

GENERAL TERMS AND CONDITIONS

(GTaC)

for the Measured Data Management Exchange Platform

1. DEFINITIONS

“**openMDM Business Object Model**” means a description and/or definition of how to represent and access electronic measurement information for MDM, based on a generic and structured ASAM ODS application model.

“**Derivative Works**” means software, data, data models, object models or other information subject to intellectual property rights based on a pre-existing work, i.e. openMDM Core Software or openMDM Application Software, that is altered, changed, adapted, condensed or recast or software which is statically or dynamically linked against a pre-existing program.

„**Intellectual Property Rights**” means all patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world.

“**MDM**” means Measured Data Management.

“**openMDM**” is a trade mark of Audi AG, registered in the European Union (Community Trade Mark).

“**openMDM Application Software**” means any computer programs that are developed incorporating, based upon, or derived from or by otherwise using the openMDM Core Software and/or that are a Derivative Work of pre-existing openMDM Application Software.

“**openMDM Application Software License**” means the terms and conditions for distribution and sub-licensing of the openMDM Application Software set forth in these General Terms and Conditions

“**openMDM Architecture Definition**” means a description of the respective business objects and interfaces of the openMDM system environment.

“**openMDM Community**” means all Participants in the openMDM Exchange Platform.

“**openMDM Core Software**” means computer programs, configurations or documentation, which can be used for the development and production of openMDM Application Software. Currently, the openMDM application model, the openMDM business objects as semantically described in the openMDM documentation and the interface definitions belong to the openMDM Core software. openMDM Core Software shall be classified as such when being published within de openMDM Community.

“**openMDM Exchange Platform**” means a server for the storage and exchange of Measured Data Management software and information concerning the openMDM Community.

“**openMDM Framework**” means a software framework consisting of the openMDM Business Object Model, the openMDM Core Software and the openMDM Architecture Definition made available via the openMDM Exchange Platform.

“openMDM Platform Provider” is the entity that maintains and operates the openMDM Exchange Platform according to this GTaC. Currently the openMDM Platform Provider is Audi AG.

“openMDM Software” means all computer programs, including related data, or parts thereof contained in the openMDM Core Software or the openMDM Application Software

“Non Participant” means a third party that receives an **openMDM Application Software License** through a Participant.

“Object form” means a machine-readable, compiled or otherwise mechanical or automatic transformation or translation of a Source form, including but not limited to compiled object code, generated documentation and conversions of other media types.

“Participant” means an entity which participates as a registered member in the openMDM Exchange Platform.

“Source form” means un-compiled, modifiable software, data, data models or a collection of statements or declarations written in human-readable computer programming or declaration language, including but not limited to software source code, documentation source and configuration files.

2. OBJECT

- 2.1. The openMDM Exchange Platform serves companies that maintain and/or operate test and examination facilities and therewith produce measured data as well as companies that offer software for the generation, processing and/or handling of measured data. The use of the openMDM Exchange Platform by the Participants is free of charge.
- 2.2. The openMDM Platform Provider provides and operates the openMDM Exchange Platform, the openMDM Core Software and the openMDM Framework at its sole and absolute discretion. Therefore, The openMDM Platform Provider has no obligation to perform any modifications or alterations to the openMDM Exchange Platform or to the openMDM Software or to meet any service levels concerning the accessibility, performance or functioning of the openMDM Exchange Platform. The openMDM Platform Provider may adapt the openMDM Exchange Platform, the openMDM Framework and/or the openMDM Core Software to meet changes recommended or approved by the openMDM Community which are in compliance with the current technical standards and in accordance with openMDM Exchange Platform’s reasonable interests.
- 2.3. The Participants may under the conditions set out herein upload or download software or related material via the openMDM Exchange Platform in line with its technical functions. The openMDM Platform Provider is not responsible for creating backup copies of any programs, data or other information, uploaded by Participants or third parties.

- 2.4. Nothing in this agreement shall constitute the Participant as an agent of AUDI AG nor shall it give any authority to the Participant to act for or in the name of AUDI AG unless otherwise expressly stated.
- 2.5. AUDI AG will not be party of or obliged by any contract, license agreement or statement between Participants and other Participants or Non-Participants unless otherwise expressly stated.
- 2.6. To the extent that AUDI AG acts as Participant the terms for Participants shall apply accordingly, with the exception of clause 4.4.

3. REGISTRATION

- 3.1. The openMDM Platform Provider provides applicants on request via mail, email or online with a registration form. The applicant shall fill in the registration form completely and truthfully and accept these General Terms and Conditions. The Participation in the openMDM Community is subject to approval by the openMDM Platform Provider. If approved the applicant will receive login data for the platform.
- 3.2. The applicant has no entitlement to participate in the openMDM Exchange Platform. The openMDM Platform Provider has the right to refuse applicants without giving reasons.

4. TERM

- 4.1. The openMDM Platform Provider may terminate the operation of the openMDM Exchange Platform at any time by giving 4 (four) weeks written notice to Audi AG.
- 4.2. The openMDM Platform Provider may at any time and for any reason modify, alter and/or interrupt the operation of the openMDM Exchange Platform or its Services, or any parts thereof, as the openMDM Platform Provider deems appropriate in its sole and absolute discretion.
- 4.3. Participant's right to access and use the openMDM Exchange Platform terminates automatically upon Participant's material breach of any Provisions of these General Terms and Conditions and/or licenses that may apply to any of the sites or services of the openMDM Exchange Platform.
- 4.4. The openMDM Platform Provider shall be entitled to terminate the registration of each Participant and therewith its access to the openMDM Exchange Platform immediately by giving written notice to the respective Participant if the respective Participant commits culpably or otherwise a material breach of any obligation and/or regulation of these General Terms and Conditions and does not remedy such breach (if the same is capable of remedy) within 14 (fourteen) days of being required by written notice to do so.
- 4.5. On observing a 4 (four) weeks period of notice each Participant shall be entitled to terminate its participation by giving written notice to The openMDM Platform Provider.
- 4.6. The disclaimer of warranties, the limitation of liability, the jurisdiction and applicable law provisions shall survive any termination. In case of termination of this agreement

any licenses granted by Participants in accordance with this agreement during its term, i.e. openMDM Application Software Licenses, will remain in full force and effect in accordance with its terms.

- 4.7. If the openMDM Platform Provider terminates the contract or otherwise ceases to operate the openMDM Exchange Platform Audi AG shall become openMDM Platform Provider unless Audi AG notifies the other Participants via email or other means of communication of its decision to decline the task.

5. COPYRIGHT AND LICENSE TERMS

5.1. Intellectual Property Rights related to the openMDM Exchange Platform

- (a) The openMDM Exchange Platform, any names, logos and trademarks, patents, copyrights, designs and all other intellectual property rights related to the openMDM Exchange Platform shall at all times be the sole and exclusive property of AUDI AG.
- (b) The openMDM Platform Provider shall be entitled to use, integrate and display names and logos of the Participants on the internet website of the openMDM Exchange Platform for purposes of the openMDM Community.

5.2. Intellectual Property Rights related to the openMDM Core Software

- (a) All intellectual property rights related to the originally openMDM Core Software and/or the openMDM Framework shall at all times be the sole and exclusive property of AUDI AG, as far as these works are created or developed by AUDI AG. Insofar clause 5.4 is not applicable.
- (b) Subject to the condition in clause 5.4 AUDI AG hereby grants to each Participant a perpetual, worldwide, non-exclusive, free of charge, royalty-free and irrevocable license to use the openMDM Core Software in Source Form or Object Form on any number of computers and to use the openMDM Framework - in whole or in part - to create, alter or otherwise modify openMDM Software Applications. This includes the right to copy, distribute or make available parts of the openMDM Core Software in Object Form as a technical necessary part of the respective openMDM Software Application.
- (c) A Participant may sub-license the rights in the openMDM Core Software in Object Form granted in clause 5.2 (b) to Non-Participants provided that they comply with all obligations set forth in these General Terms and Conditions. Non-Participants are not entitled to sub-license, assign, charge or otherwise transfer any of their rights or obligations. Non-Participants are not entitled to use or gain access to the Source Form of the openMDM Core Software; therefore Participants must not transfer any rights in the Source Form of the openMDM Core Software to Non-Participants. The respective Participant intending to sub-license undertakes to execute and enforce a license agreement with the respective Non-Participant which contains at a minimum the terms, conditions and restrictions as set out in these General Terms and Conditions. The Participants acknowledge and agree that no such agreement will contain any provisions that are inconsistent with or diminish the legality or enforceability of the provisions as set out in this General Terms and Conditions or jeopardizes the rights of AUDI AG in the openMDM Core Software.

5.3. Intellectual Property Rights related to the openMDM Application Software

- (a) All intellectual property rights to openMDM Application Software remain with the Participant, which has created the respective programs, unless stated otherwise.
- (b) A Participant may sub-license openMDM Application Software to Non-Participants provided that they comply with all obligations set forth in these General Terms and Conditions. Non-Participants are not entitled to sub-license, assign, charge or otherwise transfer any of their rights or obligations. The respective Participant intending to sub-license to a Non-Participant undertakes to execute and enforce a license agreement with the respective Non-Participant which contains at a minimum the terms, conditions and restrictions as set out in these General Terms and Conditions. The Participants acknowledge and agree that no such agreement will contain any provisions that are inconsistent with or diminish the legality or enforceability of the provisions as set out in this General Terms and Conditions or jeopardizes the rights of AUDI AG in the openMDM Core Software or the respective Participant's rights in the openMDM Application Software. The openMDM Community may issue and amend from time to time an End User License Agreement (EULA), which reflects the requirements of this clause in regard of sub-licenses.

5.4. Reciprocity

- a) As a condition of use of the openMDM Exchange Platform or openMDM Software and especially of downloading Software from the openMDM Exchange Platform, each Participant and/or licensee of openMDM Software who receives software via the openMDM Exchange Platform undertakes to upload any Derivative Work created by using the openMDM Core Software and/or openMDM Application Software to the openMDM Exchange Platform at the latest when the Derivative Work is distributed or otherwise made available to a third party for the first time and therewith to transfer rights to use the Derivative Work according to clause 5.4 (b).
- b) By uploading openMDM Software to the openMDM Exchange Platform the respective Participant grants to each current and/or future Participant, including AUDI AG, a perpetual, worldwide, non-exclusive, no-charge, royalty-free, irrevocable and transferable license to use the respective Software in Source Form and Object Form, in whole or in parts, commercially or non-commercially, according to the provisions set forth herein. The license includes the right to copy, to publicly display, to produce Derivative Works thereof, to combine with other works (including software and physical products), as well as to distribute and to sub-license the Software or Derivative Works thereof to Participants, Non-Participants or third parties.

5.5. Notices, Disclaimer

- (a) The Participants or licensees must include in or add to each copy of openMDM Software licensed under these General Terms and Conditions in a reasonable practicable manner notices or licensing information referring to the openMDM Community. The openMDM Community or AUDI AG will lay down further requirements.
- (b) The Participants may only use the credit required by this Section for the purpose of attribution. By exercising their rights under these General Terms and Conditions, Participants or licensees shall not implicitly or explicitly assert or imply any connection with, sponsorship or endorsement by the original author, licensor and/or attribution

parties unless otherwise expressly stated herein or consented by the respective person.

- (c) The Participants or licensees shall not remove any copyright notices, names, trademarks, terms of services, disclaimer, license notices or references to the author of the code from the MDM Software.

5.6. Condition

All licenses to Participants and/or Non-Participants in this section 5 are expressly granted under the condition of fulfillment of the obligations in this section.

6. RESPONSIBILITIES AND OBLIGATIONS OF THE PARTICIPANTS

- 6.1. Participants are authorised to use the openMDM Exchange Platform in accordance with the respective terms.
- 6.2. Participants shall comply with all technical or other applicable standards, specifications and requirements whilst using the openMDM Exchange Platform and the openMDM Software. Any instructions and notes (e.g. FAQ) issued by the openMDM Platform Provider or the openMDM Community are to be heeded as amended at the time. Participants shall also meet all standards, specifications and requirements for the development and alteration of openMDM Application Software, e.g.
- openMDM Application Software Requirements
 - ASAM ODS Standard
 - Documentation according to standards set or designated by the openMDM Community.
 - Operability of the components in a defined system environment
- 6.3. The openMDM Community or AUDI AG will lay down further requirements from time to time to be observed in regard of ensuring quality and enhancing the openMDM Exchange Platform.
- 6.4. Participants shall co-operate with all other Participants and AUDI AG in furthering and promoting the openMDM Exchange Platform and the openMDM Community and providing any necessary assistance or information.
- 6.5. Each Participant shall appoint in writing one contact manager, who shall be responsible for the co-ordination of all matters relating to the openMDM Community. Each Participant shall notify in writing promptly in the event of any change.
- 6.6. Participants may refer to their membership in the openMDM Community on their respective websites, in press releases and in similar communications provided any such reference shall be with reference to the actual relationship and uses the actual openMDM logos and marketing material.
- 6.7. Participants shall ensure that its staff is sufficiently trained in using the openMDM Exchange Platform, the openMDM Core Software and all training materials

standards, specifications and requirements for the development and alteration of openMDM Application Software.

6.8. Participants remain responsible for their conduct and account to the openMDM Community. This applies in particular to any openMDM Application Software or other submissions, contributions or content used or uploaded by a Participant. The openMDM Platform Provider or AUDI AG are under no obligation to check any submissions, contributions or content of a Participant. The openMDM Platform Provider may, but is not obligated to, review submissions, contributions or content of a Participant and may delete or remove (without notice) any content that in its sole discretion determines to contravene these General Terms and Conditions or that may be offensive, illegal, or that might infringe the rights of or threatens to harm other Participants, especially if a third party requests so.

6.9. Participants shall not:

- conduct business in a manner that reflects negatively on the openMDM Community, other Participants or AUDI AG;
- make any false or misleading representation with regard to the openMDM Community, other Participants or AUDI AG.

6.10. The openMDM Platform Provider may - in consultation with the openMDM Community - lay down further rules regarding the use of and the conduct on the openMDM Exchange Platform from time to time.

7. MONITORING by Audi

7.1. Posts, comments or other content from Participants or any other third party on the openMDM Exchange Platform is neither reviewed nor endorsed or supported by AUDI AG.

7.2. AUDI AG is entitled but not obliged to examine all openMDM Software that is placed on the openMDM Exchange Platform, including terms of quality, compatibility with the openMDM Architecture Definition and defects in title. Each openMDM Application Software can be removed from AUDI AG at any time and without stating any reason.

8. WARRANTIES

8.1. The openMDM Exchange Platform is put at the Participant's disposal along with the available functions; no right to have certain functions provided exists. The openMDM Platform Provider or AUDI AG are entitled at any time to alter content or functions. No warranty of any specific availability is given for the openMDM Exchange Platform. In particular, downtimes may be caused by technical problems beyond the openMDM Platform Provider's control. Maintenance work may impair availability. In addition, unannounced maintenance measures may be necessary, such as in the event of unpredictable failures (e.g. due to attacks, viruses). No warranty can be given that the openMDM Exchange Platform or MDM Software is devoid of errors.

8.2. By uploading an openMDM Software the respective Participant declares and ensures that he is fully authorized to do so, has all rights to the respective content and is not aware of any third parties' rights (e.g. Intellectual Property Rights, personal rights or

droit moral of any person). The respective Participant is responsible and ensures that the uploaded openMDM Software complies with all laws, requirements of authorities and that the use of the uploaded openMDM Software as set out in these General Terms and Conditions does not infringe any third parties' rights.

- 8.3. The respective Participant indemnifies and keeps indemnified the openMDM Platform Provider, AUDI AG and the other Participants from and against all claims which are based on functions, malfunctions or failures of openMDM Software or the open MDM Exchange Platform brought by third parties to which the respective Participant has licensed or given access to openMDM Software.
- 8.4. Unless explicitly stated otherwise in these General Terms and Conditions, no further warranties on any rights, software, services, submissions, contributions or content are given by the openMDM Platform Provider, AUDI AG or Participants, including but not limited to availability and/or any functionality, merchantability, title, or fitness for a particular purpose or warranties arising out of law, course of dealing, custom or usage trade practice or otherwise. The openMDM Platform Provider, AUDI AG and the Participants shall act in good faith, but strictly on an "as-is" and "as-available" basis, unless expressly stated otherwise.
- 8.5. Any representation or warranty not expressly contained in these General Terms and Conditions is disclaimed and unenforceable. No oral or written information, including documentation, given by the openMDM Platform Provider, AUDI AG or a Participant, its employees or any purported agent or affiliates shall create a warranty or in any way increase the scope of the warranties given in this Agreement, and a party shall not be responsible or liable for reliance on any such information.

9. LIABILITY

- 9.1. The following provisions on the limitation of AUDI AG's and Participant's liability apply to all compensation claims and instances of liability for whatsoever legal cause, except for any claims or rights
 - that are based on mortal injury, physical harm or health damage;
 - that are based on fraudulent concealment by AUDI AG or a Participant, or on the lack of any characteristic guaranteed by AUDI AG or a Participant;
 - that are based on intent or gross negligence on the part of AUDI AG or a Participant, its statutory representatives or vicarious agents; or
 - under product liability law.

Each of the aforementioned exceptions shall be governed exclusively by statutory regulations.

- 9.2. Unless explicitly stated otherwise in these General Terms and Conditions, AUDI AG's or Participant's liability for simple negligence is excluded. Furthermore, unless explicitly stated otherwise in these General Terms and Conditions, in no event shall AUDI AG or a Participant be liable for any loss, damage or expense whatsoever, including but not limited to consequential loss, loss of profits, lost savings, loss of or

damage to data files, punitive damages and loss caused by interruption of operations.

- 9.3. In connection with contractual usage under tenancy law and suchlike, AUDI AG's liability irrespective of fault for errors already existing at the time of contract closure is expressly excluded.

10. CONFIDENTIALITY

- 10.1. "Confidential Information" is defined as that information identified or identifiable to be kept confidential, and received from Discloser in written, graphic, tangible, electronic or oral form. Confidential Information may include, without limitation, data, processes, plans, specifications, drawings, designs, materials, models, or know-how.
- 10.2. Confidential Information shall be held by the Party receiving said information ("Disclosee") in confidence and will not be reproduced, transmitted, used or disclosed by Disclosee to any other organization or entity, or to any person not in the function of supporting the openMDM Exchange Platform, unless otherwise stated in these General Terms and Conditions or with prior consent of the Disclosing Party ("Discloser"). Disclosee agrees to restrict circulation of such information within its own organization except to the extent necessary for supporting the openMDM Exchange Platform.
- 10.3. Disclosee shall take all necessary measures to keep third parties from taking notice of or using the Confidential Information. Disclosee shall carefully protect the Confidential Information applying at least the same safety standards and procedures used for their own business and manufacturing secrets. If Confidential Information is to be passed on according to these General Terms and Conditions or with the prior written consent of Discloser to other persons that are not Participants, Disclosee shall conclude appropriate contractual agreements to make sure that these persons refrain from unauthorized passing on or using the Confidential Information.
- 10.4. At Discloser's request Disclosee shall return or destroy all Confidential Information without delay, except that Disclosee may retain copy of Confidential Information if and insofar as essential for legal records. Destruction has to be confirmed in writing by Disclosee. Any right of retention of Disclosee shall insofar be excluded.
- 10.5. The obligation of secrecy shall not apply to the following information:
- Information which was provable known to Disclosee prior to disclosure by Discloser;
 - Information provable received by a third party not subjected to secrecy obligations;
 - Information generally known and such becoming generally known not based on an infringement of the secrecy obligations; or
 - Information that is provable independently developed by Disclosee without use of Confidential Information.

11. DISPUTE RESOLUTION

- 11.1. All disputes arising out of or in connection with these General Terms and Conditions or the openMDM Exchange Platform, which the Parties are unable to settle, shall be brought before the Conciliation Office of the German Association of Law and Informatics e.V. (Deutsche Gesellschaft fuer Recht und Informatik e.V., hereinafter DGRI e.V.), presently

Prof. Dr. Juergen W. Goebel
Schoene Aussicht 30
61348 Bad Homburg v.d.H.
GERMANY
Tel.: 0049-6172-9209-30
Fax: 0049-6172-9209-33
e-Mail: schlichtung@dgri.de
Homepage: <http://www.dgri.de/>

or to such other address as set forth on the website of DGRI e.V. at <http://www.dgri.de/> to be settled, fully or in part, provisionally or finally, in accordance with the Conciliation Rules valid at the time such dispute is brought before the Conciliation Office.

- 11.2. The limitation period for any claim related to the facts brought before the Conciliation Office shall be suspended from the date such conciliation request is docketed until the conciliation proceeding is concluded. Par. 203 German Civil Code (BGB) shall apply.

12. FINAL PROVISIONS

- 12.1. Participants shall ensure that any data provided to other Participants, the openMDM Platform Provider or AUDI AG is legally admissible or does not contain personal data. All test data shall be anonymised, unless personal data are necessary for the purposes of the openMDM Exchange Platform.
- 12.2. No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.
- 12.3. The relationship of the parties is that of independent contractors and nothing in this Agreement will be construed so as to constitute the parties as partners, joint venturers or co-owners or empower either party to act for, bind or otherwise create or assume any obligation on behalf of the other and neither party will hold itself out as entitled to do the same. Nothing in this Agreement will create or be deemed to create the relationship of employer and employee.
- 12.4. Participants shall not appoint a third party to carry out any of its rights and obligations without the prior written approval of AUDI AG. AUDI AG can make such approval subject to certain conditions, such as, but not limited to, the third party signing a non-disclosure agreement.
- 12.5. If any provision of these General Terms and Conditions shall made be or become invalid this shall not affect the remaining provisions which shall remain in full force and effect. The parties shall substitute any invalid provision or any

incompleteness of the General Terms and Conditions by such provision which comes as close as possible to the economic intent of the present provision.

12.6. These General Terms and Conditions have priority over other documents existing between the parties, unless other document is expressly granted priority by referring to these General Terms and Conditions and this is confirmed by AUDI AG in writing.

12.7. No term of these General Terms and Conditions is intended to confer a benefit on, or to be enforceable by any person who is not a Participant. As a basic principle, additional arrangements or amendments must be agreed in writing or must be confirmed by AUDI AG in writing.

12.8. These General Terms and Conditions shall be interpreted and construed according to the law of the Federal Republic of Germany with the exception of the United Nations Convention on Contracts for the International Sale of Goods.

12.9. The Courts of Ingolstadt, Germany shall have exclusive jurisdiction for all disputes arising in connection with these General Terms and Conditions, provided the respective Participant is an ordinary business man (Kaufmann), legal person under public law or a public law special asset (öffentlich-rechtliches Sondervermögen). Clause 11 (Dispute Resolution) remains unaffected.

End of the General Terms and Conditions, Version 3.0