

**Version 3.0 from June 12, 2024**

## **PART I End User License Agreement (“EULA”)**

### **1 Introduction**

#### **1.1 Publisher and Provider**

This App is being provided by its Publisher in an app store (“Platform”) of the individual operator (“Platform Operator”). This EULA governs the User’s access and use of the App and is by and between the Publisher or its affiliates (as applicable) and User. THIS IS A LEGAL AGREEMENT. BY ACCESSING AND USING THE APP, THE USER IS ACCEPTING AND AGREEING TO THIS EULA ON BEHALF OF USER OR THE ENTITY USER REPRESENTS IN CONNECTION WITH THE ACCESS. USER REPRESENTS AND WARRANTS THAT USER HAS THE RIGHT, AUTHORITY, AND CAPACITY TO ACCEPT AND AGREE TO THIS EULA ON BEHALF OF ITSELF OR THE ENTITY USER REPRESENTS. USER REPRESENTS THAT USER IS OF SUFFICIENT LEGAL AGE IN ITS JURISDICTION OR RESIDENCE TO USE OR ACCESS THE APP AND TO ENTER INTO THIS EULA. IF USER DOES NOT AGREE WITH ANY OF THE PROVISIONS OF THESE TERMS, USER SHOULD CEASE ACCESSING OR USING THE APP.

#### **1.2 License**

Subject to User’s compliance with this EULA, Publisher grants User a limited, non-exclusive, non-sublicensable, revocable, non-transferable license to: (i) access and use the App on your personal device; and (ii) access and use any content, information and related materials that may be made available through the App, in each case solely for User’s personal, noncommercial use. Any rights not expressly granted herein are reserved by Publisher, its affiliates and Publisher’s licensors.

#### **1.3 Function and Purpose of the App**

The function and the purpose of the App are described under App Description.

#### **1.4 Registration**

In case a registration of a User account is required, the User must enter correct and complete data and keep such information current at all times. For the handling of this data, Part II is applicable.

#### **1.5 Ownership**

The App and all worldwide copyrights, trade secrets, and other intellectual property rights therein are the exclusive property of Publisher and its affiliates and licensors. Publisher, its affiliates and licensors reserve all rights in and to the App not expressly granted to User in this EULA. The App (and all copies thereof) is licensed to User, not sold, under this EULA. There are no implied licenses in this EULA. All suggestions or feedback provided by User to Publisher with respect to the App shall be Publisher’s property. Publisher may use, copy, modify, publish, or redistribute the submission and its contents for any purpose and in any way without any compensation to User. User also agrees that Publisher does not waive any rights to use similar or related ideas previously known to Publisher, developed by its employees, or obtained from other sources.

### **2 Usage Rights**

#### **2.1 Range of Usage Rights**

The lawfully eligible User is granted the non-exclusive, non-sublicensable, nontransferable and revocable right to

use the App free of charge in accordance with the EULA for private purposes only. The license is limited in time to the term of this EULA. The license grant regarding the app including its content is limited to a period of Various months following the supply of the App by the User from the respective app store.

Deviations and additions may result from information and terms for FOSS (sec. 2.2) and for third party content (sec. 2.3).

## **2.2 Usage Rights for FOSS**

The App may contain parts of free and open source software ("FOSS"). For those components the INFORMATIONAND TERMS FOR FOSS INFORMATION.

## **2.3 Third Party Content**

### **2.3.1**

Certain websites and applications of the Publisher and its affiliates may also include features that will allow the User to interface with one or more third-party products and services (Third Party Product). Although these features may be offered by the Publisher or its affiliates, User acknowledges that the Third Party Products that User decides to interface with are not the products or services of the Publisher or its affiliates and User acknowledges and agrees that the Publisher and its affiliates do not control, and that these Terms of Use do not apply to, any Third Party Products. User agrees that the Publisher or its affiliates, as the case may be, may exchange information (including home location) and control data regarding User and User's Third Party Product of choice (including User's personal information) in order to enable the interface with the Third Party Product. Once such information is shared with the particular Third-Party Product, its use will be governed by such third party's privacy policy. User acknowledges and agrees that the Publisher and its affiliates make no representation or warranty about the safety, security or operation of any Third-Party Product. Accordingly, the Publisher and its affiliates are not responsible for User's use of any Third Party Product or any personal injury, death, property damage (including, without limitation, to User's home or vehicle), or other harm or losses arising from or relating to User's use of any Third Party Product. User should contact the third party with any questions about their Third Party Products. Use of any Third Party Products is governed by separate terms and conditions provided by such third party operator(s) of the applicable Third Party Products.

### **2.3.2**

To the extent that User interfaces with any Third Party Product that collects audio/video information, User represents and warrants that such recordings shall not infringe or violate any applicable laws or any rights of a third party, including without limitation, rights of publicity, rights of privacy or intellectual property. User hereby grants Publisher and its affiliates a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, fully paid, sublicensable and transferable license to use the information collected through the Third Party Product, including audio/video information, in connection with User's use of the App and its affiliates and only to the extent necessary or as far as User has consented to an additional use.

### **2.3.3**

If User decides to link the App with any other Third Party Product, Publisher or its affiliates (as applicable) will only share the information provided by User to the applicable third party operating such Third Party Product, and Publisher and its affiliates will never share such information with any other 3rd parties. To the extent that any information needs to be stored for the operation of the interface between the App and a Third Party Product, it will not be stored on any of the backend servers of Publisher or its affiliates.

## **2.4 Expiration of Usage Rights**

The license is granted under the resolutive condition that the User obeys this EULA. In case of a breach of the User against this EULA, the license grant regarding the App and its content automatically expires. Irrespective thereof the Publisher and the Provider of the App may revoke the granted rights to use the App by unilateral declaration with immediate effect.

## **2.5 Breaches**

In addition to the expiration of usage rights a breach against the EULA may have further legal consequences for the User, e.g. because of unlawful use of the App and its content. This also includes the omission or discontinuation of any further use of the App and claims for damages.

## **3 User Obligations**

### **3.1 Confidentiality**

“Confidential Information” shall mean the App and all other information disclosed to User that Publisher or its affiliates characterizes as confidential at the time of its disclosure either in writing or orally, except for information which User can demonstrate: (a) is previously rightfully known to User without restriction on disclosure; (b) is or becomes, from no act or failure to act on User’s part, generally known in the relevant industry or public domain; (c) is disclosed to User by a third party as a matter of right and without restriction on disclosure; or (d) is independently developed by User without access to the Confidential Information. User shall use its best efforts to preserve and protect the confidentiality of the Confidential Information at all times, both during the term hereof and for a period of at least 3 years after termination of this EULA, provided, however, that any source code User receives shall be held in confidence in perpetuity. User shall not disclose, disseminate or otherwise publish or communicate Confidential Information to any person, firm, corporation or other third party without the prior written consent of Publisher. User shall not use any Confidential Information other than in the course of the activities permitted hereunder. User shall notify Publisher in writing immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this EULA, and will cooperate with Publisher in every reasonable way to regain possession of Confidential Information and prevent any further unauthorized use. If User is legally compelled to disclose any of the Confidential Information, then, prior to such disclosure, User will (i) immediately notify Publisher prior to such disclosure to allow Publisher an opportunity to contest the disclosure, (ii) assert the privileged and confidential nature of the Confidential Information, and (iii) cooperate fully with Publisher in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, User shall disclose the Confidential Information only to the extent necessary to comply with the applicable legal requirements.

### **3.2 Obligation to Inform about Dysfunctions**

The User informs the app support about disruptions or dysfunctions regarding the App immediately to the contact stated under App Support.

### **3.3 Lawful Use**

The User is obliged and warrants to use the App only in a lawful manner and in accordance with this EULA and applicable laws.

## **4 Limitation**

### **4.1 Prohibitions Regarding Transfer and Exploitation**

User agrees not to, and User will not permit others to, (a) license, sell, rent, lease, assign, distribute, transmit, host, outsource, disclose or otherwise commercially exploit the App or make the App available to any third party,(b) copy or use the App for any purpose other than as expressly permitted in this EULA, (c) use any portion of the App on any device or computer other than the one that User owns or controls, (d) remove or alter any trademark,

logo, copyright or other proprietary notices, legends, symbols or labels in the App, or (e) modify, make derivative works of, disassemble, reverse compile or reverse engineer any part of the App (except to the extent applicable laws specifically prohibit such restriction for interoperability purposes, in which case User agrees to first contact Publisher and provide Publisher an opportunity to create such changes as are needed for interoperability purposes). User may not release the results of any performance or functional evaluation of any of the App to any third party without prior written approval of Publisher for each such release.

### **4.2. Prohibition of Changes**

It is not permitted to change, to adapt or adjust, to translate, to create derivative works, to decompile, to reverse engineer, to disassemble the App, or otherwise try to derive the source code of the App. Legal powers to do so remain unaffected, in particular the User right to decompile the App in order to gain the necessary information to achieve interoperability with other programs, as far as the Publisher does not provide these under reasonable conditions.

### **4.3 Effects on Software or Websites of the Publisher or a Third Party**

Any use of the App that has a negative impact on the App itself, associated websites or on software that the App accesses, is forbidden.

## **5 Warranty for Defects**

### **5.1 Provision Free of Charge under Exclusion of Claims with Regards to Warranties for Defects**

THE APP IS PROVIDED "AS IS" AND FREE OF CHARGE. IN PARTICULAR, NO LIABILITY WILL BE ASSUMED FOR AVAILABILITY OF THE APP AND ITS CONTENT. CLAIMS WITH REGARDS TO WARRANTIES FOR DEFECTS OF THE APP ARE EXCLUDED, EXCEPT FOR INTENT OR GROSS NEGLIGENCE OF THE PUBLISHER OR THE PROVIDER OF THE APP. THE SAME APPLIES WITH REGARDS TO POTENTIAL SUPPORT.

### **5.2 Accuracy of Information**

The Publisher makes every effort to provide accurate and up to date information within the App. HOWEVER, THE PUBLISHER DOES NOT ASSUME ANY RESPONSIBILITY REGARDING THE COMPLETENESS AND ACCURACY OF SUCH INFORMATION. THE PRESENTATION OF GOODS, SERVICES AND PRICES IS WITHOUT ANY GUARANTEE REGARDING ITS COMPLETENESS AND ACCURACY AND DOES NEITHER CONSTITUTE A CONTRACTUAL OFFER NOR A CLAIM FOR CONCLUSION OF A CONTRACT.

### **5.3 Range of Warranty**

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION 5, NOTHING IN THIS SECTION 5 SHALL LIMIT OR EXCLUDE ANY MANDATORY WARRANTY OF THE PUBLISHER OR OF THE PROVIDER TO THE EXTENT THAT SUCH LIMITATION OR EXCLUSION IS PROHIBITED UNDER APPLICABLE LAW.

## **6 Liability**

### **6.1 Liability of Publisher and Provider**

Irrespective of a fault of the Publisher or the Provider, liability for fraudulent concealment of a defect, for acceptance of a guarantee or a procurement risk and after the Product Liability Act remains unaffected. PERSONAL LIABILITY OF LEGAL REPRESENTATIVES, VICARIOUS AGENTS AND EMPLOYEES OF THE PUBLISHER AND THE PROVIDER FOR DAMAGES CAUSED BY ORDINARY NEGLIGENCE IS HEREBY EXCLUDED.

### **6.2 Indemnity**

In case a claim is being raised against the publisher or the provider of the App by the Publisher or the Provider of the App by a third party regarding a breach of the EULA by the User, the User indemnifies and holds harmless the Publisher and the Provider from any such claims and cost, that result directly or indirectly including reasonable cost for legal advice of and defense by an attorney. This does not apply as far as the user is not responsible for such a breach. The Publisher reserves the right to take over the defense against such claims.

### **6.3 Range of Liability**

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION 6, NOTHING IN THIS SECTION 6 SHALL LIMIT OR EXCLUDE THE LIABILITY OF THE PUBLISHER OR OF THE PROVIDER TO THE EXTENT THAT SUCH LIMITATION OR EXCLUSION IS PROHIBITED UNDER APPLICABLE LAW.

## **7 Final Provisions**

### **7.1 Subject to Change**

The Publisher reserves the right to change this EULA at any time. The Publisher will inform the User of material changes to the EULA. Changes will come into effect 30 days after such notification automatically. If a User does not agree with a change, User shall uninstall the App and not use it any further. By further using the App the User agrees to the changed EULA.

### **7.2 Invalidity of Individual Clauses**

In case individual provisions of this EULA shall be or become ineffective, void or unenforceable, this does not affect the remaining provisions.

### **7.3 Applicable Law**

This EULA shall be governed by the laws of the State of Georgia without giving effect to any conflicts of laws principles that require the application of the laws of a different jurisdiction..

### **8 Additional Conditions**

Depending on the Platform, additional conditions apply for the use of the App:

#### **8.1 Platform Operator**

##### **8.1.1**

This EULA is concluded between the User and the Publisher only and not with the specific Platform Operator (e.g. Apple, Google, etc.). The Platform Operator does not assume any responsibility for the App, but is- in case of a breach of the EULA - entitled to raise claims against the User to the extent that the Platform Operator is a beneficiary to the EULA.

##### **8.1.2**

The Publisher grants the User the right to use the App only on devices that are owned or operated by him and in accordance with the Platform EULA.

##### **8.1.3**

Platform Operator is in no way obliged to provide any maintenance or support services with regards to the App.

##### **8.1.4**

Platform Operator does not assume any responsibility for the review, defense, settlement or satisfaction of claims resulting from the infringement of third party intellectual property rights.

##### **8.1.5**

Platform Operator is not obliged to react on claims brought against Platform Operator by the User or a third party in connection with the App or the property and/or the use of the App. This applies among others for the following claims: (a) product liability claims; (b) claims on the basis of assertion that the App is in breach of legal or regulatory provisions and (c) consumer protection claims or similar laws and regulations.

##### **8.1.6**

If the App does not satisfy an applicable warranty or guarantee, the User is entitled to inform the Platform Operator, so that the Platform Operator may refund the purchase price to the User, if applicable. As far as legally permissible, the Platform Operator does not assume any warranty regarding the App.

##### **8.1.7**

Platform Operator and its subsidiaries are beneficiary of the privacy statement and this EULA and are after acceptance by the User therefore entitled to (and this right is deemed to have been accepted) derive rights from this EULA and raise claims against the User.

## **Part II Data Protection Provisions**

For purposes of these data protection provisions the term “Publisher” will be used irrespective of whether the Publisher is the sole contractual partner of the EULA (Part I) or a deviating Provider is being mentioned in the provider information. Responsible from a data protection point of view (controller) is in that case the Provider, apart from that the Publisher.

### **1 Use of Personal Data and Purpose Limitation**

#### **1.1**

The Publisher collects, processes and uses personal data of the User in order to provide the App and its functionalities only to the extent necessary or as far as the User has consented to an additional use. In particular the App uses data that the User enters and, if he releases them, data that is existent on the mobile device or is being generated through the use of device functionalities (Contacts, location, camera).

#### **1.2**

The use of the App is possible without access to this data. The access may be deactivated and reactivated at any time by/at Contacts are used for POI sent to vehicle, location is used for locate vehicle and other location based features. Camera used to scan VIN plate. However, if the access of the App to the data is deactivated, this might lead to limitations on functionalities.

#### **1.3**

If the User has activated the encryption of his device and has set a password/PIN, the App will store personal data in an encrypted form. Should the User not use the encryption of his device or if no password/PIN has been set, encryption of personal data cannot be ensured.

### **2 Cookies**

#### **2.1.**

The App uses cookies and similar technologies such as HTML5 Storage (together hereinafter referred to as “Cookies”), in order to set up the App in an ideal way. This results in an easement of navigation and a high level of user friendliness within the App. Cookies are small data files that will be stored on the User’s mobile device. They may be used in order to find out whether or not there has been communication from this mobile device of the User with the Publisher. Only the cookie on the mobile device of the User is being identified. Personal data may only be stored in cookies, if the User has consented or if this is necessary, e.g. in order to provide a secured login. By using the App, the User consents to the use and storage of cookies on his mobile device. The consent regarding the use and storage of cookies may be revoked at any time by uninstalling the App.

### **3 Push Notification**

#### **3.1**

The App informs the User through push notification about Asynchronous features such as remote start, locate vehicle, and account updates. These are silent notifications - data only. The push notification may be deactivated and reactivated at any time by/at No device-level push may be disabled as they are required for app functionality.

#### **4 Analysis of User Data**

In order to identify user preferences and therefore to further develop and improve the App, the Publisher analyzes the usage data of the App (App feature usage tracked via Google Analytics). This way the App may be suited/tailored towards the individual needs of the User and the service therefore be improved constantly. By using the App the User consents to this analysis. If information regarding the use of the App should not be stored or analyzed, this functionality may be deactivated or reactivated at any time by/at No deactivation provided. As far as cookies are used for the analysis, their use will no longer be carried out, if the analysis functionality has been deactivated.

#### **5 Contact Person for Privacy Matters**

In case of any questions regarding the processing of personal data within the App, the User may email the privacy team at [myprivacy@mbusa.com](mailto:myprivacy@mbusa.com). The privacy team will also take care of information requests, suggestions or complaints.

#### **Part III Additional Policies**

By accepting this agreement and by using the mbrace app, you also agree to all Mercedes-Benz USA terms available on the [MBUSA Policies Page](#) and additional terms enclosed therein.