

# EUROPRIVACY<sup>TM/®</sup>

## GENERAL TERMS AND CONDITIONS

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# Europrivacy General Terms and Conditions

## Contents

1	Introduction and Scope .....	2
2	Terminology and Definitions.....	2
2.1	Definitions .....	2
3	General Terms and Conditions .....	3
3.1	General Provisions .....	3
3.2	Certification Process Principles .....	3
3.3	Control and Consistency Mechanism .....	5
3.4	Specific Obligations of Partners.....	5
3.5	Specific Obligations of Europrivacy Certified Clients	6
3.6	Obligation to Record and Report .....	6
3.7	Confidentiality .....	7
3.8	Documentation and Archiving.....	7
3.9	Use of Certification Material and References .....	7
3.10	Fees and Payments to the Scheme Owner .....	8
3.11	Liability and Indemnity .....	8
3.12	Warranties and Remedies .....	9
3.13	Duration and Termination .....	9
3.14	Force Majeure .....	10
3.15	Miscellaneous .....	10
3.16	Data Protection.....	10
3.17	Governing Law, Jurisdiction, Dispute Resolution..	11

## 1 Introduction and Scope

These Terms and Conditions apply to Europrivacy certification services and related consulting services (hereafter referred as the “Certification Services”), as well as to any ancillary duties and services provided within the scope of contract performance related to Europrivacy.

The Parties involved are by default:

- A. the European Centre for Certification and Privacy (ECCP) representing the Europrivacy Scheme Owner (hereafter collectively referred to as “ECCP” or the “Scheme Owner”);
- B. legal entities that have applied for receiving Europrivacy related certification services (hereafter referred as the “Client” or the “Applicant”);
- C. legal entities that have applied for delivering Europrivacy certifications (hereafter referred as the “Certification Body”);
- D. legal entities that have applied for preparing Clients to be certified according to Europrivacy by a Certification Scheme (hereafter referred as the “Consulting Firm”).

Certification Bodies (C) and Consulting Firms (D) are collectively referred to as the “Partners”.

Unless otherwise agreed in writing, all offers or services and all resulting contractual relationship(s) between the Parties shall be governed by these General Terms and Conditions. They prevail on any other terms and conditions for the obligations towards and relationship with the Scheme Owner.

## 2 Terminology and Definitions

In the Europrivacy Certification Scheme and all documents pertaining to it, the following verbal forms are used:

“**shall**” indicates a requirement;

“**should**” indicates a recommendation;

“**may**” indicates a permission;

“**can**” indicates a possibility or a capability.

### 2.1 Definitions

**Accreditation Body:** Any organisation (whether public or private) having the authority to appoint Certification Bodies.

**Applicable Data Protection Law:** The data protection regulations applicable to the Target of Evaluation, including the GDPR (General Data Protection Regulation EU/2016/679) and the complementary national and/or sector specific obligations mentioned in the normative scope.

**Application:** A request for certification services by a Client from the Europrivacy Certification Body.

**Authorised Agent:** A legal entity or natural person authorized to act and deliver services on behalf of a Party.

**Certificate:** A formal and official certificate indicating the conformity of the Certified Object with the Europrivacy Certification Scheme requirements.

**Certification:** The process of assessment and provision by an independent Certification Body of written assurance that a certified data processing meets the Europrivacy requirements.

**Certification Body:** Any entity having the authorisation to issue Europrivacy Certificates.

**Certification Audit or Assessment:** An independent audit and/or assessment carried out to determine whether the data processing in the Target of Evaluation is conform to the Europrivacy Certification Scheme requirements.

**Certification Auditor or Assessor:** A person authorised by the Certification Body to carry out a Certification assessment and/or audit

**Certification Report:** A report issued by the Certification Body that presents the results of the conformity assessment.

**Certification Mark License Terms and Conditions:** The terms and conditions of use of the licensed Certification Mark granted by the Certification Body.

**Certification Scheme:** A certification system based on specified requirements, rules and procedures. In this document, it refers to the Europrivacy Certification Scheme.

**Certification Service:** Service provided by the Certification Body in view of certifying one or several Objects.

**Certified Object:** Any data processing, process, service product, or information management system for which a Europrivacy certification has been granted.

**Client:** A legal entity that has requested Europrivacy-related services to a Certification Body or to a Consulting Firm.

# Europrivacy General Terms and Conditions

**Codes of Practice:** Any Code of Practice issued by the Europrivacy Certification Body in accordance with the Europrivacy Certification Scheme.

**Consulting Firm:** Company delivering support and services for preparing Clients to be certified.

**Disclosing Party:** Party sharing information with another Party.

**Evidence:** Any records, statements of fact or other verifiable information relevant for assessing an audit criteria.

**Findings:** The results of the evaluation of the collected audit evidence against audit criteria.

**Linked-Parties:** The parties linked to a Party, including its affiliates, parent, brother and sister corporations, successors-in-interest, agents, representatives, shareholders, officers, directors, members and employees thereof.

**Non-conformity:** Non-fulfilment of a requirement.

**Major Non-conformity:** A critical Non-conformity, which breaches the compliance of the Object to be certified with the fundamental data protection requirements, the data subject rights, or the Europrivacy Certification Scheme requirements.

**Minor Non-conformity:** A non-critical Non-conformity which does not qualify as a Major Non-conformity. A non-Conformity can be qualified of “minor” only if it has no impact on data subject’s rights and would not cause a certification to be perceived as misleading by end-users and consumers.

**Normative Scope:** The data protection regulation(s), including where applicable complementary national and/or sector specific obligations, whose compliance has to be assessed through the certification process.

**Object of Certification:** Any process, product, service or information management system for which Europrivacy certification is requested.

**Observer:** A person who accompanies the audit team but does not audit.

**Proposal:** The outline of services to be rendered by the Europrivacy Certification Body to the Client.

**Receiving Party:** Party receiving information shared by a Disclosing Party.

**Recertification:** Renewal of certification at defined intervals.

**Scheme Owner:** The organisation responsible for developing and maintaining the Europrivacy Certification Scheme. The original Scheme Owner of Europrivacy is Archimede Solutions SARL, which has delegated this responsibility to ECCP.

**Supervisory Authority:** The national authority, which has received the legal mandate to overview the certification of compliance with the applicable data protection regulations.

**Surveillance Audit:** Iterative conformity assessment activities by the Certification Body for maintaining the validity of the Europrivacy Certificate.

**Target of Evaluation:** The specific scope for which the certification is requested for a given Object to be certified.

## 3 General Terms and Conditions

### 3.1 General Provisions

This document specifies the General Terms and Conditions that are binding on and shall be applied and respected by all Parties delivering or receiving Europrivacy related services.

#### 3.1.1 Implicit Agreement

The Parties, upon applying for or delivering any Europrivacy related service, acknowledge their understanding and agree with these Terms and Conditions.

#### 3.1.2 Inclusive Definition of the Parties

As used in these General Terms and Conditions, all references to any Party implicitly includes and refers to its agents, representatives, employees, consultants, subsidiaries, owners, and affiliates.

#### 3.1.3 Territorial and Organisational Scope

Where the Party has multiple sites and branches, the contractual obligations shall apply to all the sites, except if they have been formally excluded by the contract.

#### 3.1.4 Complementary Norms and Documents

These General Terms and Conditions are complemented by the latest version of the Europrivacy related rules and prescriptions specified and published by the ECCP.

#### 3.1.5 Adaptations and Amendments

Data protection compliance requires to adapt to a fast evolving environment, which is impacted *inter alia* by jurisprudences. The Scheme Owner reserves the right to change and update the Europrivacy Certification Scheme, these Terms and Conditions, as well as other reference documents at any time.

The changes will be published on the Europrivacy website and/or communicated to the Partners in writing. The changes shall become effective within the indicated deadline.

Where changes may impact Clients, the Partners commit to inform their Clients about these changes and their implications without undue delay.

All Parties shall commit to respect and comply with such changes without undue delay. Failure to comply to published changes can result in suspension or withdrawal of Certificates.

#### 3.1.6 Written Form Required for Any Alteration

All contractual relationship(s) between the Scheme Owner and the other Parties shall be governed by written contracts and the latest version of these Terms and Conditions.

No alteration or amendment to a contract shall be valid unless made in writing and agreed by the Parties.

### 3.2 Certification Process Principles

#### 3.2.1 Commitment to Respect Data Protection

All Parties commit to respect and comply with their Applicable Data Protection Law, including the European General Data Protection Regulations. They are expected to communicate their commitment through contractually binding tools, such as Privacy Pact ([www.privacypact.com](http://www.privacypact.com)).

## Europrivacy General Terms and Conditions

### 3.2.2 Purpose of Certification

Europrivacy Certification aims to provide confidence to the public that the Certified Object is in conformity with the Applicable Data Protection Law and with the relevant Certification Scheme requirements.

### 3.2.3 Inherent Limitations to Certification

A Europrivacy Certificate constitutes an impartial indication of compliance verified by independent Auditors (or Assessors). It indicates that a certification process has been performed in conformity with the requirements and procedures of the Europrivacy Certification Scheme and that the Certified Object has successfully met the Europrivacy requirements.

The certification process is based on findings identified by the Auditor (or Assessor) through sample analysis and/or targeted audits performed during a given period. As such, it cannot guarantee that the Certified Object is and will be in full conformity with the applicable data protection regulations.

Legal conformity remains the sole and exclusive responsibility of the Client who must ensure that its Certified Object fully complies with the requirements of the Certification Scheme and the Applicable Data Protection Law.

A certification is neither a recommendation for the use of the Certified Object nor a guarantee that it is totally free from any exploitable vulnerability. Neither the Certification Body nor the Scheme Owner is liable for any loss or damage whatsoever and howsoever arising through the use of the Certified Object.

### 3.2.4 Dissociation of Consulting and Certification Services

In conformity with EDPB and ISO impartiality requirements, Consulting Firms cannot act as Certification Bodies for Clients to which they have provided consulting services. All Parties shall preserve the objectivity, independence and impartiality of the certification process. While a certification process may enable a Client to identify its non-conformities, the Certification Body and its Auditors are not allowed to provide the Client with advice or recommendations that could be considered as provision of consultancy.

### 3.2.5 Preparatory Phase

Clients may request support from qualified Consulting Firms to comply with the applicable data protection regulations and to prepare their certification process. Clients can directly access online Europrivacy documentation by registering on the Europrivacy community website accessible through the main Europrivacy website: [www.europrivacy.com](http://www.europrivacy.com).

### 3.2.6 Target of Evaluation

Once a Client has applied to be certified, the Certification Body shall clarify and if needed adapt the intended Target of Evaluation. It shall prevent any misleading certification and determine if complementary normative requirements, checks and controls should be included in the Target of Evaluation. The Certification Body shall also determine if it has the required skills and resources to deliver a reliable certification.

### 3.2.7 Certification Process

The Certification Body provides an independent and impartial evaluation of whether the Object of Certification is compliant with the Europrivacy Certification Scheme.

The Certification Body shall make its best efforts to maintain public confidence in the certification by following principles of impartiality, fairness and objectivity.

Upon completion of a Certification Audit or an Assessment, the Certification Body shall prepare and submit to the Client a Report presenting the relevant findings and conclusions. The Client will have a delay to address the identified non-conformities, and the Certification Body will update its Report.

Based on the findings and the Report, the Certification Body will make a decision whether to grant or not grant the Certificate for which the Client has applied. Any recommendation in a Report is not to be binding on the Certification Body and the decision to issue a Certificate is at the sole discretion of the Certification Body.

### 3.2.8 Impact of Findings

The Client acknowledges and accepts that findings may impact the certification process. For instance, where major non-conformities are identified or where significant changes are made to the Object of Certification during the certification process, the Certification Body may need to cancel, postpone, or repeat part or all of the certification process. The Certification Body may also need to revise its original arrangements and cost estimate.

### 3.2.9 Responsibility for Certification Decisions

The decision to issue a Certificate is at the sole discretion of the Certification Body. The Certification Body is responsible for and retains the authority for its decisions relating to certification, including the granting, refusing, maintenance of certification, expanding or reducing the scope of certification, renewing, suspending or restoring following suspension, or withdrawing of certification.

The decision shall be based on the review of the Certification Report, the identified non-conformities and the corrective actions submitted by the Client. It shall be made in conformity with the Europrivacy Certification Scheme and applicable regulations. As required by ISO, the decision shall be taken by individuals with appropriate competence who have not been involved in the Certification Audit.

### 3.2.10 Possibility to Override a Certification Decision

If a Supervisory Authority (or the Scheme Owner) is provided with compelling documentary evidence from any source that a Certified Object, in fact, suffers from non-conformities and:

- the Client has not acted expeditiously to take corrective action to correct the non-conformity; and
- the Certification Body has not acted expeditiously to review the certification status of the object;

then the Supervisory Authority (or the Scheme Owner) can, at its sole discretion, unilaterally suspend and/or withdraw the relevant Certificate to protect the integrity of, and public confidence in, the Europrivacy Certification Scheme.

## Europrivacy General Terms and Conditions

### 3.2.11 Periodic Surveillance Activities

The Certification Body is expected to carry out periodic surveillance activities in order to ascertain the continuing conformity of a Certified Object. The Certification Body reserves the right to make unannounced or short notice visits and audits as required. The Client shall provide full support to ease the performance of such activities.

### 3.2.12 Dissociation of Service Fees and Decision

Certification services and fees are charged to the Client regardless of the decision to grant (or not) the Certificate for which the Client has applied.

### 3.2.13 Ability to Use Complementary Resources

A Partner may delegate the performance of tasks to qualified agents or subcontractors who will act on its behalf, provided that the Client has formally agreed, and that the agent or subcontractor is free from any conflict of interest, and is bound by equivalent obligations of confidentiality as the Partner.

## 3.3 Control and Consistency Mechanism

In order to ensure the quality and reliability of the delivered certificates, Control and Consistency Mechanisms are established at several levels:

- The Certification Body is in charge of monitoring the compliance of its Client with regards to the delivered Europrivacy Certificates.
- Where applicable, national supervisory authorities and/or accreditation authorities are in charge of authorizing and monitoring the adequate deliverance of certificates by Certification Bodies.
- On a subsidiary basis, the Scheme Owner may also monitor and control the compliance of Parties with the Certification Scheme requirements.

Any of the above-mentioned entities in charge of monitoring the compliance of another Party (hereafter referred to as "Controlled Party") is referred to as the "Controlling Entity" and is entitled, at its discretion, to check and control the compliance of the Controlled Party with Europrivacy rules and requirements. Such controls can be part of licensing provisions or triggered by the circumstances (such as complaints or appeals).

### 3.3.1 Obligation of Reasonable Cooperation

All Controlled Parties shall provide their Controlling Entity with reasonable cooperation and assistance within the limits of the applicable regulations. For Applicants and Certification Bodies, the cooperation may include access to requested premises, documentation and information.

### 3.3.2 Control and Surveillance Costs

Controls and surveillance activities may be charged to the Controlled Party at the Controlling Entity's rates when:

- the controlling activity is required by law or by the license agreement; or
- the controlling activity is the result of a complaint and there are evidence of wrongdoing by the controlled Party.

The rates of the Controlling Party must be available to the Controlled Parties on request. The Partners are free to adopt contractual clauses with their Clients to transfer such costs to their Clients.

## 3.4 Specific Obligations of Partners

### 3.4.1 Commitment to Collaborate

The Partner commits to collaborate with:

- its Controlling Entity;
- the Scheme Owner represented by ECCP.

### 3.4.2 Commitment to Preserve Impartiality

The Partner commits to prevent any risk of effective (or perceived) conflict of interest and/or impartiality issue in the certification process, in conformity with the ISO principles. Certification Bodies are not authorised to use experts involved in consulting services for the Client they intend to certify.

### 3.4.3 Quality of Service Commitment

The Partner commits to deliver high quality, efficient and reliable Europrivacy related services that contribute to develop a positive reputation for Europrivacy.

### 3.4.4 Commitment to Use Qualified Resources

The Partner commits to use qualified experts and auditors with the adequate and demonstrated knowledge of the Europrivacy Certification Scheme requirements when delivering Europrivacy related services. It shall request its experts and auditors to study the training material provided by ECCP and to have successfully passed the corresponding tests to demonstrate their understanding of the Certification Scheme.

It shall encourage them to develop and continuously maintain their knowledge and expertise in data protection regulations, as well as in the Europrivacy Certification Scheme.

### 3.4.5 Support for Continuous Improvement

The Partner commits to support the continuous improvement of the Europrivacy Certification Scheme, including with regards to its list of Criteria, Checks and Controls, by reporting to the Scheme Owner any identified area of improvement.

### 3.4.6 Commitment to Build Trust and Reputation

The Partner commits to enhance trust in data protection certification and to develop a good reputation of Europrivacy. It shall refuse to endorse any doubtful or misleading certification, and shall oppose to any illegitimate pressure, act of corruption, or bribe. It shall have established mechanisms and procedures in place to record and handle wrongdoings.

### 3.4.7 Duty to Bind Clients with Appropriate Contractual Clauses

The Partners have the obligation to ensure that all their Clients receiving Europrivacy related services are contractually bound to respect and comply with the Europrivacy General Terms and Conditions, including *inter alia* (and not limited to) the clauses on Intellectual Property Rights, liability, indemnity, harmlessness, warranties and remedies.

## Europrivacy General Terms and Conditions

### 3.5 Specific Obligations of Europrivacy Certified Clients

#### 3.5.1 Duty to Comply with the Data Protection Regulations and the Certification Scheme

The Client shall commit to comply and maintain compliance of any Certified Object with all the provisions of the Applicable Data Protection Law and with the Europrivacy Certification Scheme requirements. The Client shall make all necessary arrangements to maintain the compliance of Certified Objects, including by implementing appropriate changes to a Certified Object when needed.

#### 3.5.2 Exclusive Responsibility

The Client shall acknowledge and accept its full and exclusive responsibility for ensuring that any Certified Objects comply and remain compliant with the Applicable Data Protection Law and with the Europrivacy Certification Scheme requirements.

The Client shall acknowledge that the Certification Body and the Scheme Owner, either by entering into the Contract or by providing the Services, neither takes the place of Client or any third-party, nor releases them from any of their obligations, nor otherwise assumes, abridges, abrogates or undertakes to discharge any duty of Client.

#### 3.5.3 Duty to Support and Facilitate the Certification

The Client shall commit to support and make all necessary arrangements to facilitate and ensure an effective and efficient certification process.

#### 3.5.4 Duty to Disclose Required Information

The Client shall provide clear and truthful information to the Certification Body. It shall report any identified non-conformity and relevant information for the Europrivacy certification.

#### 3.5.5 Duty to Report any Changes that May Negatively Affect Compliance

The Client shall, without any delay, inform the Certification Body of any and all changes in the ability of the Certified Object to comply with the Applicable Data Protection Law and/or with the Certification Scheme requirements. Such elements may include but are not limited to:

- identification of a non-conformity;
- changes in the data processing or in the organization that may negatively impact the level of data protection or extend the collection or processing of personal data.

Any breach of the Client's obligation to promptly inform may lead to the withdrawal of the Certificate by the Certification Body or by the Scheme Owner.

#### 3.5.6 Duty to Avoid Any Misleading Communication

The Client shall avoid any misleading communication with the public and any misleading use of marks of conformity. More specifically, the Client shall:

- only make claims regarding its Certification that are consistent with the scope of validly held Certificates;
- avoid any statement regarding its Certified Object that may be perceived as misleading or unauthorised;

- comply with the rules and instructions provided by the Certification Body and by the Scheme Owner with regards to communication and to the use of marks of conformity.

Upon suspension, withdrawal, or termination of a Europrivacy Certificate, the Client shall immediately discontinue its use of advertising matter that contains a reference to that certification and shall take the actions required by the Certification Scheme and those requested by the Certification Body (e.g. the return of certification documents).

#### 3.5.7 Acceptance of Certification Monitoring

The Client shall agree that the information provided to the Certification Body for certification process can be accessed and verified by the Scheme Owner and by the National Surveillance Authorities for the purpose of controlling and monitoring the certification process.

#### 3.5.8 Commitment to Permit Witness Audits

The Client shall permit witnessed audits by a Controlling Entity subject to equivalent confidentiality obligations.

#### 3.5.9 Effect of Termination on Clients

On termination of a Certification service or a Certificate validity, the Client must immediately:

- cease using the certificate in its communications;
- cease using Europrivacy name, logo and marks of conformity (or any mark that is substantially identical with or deceptively similar to Europrivacy);
- remove the Europrivacy mark from, or destroy all materials bearing the Europrivacy Mark in the Client's custody, possession or control; and
- must promptly return the Certificate and license to the Certification Body.

#### 3.5.10 Failure to Complete Surveillance Audit

Where the Certification Body is unable to complete a Surveillance Audit of a Certified Object, the Certificate will expire in principle on the corresponding Surveillance Audit deadline, respectively for:

- first Surveillance Audit: the end of the twelfth month;
- second Surveillance Audit: the end of the twenty-fourth month.

### 3.6 Obligation to Record and Report

#### 3.6.1 Duty to Record and Process Complaints

All Partners shall have a documented process for handling and investigating all complaints related to impartiality and/or conformity with certification requirements. This shall include:

- a clearly identified point of contact for internal as well as for third-party complaints;
- a record of all such complaints received, the nature of the investigation undertaken and the outcome of the investigation.

#### 3.6.2 Duty to Inform the Scheme Owner

Within the limits of their legal and contractual obligations, all Parties shall inform and report all incidents that may impact the reputation of Europrivacy to the Scheme Owner without

## Europrivacy General Terms and Conditions

delay, and shall make the complaints records available to the Scheme Owner upon request. Such reporting is complementary and does not replace or substitute any other relevant reporting obligations.

### 3.7 Confidentiality

#### 3.7.1 Duty to Protect Confidential Information

All Receiving Parties commit to protect and preserve the confidential information received from Disclosing Parties.

#### 3.7.2 Scope of Confidential Information

By default, confidential information refers to all information, data, documentation, plans and resources shared in whatever form by a Disclosing Party with a Receiving Party, except if the information can be qualified as non-confidential in conformity with the following paragraphs.

Confidential Information does not include information which:

- is generally known to the public;
- was known to the Receiving Party on a non-confidential basis prior to the time of its disclosure by the Disclosing Party, with clear evidence of such prior knowledge.

The confidentiality can be waived from information:

- intended to be published or disclosed according to the Certification Scheme rules and procedures;
- required to be disclosed pursuant to judicial or governmental ruling, order, or decree.

Where applicable, the Receiving Party takes reasonable steps to notify the Disclosing Party in advance of such disclosure to afford it the opportunity to seek a protective order or contest the appropriateness of such ruling, order, or decree.

#### 3.7.3 Restriction of Use

Unless required by law or by a judicial, governmental or other regulatory bodies, neither Party nor their agents or subcontractors shall use the Confidential Information in other manners than those specified in the Contract, nor disclose Confidential Information to any person or entity without prior written approval of the Disclosing Party except as expressly provided for herein. Receiving Party commits not to use confidential information to compete against Disclosing Party.

#### 3.7.4 Survivance of Confidentiality Obligations

In case of expiration, cancellation or termination of the contractual relationships among the Parties for any reason, the confidentiality obligations shall survive and confidentiality preserved by the Receiving Parties. Retention and retention period of shared confidential information shall be minimised and proportionate to the legitimate interest of the Party.

### 3.8 Documentation and Archiving

#### 3.8.1 Documenting the Certification Process

The Certification Body shall record relevant information, evidence and findings in order to document the certification process and to be able to justify its decisions.

#### 3.8.2 Documentation Principles

The Partners shall focus on useful information and avoid any unnecessary data collection (principle of data minimisation).

The Partners shall keep information and documents pertaining to the Client in secured document repositories.

#### 3.8.3 Retention Period

The Partners shall retain relevant information and documentation in their archives for a period of time compliant with the Certification Scheme and the applicable law in their country. Longer periods of retention may be applied to certification processes that are exposed to legal risks, as well as to cases of recertification that may require to keep documentation related to previous certifications.

At the end of the retention period, the Partners shall delete or destroy the recorded material in accordance with their standard business practices.

### 3.9 Use of Certification Material and References

#### 3.9.1 Intellectual Property

The "Europrivacy" name, its logo, and mark of conformity, as well as all documents developed, shared and/or made available by the Scheme Owner to another Party, are and shall remain the exclusive intellectual property of the Scheme Owner. Europrivacy is an international trademark registered in several countries. All Parties commit to respect and preserve the intellectual property rights of the Scheme Owner.

The Certification Body shall retain ownership and control on the reports and Certificates delivered to its Clients. The Client shall not alter or misrepresent the content of such documents in any way.

#### 3.9.2 Communication and Use of Certification

All Parties shall respect the latest version of the rules and guidelines of the Scheme Owner for the use and communication of certificates, marks and logos.

The use and communication of a delivered Certificate by the Client shall be subject to the agreement and control of the Certification Body. The Client is entitled to make copies of all or part of the Audit Report for internal use. However, the Client may only publicise extracts of any Audit Report after receiving the written permission of its Certification Body. If the Client provides copies of the certification documents to third parties, the documents shall be reproduced in their entirety or as specified by the Certification Body. The Client shall commit not to publish any details pertaining to the performance, delivery or execution of the Certification Services rendered by the Certification Body without the permission of the latter.

Europrivacy name and logo are trademarks belonging to the Scheme Owner. Using them for advertising or external communication is not permitted without the Certification Body's prior written consent and validation that such communication complies with the Scheme Owner's rules.

The Certification Body and the Scheme Owner shall reserve the right to lodge a complaint and initiate legal action if a

## Europrivacy General Terms and Conditions

publication or disclosure constitutes a breach of this clause or is considered in their sole discretion as abusive.

### 3.9.3 Certification Transfer

In case the Client transfers its activities to another organisation, the transfer of the Certificate shall be subject to the Certification Body's prior written consent. Where such consent is given, the use of the Certificate by such new Client shall be governed by equivalent contractual clauses.

## 3.10 Fees and Payments to the Scheme Owner

### 3.10.1 Scheme Owner Fees and Rates

By default, the Scheme Owner updates its rates and fees on a yearly basis. However, the Scheme Owner reserves the right to adjust its rates and fees at any time with a 30 days prior written notice to its Partners. A copy of the prevailing charging rates and fees is made available by the Scheme Owner to the Partners on request.

### 3.10.2 Payments

By default, and except if otherwise agreed in writing, the fees of the Scheme Owner services shall be paid, either by the Client or by the Partner on behalf of its Clients, before or at the time of requesting the corresponding service. The Partners are not commercial agents of the Scheme Owner.

### 3.10.3 Tax and Travel Costs of the Scheme Owner

Unless otherwise stated, quotations and reference fees of the Scheme Owner are by default exclusive of any applicable tax (i.e. Value Added Tax, Sales Tax, etc.). Where applicable, such taxes will be added to the charged price.

Quotations are by default exclusive of travelling and subsistence costs, which are charged to the Party in accordance with the Scheme Owner Travel Expense Policy.

### 3.10.4 Date of Payment and Effect of Non-Payment

Unless otherwise agreed upon, all invoices from the Scheme Owner are payable within thirty (30) days of the date of each invoice (the "Due Date"). If the Party fails to pay the invoice of the Scheme Owner in the Due date, interest will become due at a rate of 1.5% per month from the Due Date up to and including the date payment is received.

Any use of Europrivacy Certificates is conditional upon the timely payment of all related fees and charges due to the Scheme Owner. The Scheme Owner reserves the right to cease or suspend its services and/or cause the suspension or withdrawal of any Certificate of a Party who fails to pay its due.

The Party shall not be entitled to retain or defer payment of any sums due for payment to the Scheme Owner because of any dispute with the Scheme Owner or to offset them based on an alleged counterclaim against the Scheme Owner.

The Scheme Owner may elect to assert its claim for the collection of unpaid fees in any court that has competent jurisdiction. The defaulting Party shall pay all the Scheme Owner's collection costs including reasonable attorney's fees and related costs.

## 3.11 Liability and Indemnity

The Parties agree to the following with respect to liability:

### 3.11.1 No Implied Guarantees

A Europrivacy Certificate provides an impartial indication that the Certification Scheme requirements have been satisfied. It does not imply any guarantee or warranty, express or implied, of any nature by the Scheme Owner concerning the Certified Object and/or any certification activity conducted by a Certification Body, the Scheme Owner or their Authorised Agents.

### 3.11.2 Separation of Responsibilities

The responsibilities related to Europrivacy services are clearly separated:

- The Scheme Owner is in charge of maintaining and revising the Certification Scheme specifications and maintaining the Europrivacy public registry of certificates.
- The Certification Body is in charge of taking the decision to deliver (or not to deliver) a certificate to a Client.
- The Client keeps entire and exclusive responsibility for ensuring compliance of its certified data processing with the Applicable Data Protection Law and the Europrivacy requirements.

All Parties agree that the Scheme Owner cannot be held liable in any form whatsoever for any obligations of or claims asserted against a Client for failure to comply with the Applicable Data Protection Law and the Certification Scheme requirements.

### 3.11.3 Client's Liabilities

The Client shall acknowledge that a breach, default, non-compliance or non-observance of its duties and obligations under the applicable data protection regulations or otherwise (i.e. the Certification Scheme requirements) may result in Parties being in breach, default, non-compliance or non-observance of their duties, liabilities and obligations owed to third parties such that the Party will be liable in damages or otherwise will sustain loss, costs or expenses. Any such damages, loss, cost and expense are hereby agreed to be within the contemplation of the parties as being the probable results of any such breach, default, non-compliance or non-observance by the Client of its duties and obligations.

### 3.11.4 Liability Exoneration from Client's Action

The Partners and the Scheme Owner shall not be liable to the Client nor to any third party for any loss, damage or expense arising from: (i) a failure by the Client to comply with any of its obligations (including data protection regulations) herein; (ii) any actions taken or not taken on the basis of the certification; and (iii) any incorrect results, reports or Certificates arising from unclear, erroneous, incomplete, misleading or false information provided to the Certification Body.

### 3.11.5 Claims Limitation against the Scheme Owner

In order to use Europrivacy related services, the Parties must accept the Certification Scheme as provided, and shall



## Europrivacy General Terms and Conditions

formally and definitely renounce to any action or claim against the Scheme Owner and its Linked-Parties.

The Parties recognise that they shall have no cause of action or claim against the Scheme Owner (and its Linked-Parties) arising from any delivered Europrivacy Certificate. The Scheme Owner (and Linked-Parties) shall not be liable to any Parties for any loss of profit (whether direct or indirect), contracts or goodwill, loss or corruption of data or for any indirect, special or consequential loss or damage or any other claims for compensation whatsoever which arise out of or in connection with the deliverance, suspension, withdrawal or non-deliverance of a Europrivacy certificates.

The aggregate liability of the Scheme Owner (including its Linked-Parties) for all direct and indirect loss shall be limited to 110% of the Services fees effectively paid by the Party to the Scheme Owner (excluding Value Added Tax thereon) for the calendar year of the date that such liability arose.

### 3.11.6 Harmlessness of the Scheme Owner

The Partners delivering Europrivacy services agree to hold the Scheme Owner and its Linked-parties harmless, and to protect, defend and indemnify them, with respect to any claim, liability, demand, action, judgment, proceeding, costs, damages and expenses (including legal advisors' fees) in relation with the services delivered by a Partner and/or its Authorized Agent. The Partners shall adopt adequate contractual clauses to ensure that their Clients will keep the Scheme Owner and its Linked-parties harmless.

### 3.11.7 Delay for Acting

The Parties agree to have no liability to the Client for claims for loss, damage or expense unless proceedings are commenced within one year after the date of the performance, by the Party, of the service which gives rise to the claim, or in the event of any alleged non-performance, within one year of the date when such service should have been completed.

### 3.11.8 Severability of action, claim, loss or damage

In any action, claim, loss or damage arising of Europrivacy related Services, the Parties agree that their liability will be severable and claimed payment from each Party shall not exceed its proportionate share of the total liability based on its degree of fault.

### 3.11.9 Insurance

The Partners shall take adequate insurance to cover their liabilities related to Europrivacy Services.

## 3.12 Warranties and Remedies

### 3.12.1 Common Protection of the Certification Scheme

All Parties commit to defending the Certification Scheme against third party litigations, with the same care and intensity applied to protect their own assets and interests.

### 3.12.2 Breach of Warranty

If a Party breaches any warranty or any other provision of these terms, the Party must at its cost immediately notify:

- the Certification Body; and

- if required by law, the Supervisory Authority; and
- if the breach may impact the reputation of the Certification Scheme, the Scheme Owner;

and shall provide any information reasonably requested by them. The Party shall take all appropriate actions without undue delay in order to minimize the impact on the data subjects, to restore its compliance.

If the Party is a Client, it shall additionally:

- a) promptly comply with its Controlling Entity instructions to prevent further breach or minimise the adverse consequences of breach;
- b) cease using, either expressly or by implication, any certificate that does not comply any more with the Europrivacy requirements; and
- c) keep the Certification Body informed in writing of all actions taken.

### 3.12.3 Indemnity

The Parties shall indemnify the Scheme Owner from and against all losses, damages, expenses and costs that the Scheme Owner may sustain or incur as a result, whether directly or indirectly, of:

- a) any breach of data protection regulations or contractual obligations (including the Terms and Conditions and the Certification Scheme obligations) by the Party;
- b) any negligent act or omission or wilful misconduct of the Party or its officers, employees and agents; or
- c) any loss of or damage to any property or injury to or death of any person resulting, wholly or partly, from any data processing, product, process or service in relation to which a Europrivacy certification has been used by the Client.

## 3.13 Duration and Termination

### 3.13.1 Default Duration of Certification Services

By default, contractual relations between a Certification Body and a Client for a certification service should encompass the three years period of validity of the Certificate to be delivered.

### 3.13.2 Termination

The Scheme Owner is entitled, at any time to terminate its contractual relationship with a Party that is in material breach of its obligations and, following receipt of notice of such breach, the Party fails to remedy to the satisfaction of the Scheme Owner such breaches within thirty (30) days.

All Parties shall be entitled to terminate immediately the provision of the Services in the event of any arrangement with creditors, bankruptcy, insolvency, receivership or cessation of business by the other Party.

### 3.13.3 No effect for accrued rights

Termination of the License will not affect any accrued rights of any party, including any rights of appeal available to the Client under any applicable Rules.

### 3.13.4 Remaining Obligations

The clauses related to "Confidentiality", "Liability and Indemnity", "Warranties and Remedies", and "Data Protection"

## Europrivacy General Terms and Conditions

shall survive and apply notwithstanding the termination or expiry of the contractual relationship.

### 3.14 Force Majeure

If a Partner or the Scheme Owner is prevented from performing or completing any service by reason of any cause whatsoever outside its control (including but not limited to acts of god, war, terrorist activity or industrial action; failure to obtain permits, licenses or registrations; illness, death or resignation of personnel), it shall be relieved of any responsibility whatsoever for the partial or total non-performance of its contractual obligations.

### 3.15 Miscellaneous

#### 3.15.1 Duty to Use Written Notifications

Any notification made by the Parties under these Terms and Conditions must be made in writing to the official postal address or email of the other Party as set out in the Contract.

A notification will be deemed received by the other Party:

- if hand delivered, on the date of delivery;
- if sent by post, seven (7) days after the date of posting; or
- if sent by e-mail, the time indicated on the electronic receipt received by the sending Party from the other Party.

#### 3.15.2 Language of reference

If contractual agreements are made in other languages than English, in the event of a dispute the English version of the Terms and Conditions shall prevail.

#### 3.15.3 Language of Certification

The Certification Scheme and all its related documents are by default issued in English.

Unless differently agreed by the Parties, all the communications and exchange of information with the Scheme Owner shall be carried out in English or in French.

If required documentation cannot be provided in a language accepted by the Scheme Owner, the cost of any required translation shall fall on the Party providing the documentation.

#### 3.15.4 Independence of the Parties

All Parties agree that the Scheme Owner and the Partners provide their services independently, as independent contractors, and that the contracts and collaborations among the Parties do not create any agency, employment or fiduciary relationship.

#### 3.15.5 Attestation of Clarity

To the extent permitted by law, the Parties acknowledge that they have not been induced to enter into contractual relationship under the assumption, or the grant, of any warranty, representation, statement, assurance, covenant, agreement, undertaking, payment, indemnity or commitment of any nature whatsoever other than as expressly set out in these general Terms and Conditions. In any event, the Parties unconditionally and irrevocably waives any claims, rights or remedies which might arise to the Party in relation thereto.

#### 3.15.6 Transfer and Assignment of Rights

The Partners shall not assign or transfer any of their rights hereunder without the Scheme Owner's prior written consent.

Any assignment shall not relieve the assignor from any liability or contractual obligation.

#### 3.15.7 Effect of Failure to Require

Any failure by a Party to require another Party to perform any of its obligations under these Terms and Conditions shall not constitute or be interpreted as a waiver of any obligation among the Parties.

#### 3.15.8 Appeals and Complaints Mechanisms

The Certification Body and the Scheme Owner provide appeal and complaint mechanisms. Shall a Party wish to complain or appeal a decision, it shall do so in accordance with the corresponding Party's Complaints and Appeals Processes (as amended from time to time), which are available on request.

### 3.16 Data Protection

In compliance with the provisions set out by the European General Data Protection Regulation (Regulation EU 2016/679), personal data exchanged between the Parties in execution of their contractual relationship shall be processed by each Party for the sole purposes indicated in the contract and in order to carry out, as well as to comply with, any legal national and/or European obligations, and/or any provisions issued by the competent National Supervisory Authority. Personal data shall be processed according to the principles of lawfulness and fairness with appropriate security measures for their protection and procedures in place to guarantee the data subjects' rights and freedoms.

The violation of the provisions of this Article exposes the non-complying Party to hold the other Party harmless and to compensate it for any damage caused.

#### 3.16.1 Data Breach Notifications

Any Party that identifies a breach of personal data under its direct responsibility shall, if the data are subject to the GDPR:

- Notify the competent national supervisory authority without undue delay and, where feasible, not later than 72 hours after having become aware of it, in accordance with Article 55 GDPR, unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons. Where the notification to the supervisory authority is not made within 72 hours, it shall be accompanied by reasons for the delay and act in compliance with Article 33 GDPR.
- Where applicable, inform without any delay all Data Controllers and Co-controllers responsible of the breached data.
- When the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons, the Party concerned shall communicate the personal data breach to the data subject without undue delay and act in compliance with Article 34 GDPR.

## Europrivacy General Terms and Conditions

### 3.17 Governing Law, Jurisdiction and Dispute Resolution

#### 3.17.1 Legal Fora

These Europrivacy Terms and Conditions shall be governed by, and construed in accordance with, the laws of Luxembourg. Any dispute related to the Scheme Owner shall be settled before the appropriate court of law in Luxembourg.

#### 3.17.2 Mediation

In the event of any dispute arising out of or in connection with the present Agreement, the Parties agree to start by looking for amicable solutions through discussions. If no compromise is found, the responding Party may request to pursue

mediation in accordance with the Swiss Rules of Mediation of the Swiss Chambers' Arbitration Institution in force on the date when the request for mediation was submitted in accordance with these Rules. The seat of the mediation shall be in the Canton of Geneva.

#### 3.17.3 Invalidity & Severability

If any provision or provisions of these Terms and Conditions shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of these Europrivacy Terms and Conditions and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.