

## Part A – Definitions and Registration

### I. General

The European Network Exchange Association (ENX Association), having its registered office in 96, Avenue du Général Leclerc, 92100 Boulogne-Billancourt, France, and its head office in Bockenheimer Landstrasse 97-99, 60325 Frankfurt am Main, Germany, operates a high security communications network for the data exchange of the European automotive industry. The utilisation of the network requires a registration at ENX Association in order to authenticate and authorise the users, govern the use of the network and bind the user to the Terms and Conditions as set forth below.

The signed application form of the applicant/user, the acceptance of ENX Association, and the General Terms and Conditions of the ENX Registration and Utilisation (GTC) constitute the binding agreement between an applicant/user and the ENX Association on the access to the network. Other Terms and Conditions (e.g. General Purchasing Conditions of the applicant/user) do not apply. The registration might be processed by a Business Center on behalf of ENX Association. In any case, ENX Association will exclusively be the party to the GTC.

### II. Definitions

- **Access:** A physical access (in case of the ENX SSL gateway a logical access) to the network, provided by a Certified Service Provider. Each access requires its own, individual registration number, even if an already registered user is aiming to establish further accesses
- **Access agreement:** The agreement on the use of the network between ENX Association and the user consisting of the application form of the applicant/user, the acceptance of ENX Association, and the GTC
- **Applicant:** An entity which applies for becoming a user
- **Application:** The application process in order to become a user (also referred to as registration)
- **Business Center (BC):** A national or sector-specific contact point for potential applicants and users, working on the basis of a respective contract with ENX Association. A current list of BCs can be found at [www.enxo.com](http://www.enxo.com)
- **Certified Service Provider (CSP):** A telecommunications service provider offering access to the network after successfully passing the certification according to the ENX certification and operation requirements (ENX CORE). In the event the CSP loses its status, it is not anymore allowed to provide access to the network
- **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. Expressively, any information on other users including the users contact data on incidents involving third parties such as other users under this GTC is rated as confidential information without any further identification as confidential information
- **Connection:** The individual connection (VPN tunnel) established the access hardware of two individual users
- **Delay of payment:** The applicant/user is in delay of payment, if the registration fee is not being paid within 30 days after receipt of the invoice. In case of delay of payment, ENX Association may charge the applicant 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 5.00 EUR for each reminder
- **Disconnection from the network:** Under the regulations of the GTC, ENX Association is allowed to disconnect accesses with or without prior notice. This can be done by the user's CSP disconnecting the access on request of ENX Association AND/OR by ENX Association revoking the user's ENX IPsec certificate
- **ENX Association:** The legal entity formed by the European automotive industry in order to run a communications network for the automotive industry and other branches; party to the GTC
- **First communication partner:** The ENX network is a virtual private network (VPN). Exchanging data with other users requires the establishment of an individual connection. In order to authenticate and authorise the applicant, it must name its first communication partner already being a user
- **Individual:** A private individual/consumer; individuals are not allowed to enter into an agreement under this GTC and/or to make use of the network
- **Network:** The ENX network, a multi-provider network for the industrial data exchange
- **Registration fee:** ENX Association charges either yearly fees to be paid in advance or one-off fees as set forth in the then current price list published on the ENX website. Without exceptions, all fees are subject to the German value added tax (VAT) due at the applicable date. The fees fall due immediately after receipt of the respective invoice
- **Registration number:** A unique identifier for each individual access. It is independent from any CSP
- **User:** A user of the network, registered by ENX Association
- **Utilisation of the network:** The entire activities from ordering an access to its productive utilisation

### III. User registration

1. The successful registration and the subsequent dedication of a registration number to the applicant are obligatory requirements for the utilisation of the network.
2. The acceptance of the application by ENX Association is subject to
  - a. submission of the mandatory information as shown in the online registration form AND
  - b. submission of the printed, signed and stamped registration form by fax or mail AND
  - c. acceptance of the GTC part A, B and C AND
  - d. in case of doubt confirmation that the applicant owns full legal capacity and is not an individual AND

- e. approval by the first communication partner AND
  - f. payment of the applicable registration fee (rate for the first contractual year or one-off-fee) AND
  - g. acceptance of the applicant by ENX Association including but not limited to the check, whether encryption regulation or export restrictions hinder the CSPs to offer access to the network in the user's country.
3. ENX Association will notify the applicant about the successful registration by providing the ENX registration number by an electronic message or in writing. In case of final rejection of the application the ENX Association will notify the applicant in writing.
  4. The binding contract between the user and the ENX Association becomes effective upon the acceptance of the application by ENX Association.
  5. The parties agree that the access agreement and the GTC apply to all accesses of the user.

#### **IV. Utilisation of the network without prior registration**

1. The network shall be used by business entities only and on the basis of a binding agreement between the user and ENX Association including the GTC.
2. In the event, that the network is used without prior registration, whether wilful or negligent, the user is fully bound to the restrictions of the GTC. ENX Association is entitled to immediate disconnect such unauthorised user from the network without prior notice and to immediately terminate any implied contract for cause without notice. Furthermore, the user shall pay a contractual penalty in the amount of 4,000 EUR. This does not withstand any right of ENX Association to claim for further damages. Paid penalties will be deducted from damages claimed by ENX Association.
3. If the user is a business entity and fulfils the individual requirements as defined under Section III 2 d, e and g) and did not apply for registration by slight negligence, the missing registration can exclusively be remedied by immediate application of the user AND acceptance by ENX Association AND payment of the registration fee backdated to the first day of utilisation. The remedies according to this subsection will not be provided to individuals.

#### **V. Warranty**

1. ENX-related services are exclusively provided to the user by the CSP. Apart from the registration process, the BCs and ENX Association are in no way responsible for the operation of the ENX network.
2. ENX Association disclaims all warranties, whether expressed or implied, including without limitation, the implied warranties of merchantability and fitness for a particular purpose. Besides the registration governed by the GTC, ENX Association does not give any kind of advice or suggestion regarding the utilisation of the network.
3. The BC and the ENX Association assume no warranty for the quality, availability or merchantability of services offered by the CSP or any third party.

#### **VI. Liability**

1. ENX Association will be liable for damages arising from wilful misconduct, gross negligence, product liability, and in respect to live, 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 slight negligence, ENX Association will only be liable if ENX Association is in breach of material contractual obligations, such liability is restricted to foreseeable damages, or in cases of delay or impossibility of performance. In all other cases, the liability of ENX Association for slight negligence shall be excluded.
3. 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 the reasonable control of such party.

#### **VII. Term, Termination & Changes of the GTC**

1. The term of the access agreement shall be until the end of the year in which the user has been registered if such registration has been made until September 30<sup>th</sup> of the respective year, otherwise until the end of the following calendar year (the "initial term").
2. After the initial term the access agreement automatically renews for one year periods if not being terminated by either party with a notice period of three (3) months to the end of the respective term.
3. ENX Association has the right to terminate the access agreement in writing with one month notice if the applicant/user withdraws his consent regarding the handling of obligatory data as defined in PART C – Data Privacy so that ENX Association cannot fulfil its contractual obligations.
4. ENX has the right to immediately terminate the access agreement in writing for cause, including, without limitation, insolvency, composition or bankruptcy proceedings, fundamental changes in the economic situation of the user, or ongoing fundamental breaches of the GTC by the user, including, without limitation to,
  - a. the violation of the acceptable use policy according to PART B – Utilisation Policy
  - b. the infringement of the intellectual property rights of ENX Association, in particular of the trademark "ENX"
  - c. breach of confidentiality
  - d. the applicant/user being in delay in payment for more than 60 days
  - e. the utilisation of the network without prior registration according to Section IV 1)
5. As soon as the termination becomes effective, the user will be disconnected from the network. The user acknowledges that all CSPs are contractually obliged to disconnect the user upon request of the ENX Association within 24 hours from receiving the respective request.
6. The provisions of the access agreement shall survive any termination of the access agreement until the user has been disconnected from the network.

## **VIII. Final provisions**

1. The English version of these GTC is authoritative. Any translations which might be made available are for information purposes only. ENX Association is not liable for any translation errors.
2. Confidential information provided by one party shall only be used by the other party for the performance of this contract. Confidential information disclosed by one party to the other will be protected and not be further disclosed by the recipient party, except with the express prior written permission from the disclosing party. The confidentiality obligation does not apply to any information which: (i) was already known by the receiving party; (ii) becomes generally available to the public or to the receiving party without breach of this contract; (iii) is independently developed by the receiving party; (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. In regard of any confidential information, the user expressly acknowledges that ENX Association comprises not only persons identified as its representatives but also the members of its executive board, the working groups in the field of ENX, and third party service providers to ENX Association. The confidentiality obligation does finally not apply to CSPs.
3. In the event that any provision of these GTC 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.
4. Services owed to the user by the ENX Association can also be provided by the BC. The same applies to rights to be exercised on behalf of the ENX Association. ENX Association may assign its rights and obligations arising out of the access agreement in parts or completely without approval of the user to any third party being in charge of the execution and/or supervision of the ENX registration.
5. Besides the provisions of the GTC no oral or other ancillary agreements have been reached, and the GTC sets forth the entire agreement between the parties with respect to its subject matter. All amendments and modifications to the GTC shall not be effective unless made in writing.
6. The user will designate one or more individuals to whom all communications concerning the GTC or the services provided hereunder may be addressed and will proactively keep this information up to date for the entire term of the contract.
7. The GTC and the rights and duties of the parties arising from or relating to the GTC or their 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).
8. Exclusive legal venue for any proceedings is Frankfurt/M., Germany.
9. ENX Association reserves the right to add or to change the terms of the GTC without prior notice. All changes to the terms of use will be effective once posted on [www.enxo.com](http://www.enxo.com). The continued use of the ENX network will be regarded by ENX Association as acceptance of the amended terms of use.

## **Part B – Utilisation Policy**

### **I. Prohibition of data transmission to and from third parties**

1. The ENX network is based on authentication of the user by its access. The ENX network shall be utilised only for the data exchange with other users and/or for setting up connections within a corporate network. Therefore, the user must not offer its access to third parties, neither against payment nor free of charge. The user must not transmit any data from any user to a third party outside the network or vice-versa.
2. Only the following exceptions apply
  - a. The user is allowed to establish its access at the premises of a third party data center operating/providing services on its behalf, if the ENX access is solely utilised by the user and in no respect shared among several clients of this operator.
  - b. A third party data center operator is allowed to register an ENX access on behalf of a client, if the ENX access is solely used for this individual client and in no respect shared among several clients of this operator.
  - c. The provider of a Value Added Network (VAN) for the transmission of EDI messages is allowed to utilise the network if the transmitted EDI-messages are not only transmitted by the VAN provider but also processed (EDI clearing). For the providers of Value Added Networks for the transmission of EDI messages, specific and individually agreed regulations may apply.
  - d. In cases 2a, b, c) the user must disclose its specific role to ENX Association and any user it is having a connection with.

### **II. General utilisation policy**

1. The user undertakes to use the network only within the scope of its national and the European law.
2. The user undertakes that it will not compile, maintain, store or otherwise use any files or send electronic messages with the following content and not to give directions to such files: pornographic or similar material, material infringing personal rights or material which infringes the property rights of third parties, exhortations to break penal or other laws, content or material with illegal content, harmful computer programmes such as viruses, and hyperlinks to sites which infringe the above requirements.

### **III. Security**

1. The user shall provide sufficient technical and organisational means to ensure (i) that its ENX Network access can not be used by any third party and (ii) unauthorised employees of the user do not have access to the ENX network or parts of the ENX network or single connections among the users. If such unauthorised access occurs, the user is obliged to immediately inform its CSP, or other users of the ENX network with whom it has established connections as well as ENX Association. The user will undertake everything in its power to terminate such unauthorised use.
2. In particular, the user shall permanently safeguard that acknowledged safety means (such as firewalls, anti-virus programs) are permanently installed on its systems connected with the access and that the used system software is regularly updated.
3. Authorisation and authentication information (such as log-in passwords) provided to the user by the CSP and/or ENX Association shall not be stored electronically or noticed by other means. It is to be safeguarded that such data can not be spied by third parties when being entered into the system.
4. Authorisation and authentication hardware (such as dongles, SecureID tokens, etc.) that are provided by the CSP and/or ENX Association shall be permanently kept safe. Even if such hardware has been provided by the CSP, the user shall inform ENX Association in case of a loss.
5. Any requests for confidential data such as log-in or password made from outside of the original ways of access shall not be answered. A demand via electronic message (such as email) to use a submitted interconnection to the (putative) way of access and to provide personal access data shall in no way be obeyed.
6. ENX Association reserves the right to define and enforce detailed requirements at any time in the future.
7. A user might be required by other users to follow individual security policies when establishing an individual connection with those users.

## **Part C – Data Privacy**

1. The user information is stored and processed in regard of the purposes of the access agreement or other purposes as described in the following section. ENX Association may collect, store and process all data
  - a. provided by the user in regard of its application and the utilisation of the network
  - b. provided by the user's CSP as shown under Part C, Section 2 and – if applicable – Section 3).

in its electronic databases. The data will be used solely for the purpose of the access agreement and disclosed to third parties solely as described in Part C, Section 4 and 5). The user agrees that its data may be processed by contractors of ENX Association.

2. Obligatory user information provided by the CSP: The user entitles its CSP to provide ENX Association with the following data concerning its access, even if such data have been provided by the user in parallel, in order to allow ENX Association the supervision of the network operation including authorisation of users, incidents, reporting and clearance:
  - a. access location
  - b. access type, bandwidth, SLA of the access and initial term of the contract with the CSP
  - c. status of ordering, implementation, relocation and cancellation of the access or inactivity of the user. The status "inactive" will be assigned if the registration for ENX was successful but an access to the network was not ordered within 90 days after registration.
  - d. CSP-internal customer numbers and/or user names
  - e. information concerning the technical configuration such as IP addresses, router type (n/a for SSL gateway accesses), router operating system version (n/a for SSL gateway accesses) information concerning the proper release of the certificate issued by the ENX certificate authority and the lifetime of the certificate
  - f. CSP quality reporting data such as bandwidth utilisation (n/a for SSL gateway accesses), CPU load of the router (n/a for SSL gateway accesses), information on individual incidents and escalations including but not limited to content of trouble tickets opened in regard of the access.

ENX Association will process such data and keep them stored for the term of the access agreement and for a certain period after the termination of the access agreement allowing ENX Association to settle the access agreement with the user. Such follow up period shall be until the end of the third month following the end of the calendar year in which the access agreement has been terminated.

3. Facultative user information provided by the CSP: The user entitles its Certified Service Provider to provide ENX Association with the following information concerning its access, even if such information have been provided by the user in parallel:
  - connections with other users configured on the access. ENX Association will receive information on the initial configuration of a tunnel. ENX will not have information on if, how or when a tunnel was used.

ENX Association will process such data and store it in its databases in order to allow for the measurement of the global networking level, for its global network planning as well as to have immediate information on the impact of network failures and incidents. The information will be kept no longer as being replaced by a later version.

4. ENX Association will not disclose private information to any third party with the following obligatory exceptions
  - a. The following information will be disclosed to the contact person at the first communication partner named by the user in order to allow the authentication and authorisation of the user:
    - user contact information (company, department, contact person, address, telephone, fax- and email-address, first communication partner named).
  - b. The following information will be made available solely to other users in order to create a user directory and to allow for the cost-efficient and comprehensive utilisation of the network:
    - user contact information (company, department, contact person, phone, fax and email-address) and
    - information as listed under 2c).
  - c. The following information can be disclosed for a tunnel establishment process, in case of an incident concerning individual connections between users to the CSPs and the other involved users in order to allow for troubleshooting and resolution:
    - user contact information (company, department, contact person, phone, fax- and email-address, IP addresses) and
    - information as listed under 2d) and 2e) and
  - d. information as listed under 2f) if and as far as necessary to resolve the problem.
5. ENX Association shall be entitled to store, process and publish, e.g. on the ENX website ([www.enxo.com](http://www.enxo.com)) and any other publication of ENX Association either on- or offline, the following information on the user:
  - company name, connection status, date of registration, city and country the entity is located in
  - if the user's status is "registered" or "connected" in order to attract new users and allow for an eased networking between users:

The consent of the user to store, process or publish the requested data shall survive any termination of the agreement.

6. The user guarantees that it has obtained all consents of respective private individuals necessary for
  - the transfer of their personal data to ENX Association
  - the transfer of their personal data to the CSP and the further transfer to ENX Association
  - all processing of their personal data by ENX Association and its cooperation partners according to this access agreement,
  - the collection of the personal data in a database (directory) containing all names of the contact person of the users and the publishing of such directory.

The user shall indemnify and hold ENX Association harmless from and against all claims of third parties against ENX Association and its cooperation partners based on the contractual processing of the transferred personal data of such individuals by ENX Association and/or its cooperation partners.

7. The user may request a statement on the data stored by ENX Association at any time.

Frankfurt/Main, 01 July 2007  
ENX Association