuidora Alcomotriz ODL, S.A. de C.V. – disposed 04/2009	- Detroit Diesel Realty Inc. – merged into Detroit Diesel Corporation September 30, 2013	- 6563 Sunset Boulevard Inc. – dissolved October 2016
- Daimler Financing International, Inc. – dissolved December 31, 2009	- DTNA Truck Services Ltd. – merged December 31, 2009	- Daimtron Corporation – merged into DTNA LLC November 30, 2013	- Motor Vehicle Service Agreement Comp., Inc. – merged into MBUSA December 9, 2016
- Mexico Detroit Diesel -Alison Corporation – dissolved December 31, 2009	- Freightliner Properties Ltd. – merged December 31, 2009	- Aika Alliance, LLC – merged into Detroit Diesel Corporation November 30, 2013	- Auto Testing Company, Inc. – sold July 6, 2017
- Surplus Truck Parts, Inc. – dissolved December 31, 2009	- Detroit Diesel Scholarship Foundation Inc. – dissolved December 31, 2009	- Detroit Diesel Holding Ltd. Brazil	- DCS UTI LLC, Mercedes-Series – sold July 26, 2017
- FMDC Canada Inc. – dissolved December 31, 2009	- Mercedes-Benz Service Corporation – merged into MBUSA LLC effective 9/30/2010	- Wings Aircraft Finance Inc. – liquidated June 12, 2014	- Multi state LIHT C Holdings III Limited Partnership – dissolved on December 20, 2017
- Mtech Axodia, LLC – dissolved April 2009	- Detroit Diesel Realty LLC – merged into Detroit Diesel Remanufacturing LLC 9/30/2010	- Columbia Freightliner LLC – merged into Daimler Truck Remarking Corporation June 30, 2014	- Coventry Lane Holdings, LLC – dissolved on December 22, 2017
- C.C. E. I. LLC – dissolved 2009	- Mercedes-Benz Hybrid LLC, merged into MBR/DNA 12/31/2010	- Florida Diesel Diesel -Rite, Inc. – merged into Outer Drive Holdings LLC August 1, 2014	- Car2go NA Sub. sold out from under DN/Ab Daimler Germany entity
- Western Star Truck Plant Portland, LLC – dissolved 2008	- MB Service/Logistics North America LLC – sold December 31, 2011	- Alstria Detroit Diesel Allison LLC – merged into Outer Drive Holdings LLC August 1, 2014	
- Freightliner of Cleveland, LLC – dissolved 2008	- Freightliner Netherland Holdings BV – 4/26 – dissolved 10/31/2012	- Outer Drive Holdings LLC – merged into Detroit Diesel Corporation December 15, 2014	
- Gastonia Components Logistics, LLC – dissolved 2009	- Daimler Vehicle Innovations USA LLC – merged into MBUSA LLC December 2012	- Daimler Buses North Carolina LLC – dissolved May 18, 2015	
- Freightliner of Mt. Holly, LLC – dissolved 2008	- Daimler Meridian Corporation – merged into Daimler Capital Services LLC – December 31, 2012	- Daimler Lub. und Raumfahrt Holding AG – merged August 13, 2015	
- Chrysler Foreign Sales Corporation – dissolved 2008	- DU Corporation – merged into Daimler Capital Services LLC – December 31, 2013	- Badestor LLC – merged into DNAC on September 15, 2015	
- Detroit Diesel Speciality Tool company, Inc. – dissolved 2008			



**DAIMLER**

Annual Financial Report 2018

	2018	2017	2016	18/17
€ amounts in millions				% change

### Mercedes Benz Cars

Revenue	93,103	94,351 <sup>1</sup>	89,284	-1
EBIT	7,216	8,843 <sup>1</sup>	8,112	-18
Return on sales (in %)	7.8	9.4 <sup>1</sup>	9.1	.
Investment in property, plant and equipment	5,684	4,843	4,147	+17
Research and development expenditure thereof capitalized	6,962 2,269	6,642 2,388	5,671 2,008	+5 -5
Unit sales	2,382,791	2,373,527	2,197,956	+0
Employees (December 31)	145,436	142,666	139,947	+2

### Daimler Trucks

Revenue	38,273	35,755 <sup>1</sup>	33,187	+7
EBIT	2,753	2,383 <sup>1</sup>	1,948	+16
Return on sales (in %)	7.2	6.7	5.9	.
Investment in property, plant and equipment	1,105	1,028	1,243	+7
Research and development expenditure thereof capitalized	1,295 40	1,322 45	1,265 57	-2 -11
Unit sales	517,335	470,705	415,108	+10
Employees (December 31)	82,953	79,483	78,642	+4

### Mercedes Benz Vans

Revenue	13,626	13,161 <sup>1</sup>	12,835	+4
EBIT	312	1,147 <sup>1</sup>	1,170	-73
Return on sales (in %)	2.3	8.7 <sup>1</sup>	9.1	.
Investment in property, plant and equipment	468	710	373	-34
Research and development expenditure thereof capitalized	666 176	565 310	442 238	+18 -43
Unit sales	421,401	401,025	359,096	+5
Employees (December 31)	26,210	25,255	24,029	+4

### Daimler Buses

Revenue	4,529	4,524 <sup>1</sup>	4,176	+0
EBIT	265	281 <sup>1</sup>	249	-6
Return on sales (in %)	5.9	6.2 <sup>1</sup>	6.0	.
Investment in property, plant and equipment	144	94	97	+53
Research and development expenditure thereof capitalized	199 41	194 30	202 11	+3 +37
Unit sales	30,888	28,676	26,226	+8
Employees (December 31)	18,770	18,292	17,899	+3

### Daimler Financial Services

Revenue	26,269	24,530 <sup>1,2</sup>	20,660	+7
EBIT	1,384	1,970	1,739	-30
Return on equity (in %)	11.1	17.7	17.4	.
New business	71,927	70,721	61,810	+2
Contract volume	154,072	139,907	132,565	+10
Investment in property, plant and equipment	64	43	37	+49
Employees (December 31)	14,070	13,012	12,062	+8

1 The amounts have been adjusted due to first time adoption of IFRS 15 and IFRS 9.

Further information is provided in Note 1 of the Notes to the Consolidated Financial Statements.

2 At the Daimler Financial Services segment, the Group's internal revenue and cost of sales have been adjusted by the same amount. These adjustments have been fully eliminated in the reconciliation.

REQID:

Total Pages in Return

TAXABLE YEAR

CALIFORNIA SCHEDULE

# Election to File a Unitary 2017 Taxpayers' Group Return

# R-7

Fill out the Schedule R-7 Election completely to make a valid election.

Name of corporation filing the single group return (key corporation*)	California corporation number
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This election is an integral part of the return of all taxpayers participating in the election, and must be filed annually with Schedule R. Signing the California tax return is an acknowledgement that the key corporation and its electing affiliates agree to comply with the terms and conditions contained in this Schedule R-7 Election. (See Side 7 for the terms of this election).

**Part I Taxpayers Electing to File, or No Longer Included in the Single Group Return. See instructions below before completing the tables.** \*The key corporation must be taxable in California and, where applicable, be the parent corporation. If the parent corporation is not a California taxpayer, the key corporation should be the California taxpayer with the largest property factor numerator in California. For a complete definition of a key corporation, see Side 7 Terms and Conditions.

In order for a group return to satisfy the individual subsidiary's filing requirements, the Schedule R-7 must include all of the information requested in Part I, Section A, (see Cal. Code Regs., tit. 18 section 25106.5-11). If the information in Part I, Section A, is not filled out completely, the electing member(s) Schedule R-7 election may be disallowed. If an electing member(s) Schedule R-7 election is disallowed, they must file a separate California return.

**Check box A** if the electing member is incorporated, organized, qualified, or registered to do business in California.

**Check box B** if the electing member has any property, payroll, sales in California, or derives income from sources within California, but is not doing business in California.

**Check box C** if the corporation is a new electing member for this current group.

Enter the California corporation number if one was assigned by the California Secretary of State (SOS) or the Franchise Tax Board (FTB).

**Note:** Schedule R-7, Part I, Section A, should only contain information of corporations that are required to file a return in California, and who are subject to California income or franchise tax. If a corporation does not have a California return filing requirement, the entity should not be listed in this Part I, Section A. The entity should be listed in Part II, Other Affiliated Corporations. The first corporation listed should be the "key corporation." The "key corporation" information entered in Schedule R-7, Part I, Section A, must match the information of the corporation entered on Form 100 or Form 100W, Side 1.

Total the number of members (including parent/key corporation) listed below, and enter the result on Form 100 or 100W, Side 1, Schedule Q, Question B3.

Section A - List of Taxpayers Making Election to File a Single Group Tax Return. Attach additional sheets using the same format, if necessary.						
Electing taxpayer corporation (Enter the legal name that is filed with the California SOS. Do not use abbreviations unless the abbreviation is part of the legal name.)	A	B	C	California corporation number (if one is assigned)	FEIN	Total self-assessed tax
(California key corporation name*)						
<input checked="" type="radio"/> DAIMLER NORTH AMERICA CORPORATION	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/> 2230130	<input type="radio"/>	<input type="radio"/> 18,647,221
<input checked="" type="radio"/> AUTOGRAVITY CORPORATION	<input checked="" type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/> 3843172	<input type="radio"/>	<input type="radio"/> 1,870
<input checked="" type="radio"/> DAIMLER INVESTMENTS US CORPORATION	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/> 9999999	<input type="radio"/>	<input type="radio"/> 342,666
<input checked="" type="radio"/> THOMAS BUILT BUSES INC	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/> 3182149	<input type="radio"/>	<input type="radio"/> 285,334
<input checked="" type="radio"/> WESTERN STAR TRUCKS SALES INC	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/> 1947445	<input type="radio"/>	<input type="radio"/> 76,955
<input checked="" type="radio"/> DAIMLER TRUCKS REMARKETING CORP	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/> 1084450	<input type="radio"/>	<input type="radio"/> 2,212
<input checked="" type="radio"/> DETROIT DIESEL CORPORATION	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/> 1602673	<input type="radio"/>	<input type="radio"/> 2,091
<input checked="" type="radio"/> STERLING TRUCK CORPORATION	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/> 2083272	<input type="radio"/>	<input type="radio"/> 800
<input checked="" type="radio"/> FREIGHTLINER CUSTOM CHASSIS CORP	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/> 3168478	<input type="radio"/>	<input type="radio"/> 800
<input checked="" type="radio"/> MERCEDES-BENZ US INTERNATIONAL INC	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/> 9999999	<input type="radio"/>	<input type="radio"/> 800
<input checked="" type="radio"/> Overflow A-ID#001	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/> 1931037	<input type="radio"/>	<input type="radio"/> 800
<input checked="" type="radio"/> Overflow A-ID#002	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/> 9999999	<input type="radio"/>	<input type="radio"/> 0
<input checked="" type="radio"/> MERCEDES-BENZ MANHATTAN INC	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/> 9999999	<input type="radio"/>	<input type="radio"/> 0
<input checked="" type="radio"/> AUTO TESTING COMPANY INC	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/> 9999999	<input type="radio"/>	<input type="radio"/> 0
<input checked="" type="radio"/> DAF INVESTMENTS LTD	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/> 9999999	<input type="radio"/>	<input type="radio"/> 0
<input checked="" type="radio"/> CONEMAUGH HYDROELECTRIC PROJECTS INC	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/> 9999999	<input type="radio"/>	<input type="radio"/> 0
<input checked="" type="radio"/> TRONA COGENERATION CORPORATION	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/> 9999999	<input type="radio"/>	<input type="radio"/> 0
<input checked="" type="radio"/> DAIMLER BUSES NORTH AMERICA INC	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/> 9999999	<input type="radio"/>	<input type="radio"/> 0
<input checked="" type="radio"/> SETRA OF NORTH AMERICA INC	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/> 9999999	<input type="radio"/>	<input type="radio"/> 0
<input checked="" type="radio"/> Overflow A-ID#003	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/> 9999999	<input type="radio"/>	<input type="radio"/> 0
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Total group self-assessed tax</b> .....						<input type="radio"/> <b>19,361,549</b>

TAXABLE YEAR

2018

**Election to File a Unitary Taxpayers' Group Return**

CALIFORNIA SCHEDULE

**R-7**

Fill out the Schedule R-7 Election completely to make a valid election.

Name of corporation filing the single group return (key corporation *) DAIMLER NORTH AMERICA CORPORATION	California corporation number 2230130
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This election is an integral part of the return of all taxpayers participating in the election, and must be filed annually with Schedule R. Signing the California tax return is an acknowledgement that the key corporation and its electing affiliates agree to comply with the terms and conditions contained in this Schedule R-7 Election. (See Side 7 for the terms of this election).

**Part 1 Taxpayers Electing to File, or No Longer Included in the Single Group Return.**  
See instructions below before completing the tables.

\*The key corporation must be taxable in California and, where applicable, be the parent corporation. If the parent corporation is not a California taxpayer, the key corporation should be the California taxpayer with the largest property factor numerator in California. For a complete definition of a key corporation, see Side 7 Terms and Conditions.

In order for a group return to satisfy the individual subsidiary's filing requirements, the Schedule R-7 must include all of the information requested in Part I, Section A, (see Cal. Code Regs., tit. 18 section 25106.5-11). If the information in Part I, Section A, is not filled out completely, the electing member(s) Schedule R-7 election may be disallowed. If an electing member(s) Schedule R-7 election is disallowed, they must file a separate California return.

Check box A if the electing member is incorporated, organized, qualified, or registered to do business in California.

Check box B if the electing member has any property, payroll, sales in California, or derives income from sources within California, but is not doing business in California.

Check box C if the corporation is a new electing member for this current group.

Enter the California corporation number if one was assigned by the California Secretary of State (SOS) or the Franchise Tax Board (FTB).

Note: Schedule R-7, Part I, Section A, should only contain information of corporations that are required to file a return in California, and who are subject to California income or franchise tax. If a corporation does not have a California return filing requirement, the entity should not be listed in this Part I, Section A. The entity should be listed in Part II, Other Affiliated Corporations. The first corporation listed should be the "key corporation". The "key corporation" information entered in Schedule R-7, Part I, Section A, must match the information of the corporation entered on Form 100 or Form 100W, Side 1.

Total the number of members (including parent/key corporation) listed below, and enter the result on Form 100 or Form 100W, Side 1, Schedule Q, Question B3.

Section A - List of Taxpayers Making Election to File a Single Group Tax Return. Attach additional sheets using the same format, if necessary.						
Electing taxpayer corporation (Enter the legal name that is filed with the California SOS. Do not use abbreviations unless the abbreviation is part of the legal name.)	A	B	C	California corporation number (if one is assigned)	FEIN	Total self-assessed tax
(California key corporation name*)						
<input checked="" type="radio"/> DAIMLER NORTH AMERICA CORPORATION	<input checked="" type="radio"/> X	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/> 2230130	<input checked="" type="radio"/>	<input checked="" type="radio"/> 23,210,778.
<input checked="" type="radio"/> DAIMLER INVESTMENTS U.S. CORPORATION	<input type="radio"/>	<input checked="" type="radio"/> X	<input type="radio"/>	<input checked="" type="radio"/> 9999999	<input checked="" type="radio"/>	<input checked="" type="radio"/> 1,279,165.
<input checked="" type="radio"/> DAIMLER NORTH AMERICA FINANCE CORPORATION	<input type="radio"/>	<input checked="" type="radio"/> X	<input type="radio"/>	<input checked="" type="radio"/> 9999999	<input checked="" type="radio"/>	<input checked="" type="radio"/> 0.
<input checked="" type="radio"/> DETROIT DIESEL CORPORATION	<input checked="" type="radio"/> X	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/> 1602673	<input checked="" type="radio"/>	<input checked="" type="radio"/> 38,189.
<input checked="" type="radio"/> DETROIT DIESEL CORPORATION	<input checked="" type="radio"/> X	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/> 1602673	<input checked="" type="radio"/>	<input checked="" type="radio"/> 6,210.
<input checked="" type="radio"/> DAIMLER TRUCKS NORTH AMERICA LLC	<input checked="" type="radio"/> X	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/> 2000124	<input checked="" type="radio"/>	<input checked="" type="radio"/> 491,771.
<input checked="" type="radio"/> STERLING TRUCK CORPORATION	<input checked="" type="radio"/> X	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/> 2083272	<input checked="" type="radio"/>	<input checked="" type="radio"/> 800.
<input checked="" type="radio"/> STERLING TRUCK CORPORATION	<input checked="" type="radio"/> X	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/> 2083272	<input checked="" type="radio"/>	<input checked="" type="radio"/> 0.
<input checked="" type="radio"/> THOMAS BUILT BUSES INC	<input checked="" type="radio"/> X	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/> 3182149	<input checked="" type="radio"/>	<input checked="" type="radio"/> 443,660.
<input checked="" type="radio"/> THOMAS BUILT BUSES INC	<input checked="" type="radio"/> X	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/> 3182149	<input checked="" type="radio"/>	<input checked="" type="radio"/> 35,229.
<input checked="" type="radio"/> DAIMLER TRUCKS REMARKETING CORP	<input checked="" type="radio"/> X	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/> 1084450	<input checked="" type="radio"/>	<input checked="" type="radio"/> 102,341.
<input checked="" type="radio"/> DAIMLER TRUCKS REMARKETING CORP	<input checked="" type="radio"/> X	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/> 1084450	<input checked="" type="radio"/>	<input checked="" type="radio"/> 2,623.
<input checked="" type="radio"/> FREIGHTLINER CUSTOM CHASSIS CORP	<input checked="" type="radio"/> X	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/> 3168478	<input checked="" type="radio"/>	<input checked="" type="radio"/> 800.
<input checked="" type="radio"/> FREIGHTLINER CUSTOM CHASSIS CORP	<input checked="" type="radio"/> X	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/> 3168478	<input checked="" type="radio"/>	<input checked="" type="radio"/> 0.
<input checked="" type="radio"/> WESTERN STAR TRUCKS SALES INC	<input checked="" type="radio"/> X	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/> 1947445	<input checked="" type="radio"/>	<input checked="" type="radio"/> 121,052.
<input checked="" type="radio"/> WESTERN STAR TRUCKS SALES INC	<input checked="" type="radio"/> X	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/> 1947445	<input checked="" type="radio"/>	<input checked="" type="radio"/> 13,117.
<input checked="" type="radio"/> DAIMLER TRUCKS NORTH AMERICA LLC (One Day Return)	<input checked="" type="radio"/> X	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/> 2000124	<input checked="" type="radio"/>	<input checked="" type="radio"/> 15,645.
<input checked="" type="radio"/> DAIMLER TRUCKS & BUSES US HOLDING INC	<input type="radio"/>	<input checked="" type="radio"/> X	<input checked="" type="radio"/> X	<input checked="" type="radio"/> 9999999	<input checked="" type="radio"/>	<input checked="" type="radio"/> 0.
<input checked="" type="radio"/> MERCEDES-BENZ MANHATTAN INC	<input type="radio"/>	<input checked="" type="radio"/> X	<input type="radio"/>	<input checked="" type="radio"/> 9999999	<input checked="" type="radio"/>	<input checked="" type="radio"/> 0.
<input checked="" type="radio"/> MERCEDES-BENZ US INTERNATIONAL INC	<input type="radio"/>	<input checked="" type="radio"/> X	<input type="radio"/>	<input checked="" type="radio"/> 9999999	<input checked="" type="radio"/>	<input checked="" type="radio"/> 800.
<input checked="" type="radio"/> DAF INVESTMENTS LTD	<input type="radio"/>	<input checked="" type="radio"/> X	<input type="radio"/>	<input checked="" type="radio"/> 9999999	<input checked="" type="radio"/>	<input checked="" type="radio"/> 800.
<b>Total group self-assessed tax</b> .....						<input checked="" type="radio"/> 25,854,097.