



# Participant Agreement

between

**BX Digital AG**

Talacker 50

8001 Zurich

(**'BX Digital'**)

and

(**'Trading Participant'**)

(together **'Parties'**)

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## **1. Preamble**

- 1.1. BX Digital AG (**BX Digital**) is a Swiss public limited company domiciled in Zurich, which has a licence as a DLT trading system pursuant to Art. 73a of the Financial Market Infrastructure Act of 19 June 2015 (**FinMIA**) and is supervised by the Swiss Financial Market Supervisory Authority (**FINMA**).
- 1.2. In particular, the DLT trading system enables trading participants to trade DLT securities that are admitted to trading on BX Digital.
- 1.3. The use of the BX Digital DLT trading system by trading participants is subject to admission by the BX Digital Regulatory Board and the conclusion of this Participant Agreement.

## **2. Subject matter and purpose of the contract**

### **2.1. Contractual framework**

- 2.1.1. The subject matter of this Agreement is to regulate the rights and obligations of the Parties in connection with the use of the DLT trading system operated by BX Digital.
- 2.1.2. The mutual rights and obligations of BX Digital and the Trading Participant are outlined in this Agreement and the regulations referred to in clause 2.2 (collectively, the Contractual Framework).
- 2.1.3. In the event of contradictions between the various components of the Contractual Framework, the following hierarchy shall be observed:
  - a) Regulations of BX Digital
  - b) Participant Agreement
- 2.1.4. The Parties hereby declare that they enter into the contractual framework as a uniform contract, with all contractual relationships being governed by the aforementioned documents. The Parties recognise that these documents, together with any future amendments thereto, form an integral part of this Agreement.
- 2.1.5. The Trading Participant acknowledges that BX Digital may amend the Regulations. It hereby recognises the version of the Regulations as amended from time to time by BX Digital as authoritative and undertakes to comply with the Regulations in the version applicable from time to time. BX Digital shall announce the amendments in advance and in an appropriate manner.

### **2.2. Regulations**

- 2.2.1. The Trading Participant confirms that it has read and understood the participant regulations (in particular the Participant Rules), the trading regulations (in particular the Trading Rules, the Trading Directive and the Market Control Directive), the

settlement regulations (in particular the Settlement Rules) and the Reporting Rules (collectively, the **Regulations**).

2.2.2. The Trading Participant expressly recognises the Regulations as binding in relation to its relationship with BX Digital.

2.2.3. The current version of the Regulations can be obtained from the BX Digital website.

### **3. Self-regulatory organisation**

3.1. The Trading Participant confirms that it has read and understood the regulations relating to the self-regulatory organisation (in particular the Rules of the Regulatory Board, the Rules of the Sanction Commission, the Rules of the Appeal Body and the Rules of the Trading Surveillance Office).

3.2. The trading participant expressly recognises the regulations of the self-regulatory organisation as binding in relation to its relationship with the regulatory bodies of BX Digital.

3.3. The trading participant acknowledges that BX Digital may unilaterally amend the regulations of the self-regulatory organisation. It hereby acknowledges that the version of the self-regulatory organisation's regulations enacted by BX Digital and the regulatory bodies is authoritative and undertakes to comply with the applicable version of the self-regulatory organisation's regulations.

3.4. The trading participant acknowledges and recognises that BX Digital has outsourced the self-regulatory organisation to BX Swiss AG (**BX Swiss**).

### **4. Admission as a trading participant**

4.1. The trading participant confirms that it fulfils the requirements and conditions set out in the participant regulations at the commencement and for the entire duration of the contractual relationship.

4.2. In particular, the trading participant confirms that it holds a corresponding licence from FINMA or a foreign authority.

4.3. The trading participant confirms that it complies with the applicable legal provisions, in particular those in connection with the Federal Act on Combating Money Laundering and Terrorist Financing of 10 October 1997 (**Anti-Money Laundering Act**), and that it will comply with them for the entire duration of its trading participation.

## 5. Settlement

- 5.1. The Trading Participant is obliged to fulfil the following requirements in relation to BX Digital:
- a) the technical and operational requirements for connection to the BX Digital trading system; and
  - b) the technical and operational requirements for connection to the BX Digital settlement system.
- 5.2. The Trading Participant undertakes to enclose with the application for admission as a trading participant a declaration of authorisation in favour of BX Digital and the accredited service bureau used by it for the purpose of carrying out payment instructions on the Swiss Interbank Clearing (SIC) system of the SNB, operated by SIX Interbank Clearing Ltd, in order to ensure the money-side settlement of trading transactions executed on BX Digital.
- 5.3. The selling trading participant (**Seller**) shall ensure that the right of disposal and the power of disposal of the DLT securities can be transferred in accordance with the requirements of the settlement regulations. The Seller shall make the necessary declarations and give the necessary instructions and enter into the associated obligations. At the time of conclusion of this Agreement, the right to dispose of the DLT securities is transferred as follows:
- a) In order to transfer the right of disposal (similar to ownership) of the DLT Securities, the power of disposal (similar to possession) of the DLT Securities shall first be transferred from the Seller to BX Digital. BX Digital receives direct, dependent power of disposal over the DLT securities. The right of disposal and the indirect independent power of disposal over the DLT securities shall remain with the Seller.
  - b) Following the transfer of direct dependent power of disposal over the DLT securities to BX Digital, payment of the purchase price is made via the SIC system. Upon receipt of this payment, the SIC system will issue a confirmation to BX Digital. Concurrently with the payment (step by step), the Seller transfers the indirect independent power of disposal and the unrestricted right of disposal of the DLT securities to the buyer.
- 5.4. The DLT securities held in the DvP smart Contract (see details on settlement in the Settlement Rules) are segregable custody assets pursuant to Art. 88 para. 1 FinMIA, Art. 37d and Art. 16 Banking Act of 8 November 1934. In the event of the bankruptcy of BX Digital, the DLT securities held in custody in the DvP smart will be segregated in accordance with clause 5.6 of the Settlement Rules. BX Digital shall at no time acquire the unrestricted right of disposal (similar to ownership) of the DLT securities for the duration of the settlement.

## **6. Custody of the DLT securities**

- 6.1. The Trading Participant is responsible for the safekeeping of the DLT securities and the private key (**Private Keys**) of the DLT securities.
- 6.2. BX Digital assumes no responsibility with regard to the safekeeping of the DLT securities and/or the Private Keys of the DLT securities.

## **7. Suspension and termination of trading participation**

- 7.1. Suspension and/or termination of trading participation shall take place in accordance with the BX Digital regulations.
- 7.2. BX Digital shall not be liable for any damages in connection with a suspension and corresponding blocking of access to the DLT trading system and termination of orders, as well as other consequences of a suspension.

## **8. Fees and prices**

- 8.1. The Trading Participant undertakes to pay the fees in accordance with BX Digital and the rates based thereon.
- 8.2. The currently valid List of Fees and the List of Fees of the BX Digital Reporting Office shall apply.

## **9. Confidentiality and publication of the business relationship between BX Digital and the trading participant**

- 9.1. BX Digital is subject to legal obligations to maintain the confidentiality of data relating to the business relationship with the Trading Participant.
- 9.2. BX Digital has outsourced various services to BX Swiss, such as the exercise of self-regulation. In order to carry out its activities and fulfil its obligations towards the Trading Participant, BX Digital is entitled to share with BX Swiss without restriction all information concerning the Trading Participant provided to it by the Trading Participant or obtained from third parties. Conversely, BX Swiss is authorised to share with BX Digital without restriction all information concerning the Trading Participant provided to it by the Trading Participant or obtained from third parties.
- 9.3. The Trading Participant authorises BX Digital to disclose the business relationship to third parties and the public; in particular, the Trading Participant authorises BX Digital to publish its name on the BX Digital website as a Trading Participant of the DLT Trading System.
- 9.4. In all other respects, the applicable confidentiality provisions of the Participant Rules shall apply.

## 10. Outsourcing

The trading participant acknowledges and accepts that BX Digital is authorised to carry out outsourcing in accordance with the Participant Rules.

## 11. Liability

- 11.1. The trading participant recognises the applicable liability provisions in accordance with this contract and the regulations.
- 11.2. BX Digital shall fulfil its contractual and legal obligations towards the Trading Participant with the due diligence required in the ordinary course of business and shall generally only be liable for gross negligence and intent.
- 11.3. BX Digital excludes liability for any defects in the trading system and the settlement system of BX Digital and any resulting damages to the extent permitted by law. In particular, it shall not be liable if and to the extent that force majeure exists. Force majeure includes all extraordinary circumstances and events outside the sphere of responsibility and reasonable control of BX Digital. These extraordinary events include, but are not limited to, technical problems with the Internet that cannot be influenced by a party, power outages, disruptions or breakdowns of information technology or telecommunications channels, declared or imminent wars, terrorist attacks, natural events, disasters, strikes, lockouts, official intervention, legal prohibitions or due to which the respective Party is hindered in its performance despite exercising due diligence.
- 11.4. In all other respects, the liability rules apply in accordance with the Participant Rules.

## 12. Further agreements

The execution of specific activities via the DLT trading system of BX Digital may require the conclusion of further contractual bases between BX Digital and the Trading Participant. For example, admission as a Market Maker requires the regulation of specific rights and obligations in an additional agreement (**Market Making Agreement**).

## 13. Contract amendment

Amendments and additions to this Agreement may only be made with the written consent of both parties.

#### **14. Prohibition of assignment**

Except as otherwise provided in the Contractual Framework, each Party is prohibited from assigning this Agreement or individual rights and obligations under this Agreement to third parties without the written consent of the other Party.

#### **15. Official/judicial measures**

- 15.1. The Trading Participant acknowledges that BX Digital must comply with any official and/or judicial measures and may therefore be prevented from fulfilling this Agreement. BX Digital shall not be liable for any damages resulting therefrom, provided that it has acted with due business care.
- 15.2. Foreign Trading Participants are obliged to provide BX Digital with information and hand over documents if ordered to do so by FINMA (Art. 73c para. 2 FinMIA).
- 15.3. BX Digital shall immediately inform the Trading Participant of such measures, unless it is prohibited from doing so by official order.

#### **16. Waiver of rights**

If a party waives the right to enforce a contractual right in an individual case, this shall not constitute a waiver of the enforcement of the right in question in the future.

#### **17. Data protection**

- 17.1. The parties confirm compliance with the applicable data protection provisions.
- 17.2. In all other respects, the data protection regulations in accordance with the Participant Rules shall apply.

#### **18. Severability clause**

Should individual provisions of this Agreement be or become invalid or unenforceable in whole or in part, this shall not affect the validity of the remaining provisions of the Agreement. This also applies if the Agreement contains gaps that need to be filled.

#### **19. Term and cancellation of the contract**

- 19.1. This contract comes into force upon conclusion and is concluded for an indefinite period.
- 19.2. The parties may cancel this contract at the end of a calendar year subject to a notice period of 6 (six) months. Notice of cancellation must be given in writing by registered letter.
- 19.3. The termination of the Trading Participation (clause 7) by one of the Parties shall result in the simultaneous termination of this Agreement. Cancellation of this Agreement is not required in this case.

## 20. Language

This Agreement and the other documents mentioned in clause 2.2 are available in German and English, whereby the Parties sign only one language version. In the event of inconsistencies or possible interpretation difficulties between the language versions, the German version shall take precedence over the English version.

## 21. Applicable law and place of jurisdiction

21.1. The legal relationship between BX Digital and the Trading Participant shall be governed by Swiss law, excluding the conflict of laws provisions of private international law.

21.2. Zurich 1 shall be the exclusive place of jurisdiction for all disputes arising from this contract.

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Place and date

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Place and date

**BX Digital AG**

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