



# IMDS Terms of Use V 5.1

## (0) The IMDS Purpose

IMDS (International Material Data System) was developed and is operated by EntServ Deutschland GmbH (legal successor of the EDS Operations Services GmbH), a DXC Technology company - subsequently called "DXC" - on behalf of various international car manufacturers with the purpose to enable the gathering of environmentally relevant information on parts and materials along the automotive supply chain by using the internet as the most cost efficient enabler for this process.

## (1) Subject of the IMDS Terms of Use

The IMDS Terms of Use (subsequently called "Terms of Use") rule the conditions between any legal entity accessing IMDS and having been properly registered by DXC (hereinafter generally referred to as "USER") – and DXC for using the IMDS.

A USER may use IMDS in two ways: The data providing USER (subsequently called "Data-Providing USER") is a USER transferring data into IMDS or forwarding received data within IMDS. The data receiving USER (subsequently called "Data-Receiving USER") is a USER who receives data out of IMDS. These Terms of Use apply to both kinds of USERS and rule the access to IMDS and the way the Data-Providing and the Data-Receiving USER interact with each other.

For the avoidance of doubt, these Terms of Use do not create contractual rights or obligations between Data-Providing and Data-Receiving Users.

## (2) Scope of Usage of IMDS

The IMDS can be used by all USERS under the condition of the acceptance of the terms, conditions, and notices contained in these Terms of Use without any modification. By pressing the "Yes"-button at the end of these Terms of Use, the USER agrees to these Terms of Use Version 5.1. As to any future versions of the Terms of Use, Article 12 shall apply. DXC grants the USER a non-transferable, non-exclusive and non-perpetual right to use IMDS and any related software, database access and interfaces according to the conditions as described in these Terms of Use.

"Usage of IMDS" with regards to these Terms of Use means any kind of interaction with the IMDS and includes, besides connecting to the IMDS and using its functionalities (i.e. data entry, data transmission, data maintenance, browsing material data sheet (hereinafter referred to as "MDS"), every usage of the IMDS web sites (e.g. browsing material lists), any functionally required installation of related software and the provision of any kind of IMDS documentation or support by DXC independent of the communication medium (online, paper, voice, electronic, etc.).

A de-compilation of the program code is prohibited. The USER is not entitled to assign the rights and obligations granted by DXC, whether in total or in parts, to third parties or to allow usage rights to third parties and/or to grant any sub-licence or right to use to any third party.

### **(3) USER Account**

Upon application and registration as set out below, DXC will provide each USER with one or more USER accounts. These accounts are password protected and can only be accessed by the USER.

To open an account for access to IMDS, the USER must complete the registration process by providing IMDS with current, complete and accurate information as prompted by the applicable registration process. The USER then will receive a User-ID and password.

The USER is exclusively responsible for maintaining the confidentiality of her/his User-ID and password. Furthermore, the USER is entirely responsible for any and all activities that occur under the USER's account, except activities of any third party outside the USER's sphere and not attributable to her/him. The USER agrees to notify DXC immediately of any unauthorized use of USER's account or any other breach of security. Unless provided for otherwise below, DXC will not be liable for any loss that the USER may incur as a result of someone else using USER's password or account, either with or without USER's knowledge.

DXC will, within the limitations as set out below, be liable if the unauthorised use is due to DXC's intentional or negligent conduct.

In the event of negligence or willful misconduct of the USER, the USER may be held liable for losses incurred by DXC due to someone else using her/his account or password. For the avoidance of doubt, the USER will not be liable for any loss of data caused by any third party outside the USER's sphere and not attributable to her/him. The USER ensures that within her/his organization the USER shall not give her/his User ID or/and PW to any other person.

### **(4) Company Administrator / END-USERS of IMDS**

Each USER of IMDS shall appoint a responsible Administrator (hereinafter referred to as "Company Administrator"). The Company Administrator shall identify herself/himself during the registration process as the responsible Administrator for the USER and will receive the USER's ID and password referred to under (3) above.

The Company Administrator shall be responsible for the administration (registration and cancellation) of employees selected by the USER to access the USER's account on behalf of the USER (hereinafter referred to as "END-USER"). The Company Administrator has the possibility to grant different rights of usage to each of the END-USERS. The Company Administrator may appoint himself/herself as an END-USER as well. Each END-USER will receive his/her own End-User-ID and password by the Company Administrator.

The Company Administrator shall be the single point of contact for DXC concerning each and all problems, questions or other items in connection with the access and usage of IMDS by the USER and her/his END-USERS.

The USER shall ensure, that the Company Administrator is highly qualified in the use of the IMDS, is aware of these Terms of Use and is responsible to ensure that the END-USERS are familiar with and behave according to these Terms of Use. USER may appoint a replacement Company Administrator at any time. The USER shall ensure that a change of the Company Administrator shall be properly recorded promptly in IMDS.



## (5) Data Input and Data Maintenance

The Data-Providing USER enters data into IMDS that may be used by the Data-Receiving USER to create the MDS.

Any data provided into IMDS is based on each Data-Providing USER's best reasonable knowledge, including the Data-Providing USER's research and experiences. The data corresponds to each Data-Providing USER's present level of knowledge. DXC is responsible for the system functionality, but has no responsibility for the data content entered by a USER. For those data DXC uploaded or may upload into IMDS and made or makes available to the USERS on behalf of any third party (such as e.g. Data Research Companies or the IMDS Material Council) the responsibility of DXC is limited to technical data integrity. In any case DXC shall provide traceability of data origin through the identification of the Data-Providing USER and the data input / modification date.

DXC will take adequate measures to ensure that the data provided into IMDS can only be completed, changed, deleted or in any other way be modified by the respective Data-Providing USER.

## (6) Scope of Usage of Data

DXC represents to USER that access to data provided into IMDS is restricted to USERS which have successfully been registered by DXC. DXC further represents that the use of and access to IMDS by the USERS shall only be possible if the USER has agreed to these Terms of Use and has not been suspended in accordance with Article 13.

### (a) USER-RELATED DATA

DATA PROVIDED WITHIN THE REGISTRATION PROCESS (HEREINAFTER REFERRED TO AS "USER-RELATED DATA" E.G. COMPANY NAME, ADDRESS) MAY BE MADE AVAILABLE TO ALL USERS BY DXC FOR THE SOLE PURPOSE OF ADDRESSING AND RELEASING DATA (E.G. BY MEANS OF RECIPIENT SELECTION LISTS, ETC.) AND OTHER REQUIRED ADMINISTRATIVE PURPOSES. USER-RELATED DATA MAY ONLY BE USED BY THE OTHER USERS FOR THE PURPOSE AS MENTIONED HEREIN.

### (b) USER provided data

The following applies to data entered into IMDS by a Data-Providing USER.

The Data-Providing USER remains owner of all data entered by Data-Providing USER. The Data-Receiving USER may use the data provided into IMDS for the sole purpose of creating material and substance documentations for products which will be at the same time used in products for the automotive industry as well as for the non-automotive industry. In the latter case such recipients of products or parts which will not be a company of the automotive industry but using parts and products of this industry supplied by DATA-Receiving USER, will be called in the following as "FURTHER CLIENTS". This includes statistical evaluations of material composition of components and complete vehicles, future evaluations on recyclability, or any other activities covered by substance regulations (including worldwide ELV<sup>1</sup> directives and relevant REACH SVHC<sup>2</sup> listed in the candidate list), RRR<sup>3</sup> and similar regulations, which are subsequently referred to as "Environmentally Relevant Information".

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<sup>1</sup> European Union's End-of-Life Vehicles Directive 2000/53/EC

<sup>2</sup> Substance of Very High Concern in the sense of European Union's Regulation 1907/2006/EC concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)

<sup>3</sup> European Union's Directive 2005/293/EC for Type Approval of cars regarding Reuse/Recovery and Reuse/Recycling targets

Material data provided by a Data-Providing USER must not be used for cost and market research studies. In particular, the data shall not be used to generate or serve as a technical data sheet for products or materials or safety data sheet for substances and preparations. It shall not be used to describe or evaluate the quality of the corresponding goods or services (see above clause (5)). Any further use and purpose needs to be approved by representatives of Data-Providing and Data-Receiving USER in advance.

DXC takes the appropriate technical measures to ensure that data sent by the Data-Providing USER is only accessible, visible or otherwise available to a designated Data-Receiving USER.

The Data-Providing USER has the possibility to mark the data submitted into IMDS as “confidential” or as “data for internal use”. These data will only be accessible, visible and available to Data-Receiving END-USERS who are specifically designated by the respective Data-Providing USER to receive the data and will not be included in any download for any Data-Receiving USER. Before “confidential data” or “data for internal use” are made available to Data-Receiving END-USERS the Data-Providing USER and the Data-Receiving USER may agree mutually upon the usage of these data.

Neither the Data-Receiving USER, nor DXC shall in any way be permitted to sell, (sub-) licence, transfer or otherwise commercially exploit the data provided into IMDS. The Data-Receiving USER is obliged, not to disclose any kind of data and information received or downloaded from IMDS to any other USER or third party or to give any other USER or third party access to such information. This explicitly includes general data, such as material lists or basic material information or similar data in IMDS. The Data-Receiving USER however, remains entitled to forward the received data to other USERS of the IMDS, his FURTHER CLIENTS as far as they are direct recipients of the physical goods, if and to the extent such USERS respectively FURTHER CLIENTS have a need to know such data. “Need to know” means that data has to be provided only to the extent that the Data-Receiving USER respectively the FURTHER CLIENT is entitled to gather environmentally relevant information on parts and materials as defined above.

#### (c) DXC Access to Accounts and Usage of Data

DXC will treat any data in IMDS as strictly confidential and will not access the USER accounts or data. Exception to this is system statistics calculation such as e.g. number of MDSs in IMDS, number of USERS online, etc. This information will be communicated as anonymous extracts of the system to the IMDS Steering Committee. Furthermore DXC' internal access to data is subject to prior written consent (an e-Mail will be sufficient) of the Data-Providing USER and is restricted to specially selected persons that may need access under supervision of security personnel for system maintenance purposes.

Without prejudice of the aforementioned rules of confidentiality, DXC is entitled to review any data provided into IMDS in order to check whether these data have been provided in compliance with these Terms of Use; DXC may only review such data if there are indications that a USER does not comply with the Terms of Use.

### **(7) No Unlawful or Prohibited Use**

As a condition of use of the IMDS, the USER will not use the IMDS in any manner that could damage or disable the IMDS or interfere with any other USER's use of IMDS.



(a) Gaining access

The USER may not attempt to gain unauthorized access to any IMDS data, other USER accounts, computer systems or networks connected to IMDS, through hacking, password mining or any other means. The USER may not obtain or attempt to obtain by any means any materials or information not intentionally made available to her/him by the Data-Providing USER.

(b) Gathering data

Within the scope of the Terms of Use, the USER is permitted to access the IMDS data exclusively by using the IMDS online screens in a web browser or by using the IMDS-a2 software. USER is allowed to make this data temporarily visible by using such screens and to make this data permanently visible by way of printout. An automatic retrieval of this data using scripts, browser plug-in, robots, crawlers or similar tools and a further automatic processing of this data is not permitted.

Only a USER holding a valid Advanced Interface license (<https://public.mdsystem.com>) shall be entitled to use its own or other data processing systems in order to retrieve the IMDS data and to prepare such data for the relevant recipients.

(c) Publication and Transfer of Data

The USER shall not be entitled to make the IMDS data available to the public or to transfer the IMDS data to any third party outside the automotive industry for such third party's commercial interest. For the avoidance of doubt a FURTHER CLIENT as defined in section 6 (b) will not be considered as a third party. Further usage of data after exporting them into in-house systems are defined in additional agreements covering the data download from IMDS, such as the "IMDS Advanced Interface" contracts between DXC and the respective IMDS USER.

The USER shall to best effort attempt to persuade his customers and sub-suppliers to receive and provide data by IMDS for reasons of quality and efficiency.

Suppliers agree that their IMDS data can be transferred by IMDS Users, derived from the Suppliers' MDS:

- into a Third-Party-System applicable in the country of supply and recognized as following the defined rules: <https://public.mdsystem.com/web/imds-public-pages/non-standard-data-use>
- to external non-IMDS recipients in as much as this information is needed to comply with regulatory requirements.

(d) Training/Workshops

The IMDS shall be used for the creation and exchange of data between supply chain partners only. Therefore, the usage of the IMDS productive server system is explicitly prohibited for commercial trainings and commercial workshops. Exceptions from this rule have to be agreed upon with DXC beforehand.

The usage of the IMDS productive server system for company internal workshops is accepted as long as the company is part of the automotive supply chain and under the condition that no additional USER IDs will be created. Furthermore, additional data must not be created on the IMDS productive server system except for the productive exchange with other business partners as defined in this Terms of Use.



## **(8) Cost of Using IMDS**

IMDS is funded by the participating vehicle manufacturers (= member companies) for the exclusive use of their supply chains. The basic use of IMDS and its services through the internet link <http://www.mdssystem.com>, menu 'System' (on the IMDS Information Pages including the USER application and registration), is free of charge only for suppliers and sub-suppliers of the member companies. For the avoidance of doubt, using IMDS to serve obligations within the supply chain respectively to provide requested information to a participating member company shall be allowed. A company may use IMDS to fulfil its own obligations as an Original Equipment Manufacturer (OEM) at the end of the supply chain, in this case the conclusion of a separate contract with DXC is compulsory. In case of doubt a registrant shall contact DXC for clarification.

DXC reserves the right to offer additional services and functions related to IMDS which are not part of the basic use of IMDS. These services and functions may require a specific charge and need to be defined in a separate agreement between the USER of such services and DXC, and are not part of the Terms of Use.

The appropriate application of IMDS may require additional investment by the USER (such as e.g. internet connection, USER hardware ...). Any such additional or associated costs shall be the responsibility of the USER.

## **(9) System and Service Availability**

Except in the event of willful misconduct, DXC has no liability under these Terms of Use that any IMDS service will be uninterrupted, timely or error-free. In the event of gross negligence, the liability of DXC will be restricted to such damages which may typically occur in comparative circumstances. Nevertheless, DXC will take adequate technical measures to provide resources and to limit the consequences of major failures. Separate agreements defining different service levels for other services than the services rendered hereby between the USER and DXC are not affected by this restriction.

## **(10) Hours of Operation**

The IMDS system is scheduled to be available Monday to Friday 24 hours per day (CET) subject to the following limitations. The DXC service centres are scheduled to be available as defined under the internet link <http://www.mdssystem.com>, menu 'Contact' on the IMDS Public Pages. However, DXC reserves the right to temporarily shut down the system for maintenance reasons. Any maintenance action within hours of operation, except for such maintenance actions that do not influence the use of the IMDS, shall be announced on the IMDS pages reasonably in advance.

## **(11) System Security**

IMDS was developed under the consideration of the highest appropriate technical information security principles available on the market. For the purpose of improving security, DXC is obliged and reserves all rights to further update the system's security in line with appropriate standards of information technology.

## **(12) Modification of IMDS Terms of Use**

In case system related security issues or other severe reasons, such as limited accessibility or limited performance, should arise, DXC may, in order to prevent abusive use of and/or to protect the proper functionality and availability of IMDS, modify the Terms of Use for this purpose. Prior to implementing such modifications DXC will consult with the major User organizations, disclose to them the reasons for such changes and discuss the necessity of changes to the Terms of Use. In the event of such a modification of the Terms of Use DXC will notify the USER either by mail or e-Mail at least thirty (30) calendar days before the modified Terms of Use will be effective.



If such modified Terms of Use are not accepted by the USER in writing or via online acceptance both parties shall have the right to terminate with thirty (30) days notice according to Article 13, second paragraph. In the extraordinary case of an imminent risk to the functionality and availability of the system requiring immediate action DXC will be released from its obligation of a prior consultation of the User organizations.

### **(13) Termination / Access Restriction**

The USER's access to IMDS and its right to use IMDS may be terminated by DXC only in case of a material breach of these Terms of Use by the USER if the USER has not been able to remedy the breach within thirty (30) calendar days after receipt of a respective written notice. In case of a material breach of these Terms of Use by the USER the access of the respective USER or END-USER to IMDS may be suspended with immediate effect until the USER/ END-USER has remedied such breach within this thirty (30) days period.

The USER may terminate the use of IMDS at any time without giving any reason by written notice to DXC. The USER's right to terminate for material breach remains unaffected.

The USER agrees that DXC may establish reasonable limits concerning the use of any IMDS storage space in the account. DXC shall be entitled to deactivate accounts that have not been accessed by the USER for more than 6 months, by giving at least thirty (30) calendar days prior written notice, and provided that the USER has not objected to the deactivation within twenty (20) calendar days from the receipt of such notice. On deactivation of a USER account, DXC will destroy any information i.e. data related to this account after previous notification of the USER thereof (at least one week before destruction). The USER may ask DXC to provide a copy of the data in his account before destroying. Any costs associated to providing such copy is to be carried by the USER. Upon termination the USER shall immediately stop the use of IMDS. Notwithstanding the aforementioned, DXC is entitled to keep one copy of all data and information of the USER after termination for the sole purpose of tendering evidence, which is to be stored in the legal department of DXC. Such data and information shall be kept confidential by DXC in accordance with Article 6 (b).

For the avoidance of doubt, in case USER requests to use its deactivated accounts at a later stage, it will notify DXC, and DXC will activate such accounts within three (3) working days.

### **(14) Copyright**

The USER may neither modify, alter, adapt or merge the IMDS software nor copy parts or the whole of it except as functionally required to use IMDS, nor use the name IMDS in conjunction with any other service or system without prior written approval of DXC.

### **(15) Force Majeure**

No party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, labour disturbances which present an unreasonable safety risk or prohibit access, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; or any other cause beyond its reasonable control, provided such party (hereinafter referred to as the "Affected Party") is without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the affected party through the use of alternate sources, work around plans or other means.

In such event, the affected party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and the affected party continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. In such case the affected party shall without undue delay notify the other party/-ies (i.e. DXC and/ or USER(S)) and describe at a reasonable level of detail the circumstances causing such delay.

#### **(16) Limitation of Liability**

Neither party will be liable for any damages based on IMDS data or for any damage, i.e. in relation to sending, storing and receiving data in IMDS, unless the damage is caused by gross negligence or willful misconduct.

The above limitation of liability shall not apply to the extent that mandatory liability is borne, in cases of injuries to life, limb and health, cases of typically foreseeable damages and in case of breach of a material obligation of the contract.

#### **(17) Indemnification**

17.1 The Data-Receiving USER acknowledges and agrees that the input of data entered by the Data-Providing USER and the accuracy and adequacy thereof, is under the exclusive control of the Data-Providing USER.

17.2 Subject to the limitations of liability as set forth in Article 16 above, DXC shall indemnify and hold the Data-Providing USERS harmless from any and all third party damage claims arising out of or relating to the fact that DXC does not, or does not place these Terms of Use completely, or does place these Terms of Use in any other way incorrectly into IMDS.

#### **(18) Disclaimer for Electronic Data Transfer**

Due to the use of electronic data transfer, neither DXC nor the Data-Providing USER do warrant or represent that the data received by the Data-Receiving USER is accurate, complete, correctly sequenced, without typographical errors, reliable or timely, or that the data will be free of errors, destructive elements and/or viruses.

#### **(19) Links to Third Party Sites**

The IMDS sites may contain links to third party web sites ("Linked Sites"). The Linked Sites are not under the control of DXC and DXC is not responsible or liable for the content of any Linked Site, including, without limitation, any link contained in a Linked Site, or any changes or updates to a Linked Site.

DXC is not responsible or liable for web-casting or any other form of transmission received from any Linked Site nor is DXC responsible or liable if the Linked Site is not working appropriately. DXC is providing these links to the USER only as a convenience, and the inclusion of any link does not imply endorsement by DXC of the site or any association with its operators. The USER is responsible for viewing and abiding by the privacy statements and Terms of Use posted at the Linked Sites.

#### **(20) Governing Law and Jurisdiction**

The validity, interpretation and implementation of these Terms of Use and the rights and obligations of the parties hereunder shall be construed in accordance with and be governed by German law. The exclusive place of jurisdiction for all disputes arising from and regarding this agreement is Frankfurt am Main, Germany.





## **(21) Export/Import Regulations**

In addition to clause (20) "Governing Law and Jurisdiction" the USER acknowledges that this Agreement is expressly made subject to any United States government and other applicable laws, regulations, orders or other restrictions regarding export from the United States or another country, and import into any country, of computer hardware, software, technical data or other items, or derivatives of such hardware, software, technical data or other items. Notwithstanding anything to the contrary in this Agreement, neither Party will directly or indirectly export (or re-export) any computer hardware, software, technical data or any other item, or any derivative of the same, or permit the shipment of the same:

(a) into (or to a national or resident of) Cuba, North Korea, Iran, North Sudan, Syria, the Crimea region of Ukraine, or any other country to which the United States has embargoed goods;

(b) to anyone on the U.S. Treasury Department's List of Specially Designated Nationals, List of Specially Designated Terrorists or List of Specially Designated Narcotics Traffickers, or the U.S. Commerce Department's Denied Parties List; or

(c) to any person, country or destination for which the United States government or a United States governmental agency requires an export license or other authorization for export, without first having obtained any such license or other authorization required.

The USER shall provide to DXC not less than ten (10) days prior written notice in the event that any of the USER Data, USER Software or USER Vendor Software that will be used or accessed by DXC in providing the services is controlled for export under the International Traffic in Arms Regulations ("ITAR") or other applicable laws. Unless otherwise expressly agreed, the USER shall be the importer of record of any items for which import is required for delivery of any portion of the services outside the United States. Each Party will reasonably cooperate with the other and will provide to the other promptly upon request any end-user certificates, affidavits regarding re-export or other certificates or documents as are reasonably requested to obtain authorizations, consents, licenses and/or permits required for any payment or any export or import of products or services under this Agreement. The provisions of this Clause 21 will survive the expiration or termination of this Agreement for any reason.

Clause (20) remains unaffected.

## **(22) Final Provisions**

If any regulation of these provisions proves to be invalid or not feasible, the effectiveness of the other regulations shall remain unaffected thereby.

The foregoing regulation shall apply mutatis mutandis in case the agreement should contain loopholes.