

# TISAX

## Participation General Terms and Conditions



### I. General

ENX Association ("ENX") is the governance body (*Trägerorganisation*) of the Trusted Information Security Assessment Exchange ("TISAX"). TISAX allows for Participants to exchange security-related information. TISAX enables Participants to seek for themselves or other Participants an information security assessment based on harmonized criteria.

Any participation in TISAX and the use of the Services and information provided by ENX and/or other Participants through TISAX requires prior registration to TISAX in order to authenticate and authorize the Participant. The registration and acceptance process and the later participation shall be governed by these TISAX Participation General Terms and Conditions ("GTC") as set forth below.

The application, the acceptance of ENX, and the GTC together constitute the binding participant agreement ("Participant Agreement") between Participant and ENX on the participation in TISAX. Other terms and conditions (e.g. general purchase conditions of Participants) shall not apply.

### II. Definitions

**Applicant:** Entity applying for becoming a Participant.

**Application:** The application process required to become a Participant.

**Assessment:** The assessment that is executed by an Audit Provider on the basis of a separate Assessment Agreement with an Auditee that includes the performance of the assessment based on the TISAX Specification of Assessments.

**Assessment Agreement:** Separate agreement between Auditee and Audit Provider governing the Assessment.

**Assessment Information:** For the purpose of this Participant Agreement, Assessment Information includes (i) Assessment-Related Information, (ii) Assessment Results, and (iii) Detailed Assessment Reports.

**Assessment Information Storage:** Information storage containing Assessment Information that may be made accessible to Participants by ENX electronically (e.g. web portal) or by other means (e.g. physical memory), subject to the proceedings described herein.

**Assessment Proceedings:** Proceedings to be performed by Auditee and Audit Provider as part of an Assessment.

**Assessment-Related Information:** Meta-information related to a pending/completed Assessment other than Assessment Results or Detailed Assessment Reports. This includes general information such as the Participant's company name, the TISAX Assessment ID, the Services, the date of the Assessment and its validity date, information on the scope of the Assessment such as the TISAX Scope ID and details that are part of the registered TISAX Scope, and the individuals involved in the Assessment. Assessment-Related Information may be made accessible to Participants through the Assessment Information Storage or upon request by ENX as set forth in this Participant Agreement.

**Assessment Result:** Summarized results of the Assessment (e.g. assessment score). This includes a short overall conclusion of the Assessment as well as the labels that were awarded to the Assessment. Additionally, summarized assessment results for specific areas or catalogues (such as

described in the ISA spiderweb diagram) can be part of the Assessment Results.

**Audit Provider:** An Audit Provider authorized by ENX to be listed within TISAX to act as an Audit Provider for performing TISAX Services.

**Audit Provider List:** List of Audit Providers published and maintained by ENX within TISAX.

**Auditee:** A Participant in its active role, seeking, undergoing, or having undergone an Assessment.

**Change-of-Control:** For the purposes hereunder the acquisition of more than 50% of the voting rights.

**Confidential Information:** Any information marked or otherwise identified by either party as proprietary or confidential or that, under the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential. Confidential Information shall in particular include any information on other Participants including such Participant's contact data and any Assessment Information.

**Detailed Assessment Report:** Full and complete report as delivered to the Auditee, in particular containing detailed results of the Assessment and all related documents.

**ENX or ENX Association:** Legal entity formed by the European automotive industry; party to the Participant Agreement and governance body of TISAX.

**Log-In Credentials:** Log-in information consisting of credentials such as log-in name, passwords, or tokens assigned to the Applicant / Participant by ENX upon Registration.

**Participant:** Generic term for Auditees (= Active Participants) and Passive Participants after their successful Application (= Registration) whereas their relationship towards each other and ENX shall be determined by this Participant Agreement. In its passive role, Participant ("Passive Participant") requests and uses the Assessment Result of another Participant through TISAX.

**Registration:** Successful Application after its acceptance by ENX; the Application was successful with receipt of the notice of acceptance by ENX to the Applicant / Participant.

**Services:** Any service of ENX provided under the Participant Agreement, including but not limited to the setting up and the maintenance of the Assessment Information Storage and the Audit Provider List or the publication of Assessment Information.

**TISAX Committee:** An advisory board of or within ENX which is particularly convened for the purpose of supporting and advising ENX with respect to TISAX and the TISAX Specification of Assessments as well as assessing complaints against Assessment Results or Detailed Assessment Reports of Audit Providers.

**TISAX Specification of Assessments:** Defines all TISAX Services including assessment types and assessment catalogues with regard to information security, prototype security, and/or data protection to be used within TISAX as published within TISAX by ENX. The Information Security Assessment (ISA), developed and maintained by the ENX working group ISA, shall form the basic assessment to be referenced in the TISAX Specification of Assessments. It includes base modules and additional modules. Auditee and Audit Provider will determine in their sole discretion the

modules within the scope of the individual Assessment to be performed under their respective Assessment Agreement.

**TISAX Services:** Any service to be performed by Audit Providers during an Assessment of an Auditee.

**Trademarks:** The trademark "ENX", the trademark "TISAX" and any other Services or TISAX Services-related trademarks, signs, or seals as communicated by ENX from time to time, notwithstanding their legal protection or protectability under applicable laws.

**Trusted Information Security Assessment Exchange or TISAX:** The overall concept of Information Security Assessment Exchange, providing for a platform for Participants to inform themselves or share and exchange Assessment Information with one another and allowing Participants and Audit Providers to connect in order to execute Assessment Proceedings.

### III. Application, Acceptance of the GTC, Acceptance Requirements

1. The Application shall be governed by these GTC. By submitting its application Applicant agrees to the full applicability of these GTC.
2. ENX' acceptance of the Application and its subsequent dedication of Log-In Credentials to the Applicant are obligatory requirements for becoming a Participant and for being entitled to participate in TISAX.
3. Acceptance of an Application by ENX is subject to
  - a. submission of the mandatory information as shown in the registration form; AND
  - b. submission of the printed, signed, and stamped registration form by regular mail or as a scan by email or submission via a pre-defined online registration process provided for by ENX; AND
  - c. binding declaration of acceptance of these GTC; AND
  - d. confirmation that Applicant owns full legal capacity and is not an individual; AND
  - e. payment of the applicable initial fee as set forth in the TISAX Fee Schedule; AND
  - f. final acceptance of Applicant by ENX.

### IV. Acceptance, Registration Fee, Conclusion of the Participant Agreement, Rejection of an Application

1. ENX will notify the Applicant about the acceptance by providing the Log-In Credentials, by email or in writing.

ENX will notify the Applicant about a rejection of the application by email or in writing. The initial fee paid to ENX by the Applicant with the submission of the Application is intended to reimburse ENX for its expenses incurred as an administrative fee and will not be reimbursed in case of a rejection of the Application.
2. The Participant Agreement as a binding contract between the Participant and ENX, consisting of the completed Application form, the acceptance of ENX and these GTC, becomes effective upon ENX' acceptance of the Application and shall govern the entire participation in TISAX including the application phase and any future use of the Services and information provided hereunder.

3. In general, becoming a Participant is open to all entities interested whereas ENX reserves the right to reject the Registration in case of legitimate interests.

A rejection of the Application may particularly occur in the following cases:

- a. reasonable security concerns with regard to the Applicant that may endanger or compromise the security and trustworthiness of TISAX or Assessments to be performed by Audit Providers hereunder, including but not limited to
    - (i) reasonable hints or suspicions for future improper participation in Assessment activities or lack of reliability with regard to the Applicant's capabilities or business practices, OR
    - (ii) reasonable hints or suspicions for abusive use of or participation in TISAX on the side of the Applicant or its affiliated companies; OR
  - b. reasonable hints that Applicant may not have the capacity to participate in TISAX or use the Services independently and/or free from governmental interference (which does not include governmental or official supervision or control with regard to general compliance with applicable laws); OR
  - c. reasonable hints for otherwise improper interference, control, or supervision by third parties.
4. When rejecting the Application based on legitimate interests, ENX will inform the Applicant accordingly.
  5. Any further rights of ENX, in particular any right to revoke access and termination rights hereunder shall remain unaffected hereby.
  6. Complaints against a rejection of the Application shall be addressed to ENX and must contain information sufficiently specifying (i) the Applicant's company (including name and seat), (ii) the scope of business of the Applicant's company, and (iii) the detailed reasons for the complaint. ENX will review and assess the complaint and shall in its own discretion either remedy the cause for the complaint or refuse remedy by giving notice to the Applicant.
  7. Any legal relationship established on the basis of the GTC between ENX and Applicant during or in the course of the Application will automatically terminate with the receipt of the rejection notice or receipt of the notice that ENX refuses remedy of a complaint against a rejection, respectively.

### V. Operation of the Platform, Services of ENX, Obligations of ENX

1. ENX will provide the Services as governance body of TISAX in accordance with the stipulations and descriptions set forth herein.
2. In particular ENX will set and maintain the Assessment Information Storage and the Audit Provider List.
3. On request of the participants, ENX will provide the then current TISAX Specification of Assessments. ENX shall inform Participants of any changes made to the TISAX Specification of Assessments.

### VI. General Obligations of Participants, Use of Assessment Information, Penalties for Misuse

1. Participant shall pay the applicable service fee in accordance with Section XVI ("Service Fee").

2. Participant shall use the Services and information provided hereunder, in particular any Assessment Information, on a need-to-know basis only. Participant shall implement and provide sufficient technical and organizational means and maintain an information security and authorization concept to ensure that any Service and information, in particular Assessment Information will not be accessed and used by any unauthorized third-party and/or unauthorized employees of Participant.
3. In case of unauthorized access, which is considered material, Participant shall immediately inform ENX and other Participants who may possibly be affected by such unauthorized activities. Participant will undertake everything in its power to instantly end any unauthorized access or use. Undertakings taken by Participant shall be reasonable and appropriately meet the nature and extent of the unauthorized access in question.
4. Participant undertakes to use the Services and information provided hereunder only within the scope of its national and, if applicable, European law.
5. Participant shall do everything in its power to safeguard that their Log-In Credentials cannot be accessed or spied out by unauthorized parties or individuals. Participant shall keep its Log-In Credentials safe from unauthorized access and shall not pass on its Log-In Credentials to any third-party or unauthorized individuals unless otherwise provided herein.
6. Participant undertakes that it will not share, transit, compile, maintain, store, or otherwise use any files, data or other information within TISAX or send emails to ENX or other Participants with the following content and not to give directions to such files: pornographic or similar material, material infringing personal rights or material that infringes property rights of third parties, exhortations to break penal or other laws, content or material with illegal content, harmful computer programs such as viruses, and hyperlinks to sites that are not in line with the above requirements.
7. At any given time ENX shall have the right to define and enforce detailed requirements where deemed necessary to ensure the security of TISAX and the Services and information provided hereunder.
8. Participant shall notify ENX about any change to its operational or technical set-up or any other amendment that could negatively impact the situation being the basis of a successful Assessment. The notification shall include (i) detailed information about the changes, (ii) any actual or possible impact of such changes to the situation being the basis of the Assessment, (iii) as well as any actual or possible impact of such changes to the Assessment Results. If the amendments made would lead to a change of the Assessment Results, Participant must have a new Assessment. ENX shall be entitled to invalidate the former Assessment on the basis of such changes. ENX' rights according to Section X.5 shall apply. Participants planning respective changes to their technical or organisational set-up should notify ENX and order a new Assessment timely before such changes are effective in order not to be without a valid Assessment Result for a possible time period between such changes become effective and the finalization of a required new Assessment.

#### **VII. Consequences in Case of Breach, Exclusion of Participants**

1. In case a Participant is in material breach of its obligations, in particular such set forth in Section VI or in case

circumstances as described in Section IV.3 arise, ENX shall be entitled to restrict and/or withdraw access rights of the responsible Participant to or within TISAX. ENX may at its own discretion restore access of the respective Participant to the TISAX website or comparable means if ENX deems the breach and/or its direct or indirect impact as being properly remedied.

2. The responsible Participant shall bear all costs resulting from such restriction and/or withdrawal including any additional on-boarding costs.
3. Any further rights or claims, in particular claims of ENX for loss and damages or rights to terminate the Participant Agreement shall remain unaffected.

#### **VIII. Nature and Effect of Assessments, Validity, Responsibility for Assessment Results**

1. Assessments shall be performed by Audit Provider on behalf of an Auditee on the basis of a separate contractual relationship between such Audit Provider and the respective Auditee. ENX will not become party to such agreements or contractual relationships.
2. ENX is only acting as intermediate between Auditees and Audit Providers. Except for the definition of the basic framework and further specifications regarding the performance of TISAX Services as set forth within the Participant Agreement, ENX will neither have any bearing on the actual contractual relationship nor on the design and the details of the Assessment Proceedings.
3. The Assessment is meant to become a quasi-standard for companies communicating, dealing, and/or providing services within the automotive sector. However, the Assessment shall neither be deemed a formal certificate, nor a quality seal and will not replace any other assessment that may be a legal or regulatory requirement. It is no legally binding attestation but only provides for the confirmation of the assessing Audit Provider that Auditee has undergone an Assessment based on the then current TISAX Specification of Assessments whereas its results are fixed in the Detailed Assessment Report and the Assessment Results.
4. Participant agrees that ENX does not screen, filter, or check for accuracy or completeness any Assessment Information provided to ENX and/or Participants within or via TISAX. Accordingly, subject to Sections XIV and XV, ENX does not assume any warranties or responsibilities with regard to the accuracy, completeness, or correctness of Assessment Proceedings performed by Audit Providers and Auditees or Assessment Information produced and shall not be responsible for any loss or damages that occur to Participants when using Assessment Information provided through TISAX.

#### **IX. Assessment Proceedings, Disputes on Assessment Results, Secrecy of Assessment Information**

1. The Assessment Proceedings shall be performed in accordance with this Participant Agreement as well as the actual ENX rules, guidelines, and requirements for Assessments.
2. To initiate Assessment Proceedings, Auditee must choose an Audit Provider listed on the Audit Provider List. The initial approach, conclusion of an Audit Provider Agreement, and the outset of the Assessment Proceedings shall be within the sole responsibility of Auditee. Depending on the status of the then current TISAX Specification of Assessments, Auditee in agreement with Audit Provider may limit the

Assessment to certain predefined modules as set forth in the then current TISAX Specification of Assessments.

3. The Assessment Proceedings shall follow the specific requirements, guidelines, and specifications for Assessment Proceedings provided by ENX through TISAX or separately. Participant as Auditee shall instruct Audit Provider in the Audit Provider Agreement accordingly.
4. Disputes regarding Assessment Results or Detailed Assessment Reports shall at first be settled internally by Auditee and Audit Provider. If the dispute cannot be settled between such parties, Auditee may initiate a dispute procedure with ENX. The initiation of a dispute, the handling of the dispute, and the decision procedures for such dispute shall follow the then actual dispute resolution procedure for Assessments, to be provided by ENX within TISAX or separately.
5. As part of the Assessment Proceedings Confidential Information and, if applicable, information subject to professional duty of secrecy may be exchanged between Audit Provider, ENX, and Participant over TISAX or separately. By agreeing upon the terms of this Participant Agreement and using the described proceedings Auditee accepts the described processing / disclosure of such information and irrevocably releases the respective Audit Provider from possible professional duties of secrecy with regard to such Assessment Information if and to the extent necessary in order to enable the aforesaid exchange of information.
6. Auditee agrees that Audit Provider will retain Assessment Information and any related documents for a time period of ten (10) years after the finalization of the Assessment ("Retention Period").

Auditee agrees that within the Retention Period and upon request of other Participants, Audit Provider shall be entitled to provide Assessment Information to such other Participants under the condition that (i) the request of the other Participant is given in the form prescribed within TISAX, (ii) Auditee has irrevocably consented to such providing of the Assessment Information to the requesting Participant towards Audit Provider, and (iii) Auditee has irrevocably released Audit Provider from its professional duty of secrecy regards such providing of the Assessment Information to the requesting Participant. The providing of the respective Assessment Information may take place immediately upon the request of the other Participant and the corresponding consent of the Auditee or at any given time thereafter but within the Retention Period.

For this service, Audit Provider shall be entitled to charge a reasonable fee from the requesting Participant, subject to a separate agreement between Audit Provider and requesting Participant.

ENX is not engaged in or part of such disclosure of Assessment Information by Audit Provider and does neither control the processes, nor the fulfilment of the prerequisites of the disclosure. Accordingly, and safe for the provisions in Sections XIV and XV below, ENX does not assume any warranty or liability referring the disclosure.

7. Nothing in this agreement hinders Participants from using any Audit Provider for other services, in particular assessments. Such further services shall, however, not be performed by using the Trademarks or other Intellectual Property of ENX. Results and reports referring to any such additional assessment services must not be combined but

separated from the Assessment Information and will not be made available through TISAX.

#### **X. Review and Inspection rights of ENX**

1. Participant as Auditee herewith irrevocably grants ENX the right to inspect the proper performance of TISAX Services in case that ENX reasonably assumes that there is a malperformance by an Auditee or its Audit Provider or a non-compliance with the assessment requirements and procedures. As part of such review ENX shall be entitled to examine Audit Provider's business processes relevant to the performance of TISAX Services.
2. Besides, ENX shall generally be entitled to conduct sample checks in two (2) percent of TISAX Services performed by an Audit Provider per contractual year. Such sample checks include e.g. the right of ENX to participate in on-going Assessment Proceedings, to re-evaluate already completed Assessments along the relevant documentation, and to inspect the relevant processes of Audit Providers and Participants in order to verify general compliance with the requirements set for Assessment Proceedings.
3. Auditee herewith irrevocably releases Audit Provider from possible duties to professional secrecy to the extent necessary for ENX and/or Audit Provider to perform or support ENX' reviews. Auditee will oblige Audit Provider in the Audit Provider Agreement to enable respective reviews of ENX and render ENX all reasonably required assistance.
4. ENX will notify concerned Audit Provider and Auditee timely in advance of an intended review. When performing the review, ENX will take into consideration all applicable laws restricting ENX' ability to perform such review (e.g. professional secrecy or data protection). ENX may commission third-party service providers to perform a review.
5. If any such review or inspection of ENX reveals reasonable doubts as to the accurateness and/or truthfulness of (an) Assessment Result(s), ENX shall be entitled to annul such Assessment(s) and the respective Assessment Result(s). ENX may at its own discretion publish such information in the same manner as the original Assessment Result had been published and/or provide a respective note to all Participants within the Assessment Information Storage. These rights of ENX are a substantial requirement to ensure the trustworthiness and reliability of TISAX and shall, therefore, not be depending upon any default or liability of Auditee.

#### **XI. Access to / Disclosure of Assessment Information**

1. Assessment Information shall be the property of Auditee as being the principal of TISAX Services. Auditee shall decide on if and how Assessment Information shall be made available to ENX or other Participants and shall govern and control the disclosure of any such information at any time.
2. Auditee agrees to a disclosure of its Assessment Information under the following circumstances:
  - a. After successful Registration and subject to its explicit consent to a publication of successful Registration to be given through TISAX, Participant will be publicly listed as registered participant within TISAX.
  - b. At the beginning of the Assessment Proceedings, Audit Provider will provide ENX with respective Assessment-Related Information. ENX will make such information available to other Participants within the Assessment

Information Storage, subject to Auditee's explicit consent to be given through TISAX.

- c. At the conclusion of the Assessment, Audit Provider will provide ENX with the Assessment Results, unless Auditee has expressly denied such transfer vis-à-vis Audit Provider (opt-out). ENX will make the Assessment Results available to other Participants within TISAX, subject to Auditee's explicit consent to be given through TISAX or in another manner as prescribed by ENX.
- d. Participants may be granted access to Assessment Information stored in the Assessment Information Storage, if and in so far (i) Auditee by using the respective means and consent forms within TISAX has released such information to the access of a particular, some identified, or all Participants and (ii) full compliance of access requesting Participant with the than actual access request procedures of ENX to be provided by ENX within TISAX or separately.

The aforesaid listings and disclosures of Assessment Information within TISAX or separately are at ENX' option. Nothing in this Participant Agreement obliges ENX to provide any information, including such Assessment Information, to any Participant, Audit Provider, or other parties nor to provide respective publication / disclosure functionalities within TISAX or separately.

3. Auditee agrees that Assessment Information disclosed in line with the requirement of this Participant Agreement or in other ways by Auditee will be used by other Participants in accordance with the then current Participant Agreement.
4. Participant shall securely store any third-party Assessment Information disclosed to him. Any disclosed third-party Assessment Information shall be deemed Confidential Information.

## **XII. Validity Period for Assessments, Information of Expiration**

1. Assessment Results shall have validity of a maximum period of 36 months.
2. After expiry of the Assessment Results, Auditee must not further use the TISAX name, logo, or trademarks until a new Assessment has successfully been performed.
3. As far as they have been published within TISAX, ENX will mark expired Assessments as "expired" or similar. If Assessment Results have been shared with other Participants, ENX shall be entitled to inform such other Participants on the expiration of the Assessment Results.

## **XIII. Intellectual Property Rights, Use of Assessment Information, Indemnification of ENX**

1. ENX' intellectual property, business secrets, otherwise protected information, Confidential Information, and know-how in existence at the time the conclusion of the Participant Agreement or created by ENX during the term of the Participant Agreement including any re-workings, modifications, and further developments of it (together referred to as "ENX Intellectual Property") shall remain with ENX. Participant is granted the non-exclusive and non-permanent (see Section XII.2) right to use the Trademarks as part of the Assessment Report in line with the stipulations of this Participant Agreement.
2. Participant grants ENX a royalty-free right to use any information or data provided by Participant or concerned Audit

Providers via TISAX or separately that is subject to intellectual property rights, business secrets, otherwise protected information or Confidential Information and know-how, in particular such included in the Assessment Information, as required for ENX to perform the Services hereunder including but not limited to the processing, storing, and use within the Assessment Information Storage or the making available to Participants under TISAX, in whole or in part, electronically or in other form without restrictions as to time and territory. ENX' use rights under this Section include the use of Participant's name, trademarks, and logos for such purposes. ENX may use Participant's name, trademarks, and logos also for advertising purposes, such as own publications, unless Participant has expressly denied such use vis-à-vis ENX following an opt-out procedure to be provided by ENX. Participant will provide ENX with respective material upon request. In case Participant opts-out of the use of its name, trademarks, and logos for advertising purposes, ENX shall be entitled to further use any advertising material already produced at the time the opt-out is declared by Participant ("Consumption Period").

3. Participant acknowledges that not only ENX and its representatives but also to its presidium, members of its executive management and its executive board, the working groups and committees responsible for TISAX and ENX, employees, assistants, contractors, and other third-party service providers to ENX may have access to and use any information or data provided by Participant or Audit Providers via TISAX, including but not limited to Assessment Information, while any such access and use is strictly limited to their role and the purposes of TISAX (e.g. review of an Assessment as a member of a TISAX board or committee hereunder).
4. If any of the information or data provided to ENX includes data, information, or other material of third parties, Participant grants the above defined use rights also with regard to any such third-party information, data, or materials and therein incorporated rights. Participant shall ensure that it has obtained all necessary rights and consents required for granting such use rights to ENX.
5. Participant shall indemnify and hold harmless ENX from any third-party claims, losses, or damages resulting from the breach of its above obligations. This shall not apply, if and to the extent Participant is not responsible for such losses, liabilities, damages, expenses, or related claims.

## **XIV. Warranty and Responsibility of ENX for third-party activities**

1. ENX shall only be responsible for providing its own services. Services provided by Audit Providers in the course of Assessment Proceedings, including the correspondence and transfer of information between Audit Providers and Auditees, shall be the exclusive responsibility of Audit Providers and Auditees, respectively. The exchange of Assessment Information between Participants without the involvement of ENX shall also be the exclusive responsibility of the concerned parties.
2. ENX disclaims all warranties, whether expressed or implied, including without limitation, the implied warranties of merchantability and fitness for a particular purpose or for the quality, availability, or merchantability of respective services offered by any third-party. This shall particularly apply with regard to any information or data provided by third parties, notably any Assessment Information and/or any TISAX

Services of Audit Providers and/or actions of Audit Providers and Auditees in the course of Assessment Proceedings or related activities.

3. ENX shall not be responsible for any activity of Participants with regard to Assessment Information or further use of TISAX or the TISAX Services provided hereunder and any loss or damage caused in this context. ENX does not assume any warranty or responsibility with regard to the accuracy, completeness, or correctness of Assessment Proceedings performed by Audit Providers and/or Auditees and/or Assessment Information produced thereunder.
4. Section XV shall remain unaffected.

#### **XV. Liability**

1. ENX will be liable for damages arising from wilful misconduct, gross negligence, product liability, and in respect to life, physical injury and health in accordance with the applicable statutory provisions. The liability of ENX for gross negligence of non-executive employees is restricted to typical foreseeable damages.
2. In cases of ordinary negligence, ENX will only be liable if ENX is in breach of material contractual obligations (cardinal obligations, *Kardinalpflichten*) whereas any such liability is restricted to typical foreseeable damages. Cardinal obligations are obligations, compliance with which is of particular importance in order to achieve the purpose of the agreement and on their fulfilment the Participant may typically rely on. In all other cases, the liability of ENX for ordinary negligence shall be excluded.
3. Subject to the above, no party shall be liable by reason of any failure to delay in the performance of its obligations due to strikes, riots, fires or explosions, acts of God, war, terrorism, governmental action, or any other cause, which is beyond their reasonable control.
4. In case of loss of data, ENX shall only be liable for such loss or damage which is required for recovering lost data in case of a proper data storage or backup performed by Participant as set forth hereunder.

#### **XVI. Fees and Payment**

1. Applicants / Participants shall pay the applicable registration and/or Service Fee as set out in the actual TISAX Fee Schedule upon receipt of the invoice by ENX. The actual TISAX Fee Schedule is available on ENX' website and will be updated on a yearly basis or even more often, if deemed necessary by ENX to reflect compelling pricing requirements. ENX will inform Participants of any such changes. Sections XVII and XIX apply.
2. Fees are subject to change (see Section XIX).
3. Payments shall be made within 30 days upon receipt of the invoice by use of the payment details communicated by ENX within the respective invoice.
4. In case of delay of payment, ENX may charge the Applicant / Participant an interest rate of eight (8) percentage points above the current base rate of the European Central Bank per annum and the reasonable costs of trying to recover overdue payment; not less than EUR 5.00 for each reminder.
5. Participant herewith agrees that ENX may commission Audit Providers dealing with the Participant in its role as an Auditee in the course of an Assessment Proceeding to collect on behalf of ENX any fees due for the Participant

hereunder. Details of such collection process shall be communicated by ENX in due time before any such collection of payments shall commence.

#### **XVII. Term and Termination, Effects of Termination**

1. The minimum term of this Participant Agreement shall be twelve (12) months starting with the acceptance of the Application by ENX ("Initial Term").
2. After the Initial Term the Participant Agreement automatically renews each time for one (1) year periods (each an "Extension Period") if not being terminated by either party with a notice period of three (3) months to the end of the respective Extension Period.
3. Both parties shall have the right to terminate this Participant Agreement with immediate effect for cause. A cause for ENX to terminate the Participant Agreement shall in particular include
  - insolvency, composition, or bankruptcy proceedings of the Participant;
  - fundamental changes in the economic situation of the Participant, including a Change-of-Control;
  - ongoing fundamental breaches of this Participant Agreement by the Participant, which are not been remedied within 30 days after ENX' request for remedy, including
    - the infringement of the Intellectual Property of ENX or the Trademarks and/or intellectual property rights of other Participants, and
    - breach of confidentiality obligations;
  - in regard to monthly payments, Participant being in delay of payment in an amount equal two months' payments; or regarding other payments, irrespective of the amount, a delay of more than three months.
  - circumstances as described under Section IV.3 above; or
  - where otherwise set forth in this Participant Agreement in a specific context.
4. As soon as the termination becomes effective, Registration will be withdrawn automatically and Participant will be disconnected from TISAX and the relevant communication means (e.g. access to the TISAX website and the Assessment Information Storage). Any access rights will be withdrawn including the disabling of any assigned Log-In Credentials. With termination coming into effect Participant will lose the right to carry or use the TISAX Assessment logo and/or ENX' Intellectual Property or Trademarks with immediate effect.
5. The provisions of the Participant Agreement shall survive any termination of the Participant Agreement until Participant's access rights have been successfully withdrawn and access has been disabled.
6. The rights and obligations according to Sections XIII.2 through XIII.5 (Intellectual Property), XVIII (Confidentiality) and XX (Final Provisions) shall survive the termination of this Participant Agreement for an indefinite period of time.
7. Participant shall tolerate any review or inspection in the meaning of Section X performed by ENX or third parties on behalf of ENX hereunder as necessary to verify Assessment Information for a period of five (5) years following the termination.

### **XVIII. Confidentiality**

1. Confidential Information provided by one party shall only be used by the other party for the performance of this Participant Agreement. Confidential Information disclosed by one party to the other will be protected and not be disclosed to any third-party by the recipient party, except with the express prior consent from the disclosing party. Besides, Confidential Information may be disclosed to affiliated companies (*verbundene Unternehmen*) on a need-to-know basis, subject to a confidentiality agreement with such affiliated company providing for the same level of protection of such Confidential Information (*Konzernprivileg*). The confidentiality obligation does not apply to any information that:
  - (i) was already known to the receiving party;
  - (ii) becomes generally available to the public or to the receiving party without breach of this Participant Agreement;
  - (iii) is independently developed by the receiving party; or
  - (iv) is required as a matter of applicable law to be disclosed by the receiving party to a competent court (or other competent governmental entity) having jurisdiction over the parties, provided that the applicable party notifies the other party without undue delay.
2. In regard of any Confidential Information, Participant expressly acknowledges that ENX comprises not only persons identified as its representatives but also persons and institutions as described in Section XIII.3.

### **XIX. Amendments to the Participant Agreement and its Attachments**

ENX shall be entitled to change or amend this Participant Agreement and its attachments where ENX deems such changes necessary to conform to ENX' legitimate interests and circumstances materially affecting the trustworthiness and functionality of TISAX. ENX shall inform Participant about the changes with twelve (12) weeks prior written notice. Participant shall be deemed to have consented to such changes unless Participant objects to the changes in writing to ENX within eight (8) weeks after receipt of the change information of ENX. If Participant objects to the changes, both, ENX and Participant shall be entitled to terminate this

Participant Agreement pursuant to Section XVII with a notice period of four (4) weeks. If Participant does not object to the changes within the set deadline, the Participant Agreement shall be deemed mutually amended.

### **XX. Final Provisions**

1. The English version of this Participant Agreement is authoritative. Any translations which might be made available are for information purposes only. Safe for Section XV, ENX shall not be held liable for any translation errors.
2. In the event that any provision of this Participant Agreement is found to be invalid or unenforceable, such provision shall be replaced by a valid and enforceable provision that most nearly reflects the original intentions of the parties. The remaining part shall continue in full force and effect.
3. ENX shall be permitted to engage subcontractors for performing the contractual obligations of ENX. ENX may assign its rights and obligations arising under the Participant Agreement in parts or completely to any third-party without approval of the Participant.
4. Besides the provisions of the Participant Agreement, no oral or other ancillary agreements have been made, and the Participant Agreement sets forth the entire agreement between the parties with respect to its subject matter. All amendments and modifications to the Participant Agreement shall not be effective unless made in writing except as set forth herein otherwise.
5. Participant will designate one or more individuals to whom all communication concerning the Participant Agreement or the Services may be addressed and will proactively keep this information up to date for the entire term of the Participant Agreement.
6. The Participant Agreement and the rights and duties of the parties arising from or relating to the Participant Agreement or its subject matter, shall be construed and interpreted in accordance with the laws of Germany, excluding the conflict of law provisions and the 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG).
7. Exclusive legal venue for any proceedings shall be Frankfurt/Main, Germany.

### **Published By**

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