



EIPACC

GENERAL TERMS AND CONDITIONS

EUROPRIVACY CERTIFICATION

TC EIPACC EP CERT 10-19



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1. General and Scope

These Terms and Conditions of Certification apply to the agreed EUROPRIVACY certification related services (hereafter referred as the "Certification Services"), as well as to any ancillary duties and services provided within the scope of contract performance by EIPACC or any third party contracted by EIPACC. Unless otherwise agreed in writing, all offers or services and all resulting contractual relationship(s) between the EIPACC and the representative of the Scheme Owner (hereafter referred to as "the Scheme Owner"), any affiliated companies of the Scheme Owner or any of their agents (each referred as the "Scheme Owner"), and:

- any person applying for receiving certification services (hereafter referred as the "Client");
- any legal entity applying for delivering EUROPRIVACY certifications (hereafter referred as the "Certification Body");
- any legal entity applying for preparing Clients to be certified according to EUROPRIVACY by a Certification Body (hereafter referred as the "Consulting Company");

shall be governed by these General Terms and Conditions and prevail on any other terms and conditions.

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 organization (whether public or private) having the authority to appoint Certification Bodies.

Applicable Data Protection Law: The data protection regulation(s) applicable to the Target of Evaluation, including the EU General Data Protection Regulation (EU/2016/679), and where applicable the complementary national and/or sector specific obligations,

including any future amendment, re-enactment, or national and sectoral implementation thereof which are applicable to the Object of Certification.

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

Certificate: A formal and official certificate indicating the conformity of the certified object with the EUROPRIVACY Certification Scheme requirements.

Certification: The process of the provision by an independent body of written assurance (a EUROPRIVACY certificate) that the product, service or system in question meets specific requirements.

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

Certification Audit: An independent audit carried out on the Client and any other parties relying on the Client's certification, to determine whether the Client's specified products, services, processes and management systems conform to the EUROPRIVACY Certification Scheme requirements.

Certification Auditor: A person authorized by the EUROPRIVACY Certification Body or one of its representatives/subcontractors to carry out a Certification Audit

Certification Report: A report issued by the Certification Body to the Client indicating whether or not a recommendation to issue a Certificate is to be made.

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 related to specified products, services, processes and management systems to which the same specified requirements, specific rules and procedures apply. In the present document, Certification Scheme 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 product, process, service or information management system for which EUROPRIVACY certification has been granted.

Client: A legal entity requesting certification services from the EUROPRIVACY Certification Body, and responsible to the EUROPRIVACY Certification Body for ensuring that certification requirements are fulfilled.

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

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

Contract: These Terms and Conditions and applicable portions of the Code of Practice and the Guidance on Certificate, Logo, and Marks.

Evidence: Any records, statements of fact or other information which are relevant to the audit criteria and verifiable.

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

Nonconformity: Non-fulfilment of a requirement

Major nonconformity: A nonconformity that affects the capability of the Client to meet the EUROPRIVACY Certification Scheme requirements. Nonconformities may be classified as major in the following circumstances:

- if there is a significant doubt that effective process control is in place, or that products or services will meet specified requirements;
- a number of minor nonconformities associated with the same requirement or issue could demonstrate a systemic failure and thus constitute a major nonconformity.



Minor nonconformity: A nonconformity that does not affect the capability of the Client to meet the EUROPRIVACY Certification Scheme requirements

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.

Recertification: Renewal of certification at defined intervals.

Scheme Owner: The organization responsible for developing and maintaining the EUROPRIVACY Certification Scheme. The Scheme Owner of EUROPRIVACY is Archimede Solutions SARL.

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

Surveillance Audit: Systematic iteration of conformity assessment activities by the Certification Body as a basis 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.

Witness Audit: Audit where a Certification Accreditation Body carries out conformity assessment within the scope of its accreditation.

3. General Terms and Conditions

3.1. General Provisions

This document specifies the General Terms and Conditions that are contractually binding on, and shall be applied and respected by, the Parties in the context of the EUROPRIVACY certification process and related services.

3.1.1. Related Norms and Documents

The General Terms and Conditions are those specified in this document and are complemented by the latest version of the:

- EUROPRIVACY Rules regarding the Use of Logo and Marks of Conformity (EP-P.8).

The Parties shall comply with the EUROPRIVACY Certification Scheme requirements, and where applicable enforce them.

3.1.2. Amendments to the Certification Scheme

The Scheme Owner reserves the right to change, revise or modify the EUROPRIVACY Certification Scheme at any time. The changes will be published on the EUROPRIVACY website or communicated to the Parties and become effective within the deadline indicated each time, which should not be shorter than 2 weeks. All parties commit to respect and comply with such changes within the deadline. Failure to adapt the Certified Object to the changes can result in the withdrawal of the Certificate by the Certification Body or by the Scheme Owner, without prejudice to the fees due by the Client according to clause 3.7. of these Terms and Conditions.

3.1.3. Implicit Agreement

The Parties, upon applying or placing any purchase order, acknowledges their understanding and agreement with the Terms and Conditions and, where applicable, the agreed prices or price lists.

3.1.4. Written Form Required for Any Alteration

Unless otherwise agreed in writing, all offers or services and all resulting contractual relationship(s) between the Certification Body and the Parties shall be governed by the Contract. Save as otherwise provided in these General Terms and Conditions, no alteration or amendment to the Contract shall be valid unless made in writing and signed by or on behalf of both the Client and the Certification Body.

3.1.5. Nature of the Parties

As used in these General Terms and Conditions, all references to any Party shall be deemed to include the agents, representatives, employees, consultants, subsidiaries and affiliates of such Party.

3.1.6. Inclusiveness of Certification

Where the Client has multiple sites, the Contract shall cover and apply to all the sites within the scope of the certification that the Client has applied for.

3.2. Specific Obligations and Commitments of the Client

3.2.1. Duty to Comply with Data Protection Law and the Certification Scheme

The Client commits to comply and maintain compliance of any Certified Object with all the provisions of the Applicable Data Protection Law.

The Client shall make all necessary arrangements to maintain the compliance of Certified Objects with the Certification Scheme, including by implementing appropriate changes to a Certified Object when the need for these is communicated by the Certification Body.

3.2.2. Exclusive Responsibility

The Client acknowledges and accepts its full and exclusive responsibility for ensuring that any Certified Objects comply and remain compliant with the Applicable Data Protection Law and the EUROPRIVACY Certification Scheme requirements.

The Client acknowledges that the Certification Body, 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 to any third party or that of any third party to Client.

3.2.3. Duty to Support and Facilitate the Certification

The Client commits to support and make all necessary arrangements to facilitate the effective and efficient conduct of Certification Scheme during the Certification Audit and for the duration of certification of a Certified Object. In particular, the Client shall:

- make available to the Certification Body all product samples, access, assistance, information, records, documentation and facilities that are requested for the certification process;
- provide the support of qualified personnel with the adequate authorizations and level of information;
- provide the Certification Body with suitable space for conducting meetings;
- provide appropriate information, access and documentation on the Client's subcontractors, such as data processor(s);
- provide information about complaints related to its certification, handled through its complaints procedure, to the Certification Body;
- provide access for surveillance purposes whenever deemed necessary by the Certification Body;
- support the participation of third party Observers, at the request of the Certification Body;
- take all necessary steps to eliminate or remedy any obstacles to or interruptions in the performance of the Certification Services.

3.2.4. Duty to Disclose Required Information

The Client shall provide clear and truthful information to the Certification Body during the Certification Service process and for the duration of the certification of a Certified Object. The Client commits to report any identified minor or major nonconformity, as well as any other information of relevance to the Certification Scheme.

3.2.5. 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:

- any non-conformity identified during internal audits performed by the Client, its business partners or public authorities, or as a result of complaints made to it by third parties.
- any modifications of the certified Object that negatively impact the level of data protection or extend the collection of data beyond what is agreed by the data subjects;
- reduce the level of protection changes in the legal, commercial, organizational status or ownership;
- organization and management changes (e.g. key managerial, decision-making or technical staff); modifications to the product or the production method; contact address and production sites; major changes to the quality management system);

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.

3.2.6. Duty to Record and Report Complaints

The Client ensures that it has a documented process for handling and investigating all complaints related to its conformity with certification requirements. This shall include:

- a clearly identified point of contact for third party complaints;

- a record of all such complaints received, the nature of the investigation undertaken, and the outcome of the investigation e.g. whether non-compliance has been identified or not;
- where non-compliance has been identified, a record of the response of the Client to ensure compliance is achieved.

The Client shall report all incidents of noncompliance to the Certification Body and make the complaints records available to the Certification Body upon request.

3.2.7. Health and Safety Provisions

The Client shall provide the Certification Body with all available information regarding known or potential hazards likely to be encountered by the Certification Body personnel during their visits, as well as any relevant instructions and regulations related to health and safety.

3.2.8. 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;
- shall not use its certification in such a manner as to bring the Certification Body into disrepute and shall not make any statement regarding its Certified Object that the Certification Body considers misleading or unauthorized;
- shall comply with the requirements of the Certification Body or as specified by the Certification Scheme in referring to its product certification in communication media such as documents, brochures or advertising;
- shall comply with any requirements that may be prescribed in the Certification Scheme relating to the use of marks of conformity, and on information related to the Certified Object.

Upon suspension, withdrawal, or termination of a EUROPRIVACY Certificate, the Client shall immediately discontinue its use of advertising matter that contains reference to that certification, and shall take such other action as is required by the Certification Scheme Code of Practice (e.g. the return of certification documents).

3.2.9. Acceptance of Certification Monitoring

The Client shall agree that the information provided to the Certification Body for certification process can be accessed by the Scheme Owner, under the seal of confidentiality, for use in controlling, reviewing or updating the certification process.

3.2.10. Commitment to Permit Witness Audits

The Client agrees to permit witnessed audits by third party accreditation bodies or parallel audits by other certifying companies, provided that the performance of such audits is part of the Accreditation Body's accreditation procedures or the applicable Certification Scheme.

3.3. Specific Obligations of Certification Bodies and Consulting Companies

3.3.1. Commitment to Preserve Impartiality

The Certification Bodies and Consulting Companies shall commit to prevent any risk of effective (or perceived) conflict of interest and/or impartiality issue in EUROPRIVACY certification.

3.3.2. Commitment to Use Qualified Resources

The Certification Bodies and Consulting Companies shall deliver reliable and high quality services. They should use trained and qualified Auditors and Experts with the adequate and demonstrated knowledge of the EUROPRIVACY Certification Scheme requirements. They shall incentive their experts and auditors to develop and continuously maintain their knowledge and expertise in data protection regulations, as well as in the EUROPRIVACY Certification Scheme.

3.3.3. Commitment to Support Continuous Improvement

The Certification Bodies and Consulting Companies shall support the continuous improvement of the EUROPRIVACY Certification Scheme, including with regards to its list of Checks and Controls, by reporting to the Scheme Owner any identified source of improvement.

3.3.4. Commitment to Build Trust and Reputation

The Certification Bodies and Consulting Companies shall contribute to build trust in data protection certification and develop a good reputation of EUROPRIVACY. They shall refuse to deliver or to recognize any doubtful or misleading certification. They shall have established mechanisms and procedures in place to report, record and effectively handle wrong-doing.

3.4. Certification Process

3.4.1. Purpose of Certification

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

3.4.2. Preparatory Phase

The Client may request support from qualified Consulting Companies to comply with the applicable data protection regulations, and to prepare their certification process.

3.4.3. Dissociation of Consulting and Certification Services

Due to ISO impartiality requirements, Consulting Companies cannot act as Certification Body for Clients to which they have provided consulting services. All Parties shall preserve the objectivity, independence and impartiality of the certification process.

Similarly, while a certification Report may enable the Client to identify potential nonconformities, the Certification Body and its Auditors will not provide the Client with advice or recommendations that could be considered as provision of consultancy.

3.4.4. Target of Evaluation

Once a Client has applied to be certified, the Certification Body shall clarify and if needed adapt the Target of Evaluation of the intended certification. 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 determine if it has the required skills and resources to deliver a reliable certification.

3.4.5. 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 will make best efforts to maintain public confidence in its certification, by following principles of impartiality, fairness and objectivity.

On completion of a Certification Audit or an Assessment, the Certification Body will prepare and submit to the Client a Report presenting the relevant findings and conclusions.

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

Certification, suspension, withdrawal or cancellation of a Certificate shall be in accordance with the EUROPRIVACY Certification Scheme and applicable Codes of Practice.

3.4.6. Impact of Findings

The Client acknowledges and accepts that Report findings may impact the certification process, including, but not limited to, the following:

- where major nonconformities are identified which affect the Object of Certification the certification process may need to be cancelled or postponed, or

the Certification Body may have to repeat part or all the certification process;

- where significant changes are made to the Object of Certification, during or after the Audit, but before the Certification Body makes its decision to grant, or not grant, the Certificate for which the Client has applied, the certification process may need to be cancelled or postponed, or the Certification Body may have to repeat part or all the certification process.
- the Certification Body may need to revise its original arrangements and cost estimate.

3.4.7. 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. Such decisions shall be made in conformity with the EUROPRIVACY Certification Scheme and Code of Practice.

In line with ISO/IEC Standard 17021-1, the decision to issue a Certificate will be taken by individuals with appropriate competence who have not been involved in the Certification Audit. The decision to issue a Certificate will be based on review of:

- the Certification Report,
- any corrections to the Certification Report, identified causes of nonconformity with the Certification Scheme requirements and the European Data Protection Regulations, and corrective actions, submitted by the Client

3.4.8. Supervisory Authority Override

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

- the Client has not acted expeditiously to take corrective action to correct the nonconformity;
- 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.

3.4.9. Periodic Surveillance Audits

The Certification Body shall, at its discretion and depending upon the type of certification services provided, carry out periodic Surveillance Audits to ascertain the continuing conformity of a Certified Object. The Certification Body reserves the right to make unannounced visits as required.

3.4.10. Dissociation of Certification Service and Decision

Fees for the Certification Service will be charged by the Certification Body to the Client regardless of the decision to grant, or not grant, the Certificate for which the Client has applied.

3.4.11. Ability to Mobilize and Use Complementary Resources

The Certification Body may delegate the performance of tasks related to the certification services to an agent or a subcontractor who will act on behalf of the Certification Body. The Client authorises the Certification Body to disclose all relevant information necessary for such performance to the agent or subcontractor, provided that the agent or subcontractor is free from any conflict of interest, and is bound by the same obligations of confidentiality as the Certification Body.

3.5. Confidentiality

3.5.1. Confidential Information Definition and Scope

The Parties shall protect the confidentiality of the information acquired in during the certification process, unless explicitly otherwise agreed in written. By default, any proprietary information or document shared by the Client with the Certification Body will be

handled as confidential information. However, Confidential Information does not include any information which:

- is generally known to the public;
- was available to the receiving party on a non-confidential basis prior to the time of its disclosure by the disclosing party;
- is disclosed to a Party by an independent third party with a right to make such disclosure.

Similarly, any documents or information shared by the Certification Body and/or the Scheme Owner with the Client or a Consulting Company shall be protected and handled as confidential by the receiving Party, except if such document or information is explicitly intended to be made public.

3.5.2. Restriction of Use

Unless required by law or by a judicial, governmental or other regulatory body, neither Party nor their agents or subcontractors shall use the Confidential Information other than under the Contract nor disclose the other's Confidential Information to any person or entity without the prior written approval of the other Party except as expressly provided for herein.

3.6. Documentation and Archiving

3.6.1. Recording and Documenting the Certification Process

To be able to justify its certification decision and any continuing recertification, the Certification Scheme requires that the Certification Body records and documents evidences and findings. This implies that the Certification Body must keep information and documents pertaining to the Client in its archives. The Client expressly authorizes the Certification Body to store such information and documents.

The Certification Body will focus on relevant information and avoid any unnecessary data collection (principle of data minimization). It will store such information and documents in a secured document repository.

3.6.2. Retention Period

The Certification Body will retain relevant information and documentation in its archive for a period of time compliant with the Certification Scheme and the law in the country of the Certification Body. 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 the previous certifications.

At the end of the retention period, the Certification Body will delete or destroy the recorded material in accordance with its standard business practices.

3.7. Use of Certification Material and References

3.7.1. Intellectual Property

Any document, including any Report or any Certificate, provided by the Certification Body and the copyright contained therein shall be and remain the intellectual property of the Certification Body or the Scheme Owner, and the Client shall not alter or misrepresent the content of such documents in any way.

3.7.2. Communication and Use of Certification

The Client may advertise its certification in accordance with the applicable terms set out in the Guidance on Certificate, Logo, and Marks. Use of the Certification Body's corporate name for advertising purposes is not permitted without the Certification Body's prior written consent.

The Client shall be entitled to make copies of all or part of the Audit Report for internal use. The Client may only publicize extracts of any Audit Report issued by the Certification Body with prior written permission.

If the Client provides copies of the certification documents to third parties, the documents shall be reproduced in their entirety or as specified in the Certification Scheme.

The Client undertakes not to publish any details pertaining to the performance, delivery or execution of the Certification Services rendered by the Certification Body.

The Certification Body reserves the right to lodge complaint and initiate legal action if a publication or disclosure constitutes a breach of this clause or which the Certification Body considers in its sole discretion as abusive.

3.7.3. Certification Transfer

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

3.8. Consistency Mechanism

At request of the Scheme Owner, or representative of the Scheme Owner, any party involved with the certification process will provide (at first request) all information with the specific aim of the Scheme Owner to ensure a consistency of compliance requirements (consistency mechanism) across all relevant certification processes, while upholding requirements at the level of additional national laws and regulations.

3.9. Surveillance

The Client agrees to undergo regular, unannounced or short notice surveillance evaluations and audits as determined by the Scheme Owner.

3.8.1 Reasonable cooperation

The Client will provide the Scheme Owner with reasonable cooperation and assistance and allow the Scheme Owner access to all

premises, documentation and information deemed necessary by the Scheme Owner to perform said surveillance evaluations and audits.

3.8.2 Surveillance frequencies

the Scheme Owner may implement higher surveillance frequencies based on a risk assessment of the Client's Certificate scope, System and location;

3.8.3 Surveillance rates

Additional surveillance visits, as deemed necessary by the Scheme Owner, will be charged at the Scheme Owner's rates current at the time of supply of such services.

3.10. Fees and Payments

The fees quoted to the Client in the Offer cover in principle all required tasks to perform the initial certification process, including the initial audit and/or assessment process and the certification Report. Where applicable, it should also indicate an estimate of the surveillance audit or assessment costs for the maintenance of the Certificate.

3.10.1. Estimates and Rates

Estimates are based on the information available and the charge rate applicable at the time of submitting the Offer. The Certification Body reserves the right to adjust its rates and fees on a yearly basis and a copy of the Certification Body' prevailing charging rates is available on request from the Certification Body.

3.10.2. Travel Costs and Tax

Unless otherwise stated, all fees quoted are exclusive of travelling and subsistence costs. These costs will be charged to the Client in accordance with the Certification Body Travel Expense Policy.

Except otherwise stated, all fees and charges are quoted exclusive of any applicable Value Added Tax, Sales Tax or other tax applicable in the country concerned.

3.10.3. Certificate Fee

If the certification process leads to a decision to grant a certificate, the Client will be required to pay a complementary fee for the publication and registration of the Certificate on the official EUROPRIVACY registry (yearly fee) and, where applicable, a complementary fee to be paid to the national Accreditation Body of the Certification Body. These fees will be, in principle, invoiced by

the Certification Body and shall be paid before the publication of the Certificate.

3.10.4. Costs and Fees Adaptations

When submitting the Offer, the Certification Body intends to provide a fair advance estimate of the amount of work to be performed. However, there are cases where the Certification Body has to increase the amount of work and the resulting costs for its certification services. This may occur, for instance, in the event of nonconformities requiring further investigation, in case of changes in the information provided by the Client, or where information on the Object of Certification is found not to conform to the initial information on which the estimated fees were quoted.

Additional fees will be charged for activities that go beyond those initially planned in the Offer. Such activities may include (and are not limited to):

- repetition of any part, or all, of the assessment and/or audit activities, due for instance to non-compliance with the requirements of the EUROPRIVACY Certification Scheme, or to the failure to provide relevant information by the Client;
- reassessment due to changes in the Object of Certification;
- suspension, withdrawal and/or reinstatement of a Certificate;
- compliance with any court order issued in conjunction with activities performed by the Certification Body to provide testimony or documents; or
- expedited certification, cancellations or rescheduling of services requested by the Client.

3.10.5. Invoice, Date of Payment and Effect of Non-Payment

The Certification Body may issue an invoice and request a preliminary payment up to 50% of the Offer estimate before starting the certification process.

Following submission of the Report to the Client, the Certification Body will, in principle, issue an invoice to the Client for the remaining amount to be paid. Invoices for additional and further work will be issued on completion of the related tasks.

Unless otherwise agreed upon, all invoices are payable within thirty (30) days of the date of each invoice (the "Due Date") regardless of whether the Client's Object of Certification qualifies for certification or not. If the Client fails to pay the invoice in the Due date, an 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 by the Client of any Report or Certificate or the information contained therein is conditional upon the timely payment of all fees and charges. In addition to the remedies set out in the Codes of Practice, the Certification Body reserves the right to cease or suspend all work and/or cause the suspension or withdrawal of any Certificate for a Client who fails to pay an invoice due.

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

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

3.11. Client's Warranties & Remedies

3.10.1 Use of Mark

The Client warrants to the Scheme Owner that the Licensed Certification Mark is used only in accordance with the Licence, unless otherwise approved in writing by the Scheme Owner.

3.10.2 Indemnity

The Client indemnifies the Scheme Owner from and against all losses, damages, expenses and costs (on a solicitor and own client basis and whether incurred by or awarded against the Scheme Owner) that the Scheme Owner may sustain or incur as a result, whether directly or indirectly, of: (a) any breach of these terms by

the Client including, but not limited to, a breach in respect of which the Scheme Owner exercises an express right to terminate the Licence;

(b) any negligent act or omission or wilful misconduct of the Client 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 product, process or service in relation to which the Licensed Certification Mark has been used by the Client.

3.10.3 Breach of Warranty

If the Client breaches any warranty or any other provision of these terms the Client must at its cost:

(a) immediately notify the Scheme Owner and provide any information reasonably requested by the Scheme Owner;

(b) promptly comply with any direction which the Scheme Owner may issue to prevent further breach or minimise the adverse consequences of breach (either to the Scheme Owner or to any member of the public), including a direction to: (i) cease supply of goods or services;

(ii) take steps to modify goods or services before supply;

(iii) destroy goods;

(iv) modify or destroy materials;

(v) provide information (including materials) to the public;

(vi) where the breach relates to goods already released for sale and which will or may cause injury to any person:

(c) under take a recall of the goods; and

(d) take such other action as may be reasonably requested by the Scheme Owner; (i) cease representing, either expressly or by implication, that they have any current Certification or Certificate and Licence; and

(ii) keep the Scheme Owner informed, in writing, of action taken pursuant to any direction issued under paragraph (b)

3.12. Liability and Indemnity

3.12.1. Limitation of Liability

The Client agrees to the following with respect to the Scheme Owner's liability:

3.11.2 Not implied guarantees

An the Scheme Owner Certificate does not imply any guarantee or warranty, express or implied, including but

not limited to any warranty of merchantability or fitness for any particular purpose, of any services

inspected by the Scheme Owner or its Authorized Agent or certified by the Scheme Owner, or any guarantee or warranty of any

nature by the Accreditation Body concerning any certification activity conducted by the Scheme Owner or its

Authorized Agent;

3.11.3 No action or claim against the Scheme Owner

The Client shall have no cause of action or claim against the Scheme Owner, the Accreditation Body, or any of their respective affiliates, parent, or brother or sister corporations or their successors-in-interest or

assigns, or the officers, directors, members and employees thereof (collectively, the "Indemnitees"),

arising in any manner from any denial of the Contract or from any Certificate delivered pursuant to the Contract, whether or not such Certificate is or is not subject to any conditions;

3.11.4 Harmlessness of Indemnitees

The Client agrees to hold the Indemnitees 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) whether for personal injury, wrongful death, property damage, or any type of injury or damage whatsoever, arising from: (i) any defect in its products, services or System; (ii) any certification



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services of any nature provided by the Scheme Owner or its Authorized Agent; (iii) the use of any service of any nature offered by the Scheme Owner or its Authorized Agent, or the use or operation by any person of any product inspected by the Scheme Owner or its Authorized Agent or certified by the Scheme Owner; or (iv) the reference to or reliance upon, actual or asserted, 9/19/2019 General terms and conditions for audit and certification services | the Scheme Owner <https://the Scheme Owner.com/en/general-terms-and-conditions-for-audit-and-certification-services> 9/11 any certification or approval given by the Scheme Owner or any inspection services rendered by the Scheme Owner or its Authorized Agent including but not limited to the results of any certification delivered by the Scheme Owner or inspections conducted by the Scheme Owner or its Authorized Agent.

3.11.5 No action or claim against indemnitees

The Client shall have no cause of action or claim against the Indemnitees, arising in any manner from any breach of the Contract or non-performance of the Contract or from any services delivered by or actions performed by the Authorized Agent pursuant to the Contract, any other agreement between the Client and the Authorized Agent, or otherwise;

3.11.6

The Client further agrees to hold the Indemnitees 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) whether for personal injury, wrongful death, property damage, or any type of injury or damage whatsoever, arising from:

16.2.1 The use or misuse by the Client of any Certificate, license, logo, service mark or trademark provided by the Scheme Owner or the Accreditation Body in accordance with the Contract;

16.2.2 Any breach of the Contract by the Client;

16.2.3 Illness, injury or death to any personnel of the Scheme Owner, the Client, its subcontractors, suppliers or customers, together with any of their employees, agents, officers or directors ("Client Group"), other than where due to the gross fault of the Scheme Owner;

16.2.4 Damage to or loss of property or equipment owned, leased or used by the Scheme Owner or the Client Group;

3.11.7 Limited liability

Subject to clause 3.11.8, the aggregate liability of the Scheme Owner, or its respective officers, subcontractors, representatives and employees, to the Client for all direct and indirect loss in contract, tort or otherwise arising out of or about this Contract shall be limited to 110% of the Services Fees for the calendar year of the date that such liability arises;

3.11.8 Exoneration

Except in respect of death or personal injury caused by negligence of the Scheme Owner or fraudulent misrepresentation in respect of which liability shall be unlimited, the Scheme Owner shall not be liable to the Client 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 performance or non-performance of the Contract by the Scheme Owner and/or its Authorized Agent; and

3.11.9 Severability of action, claim, loss or damage

In any action, claim, loss or damage arising out of this Agreement and any Services, the Client agrees that the Scheme Owner's liability will be several and not joint and several and the Client may only claim

payment from the Scheme Owner of the Scheme Owner's proportionate share of the total liability based on the degree of fault of the Scheme Owner.

3.11.10 Resulting the Scheme Owner liabilities

The Client hereby acknowledges that a breach, default, non-compliance or non-observance by it of its duties and obligations under the Contract or otherwise may result in the Scheme Owner being in breach, default, noncompliance or non-observance of its duties, liabilities and obligations owed to third parties such that the Scheme Owner 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.

3.11.11 Separation Principle

The Client acknowledges that the Certification Body, by entering into the Contract or by providing the services, cannot be held liable in any form whatsoever for any obligations of or claims asserted against the Client for failure to comply with the Applicable Data Protection Law and/or the Certification Scheme requirements.

3.12.2. 3.11.12 Limitations to Certification

A EUROPRIVACY Certificate is the outcome of a certification process, which indicates that a certification has been performed according to the requirements and procedures of the EUROPRIVACY Certification Scheme and that the Certified Object has successfully met the specified requirements of the EUROPRIVACY Certification Scheme during the assessment and/or audit process.

The certification process is based on the findings identified by the Auditors after following a clearly specified and systematic methodology. It relies on samples analysed and/or targeted audits performed during a given period. A EUROPRIVACY Certificate is a professional and impartial indication of conformance verified by an independent third party, but it cannot guarantee that the Certified Object is and will be in full conformity with the Applicable Data Protection Law. Legal conformance remains the sole responsibility of the Client who must ensure that its Certified Object complies fully 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 are liable for any loss or damage whatsoever and howsoever arising through the use of the Certified Object.

3.11.13 Limitation of Responsibility of the Certification Body

The Certification Body undertakes to use reasonable care and skill in the performance of the Services and accepts responsibility only in cases of proven willful conduct or gross negligence.

Nothing in these General Terms and Conditions shall exclude or limit the Certification Body's liability to the Client for death or personal injury or for fraud or any other matter resulting from the Certification Body's negligence for which it would be illegal to exclude or limit its liability in the Certification Body's or Client's jurisdiction.

3.11.14 Limitation of Liability for Loss, Damage and Expense

The total liability of the Certification Body to the Client in respect of any claim for loss, damage or expense of any nature and howsoever arising shall be limited, in respect of any one event or series of connected events, to an amount equal to the fees effectively paid to

the Certification Body under the Contract (excluding Value Added Tax thereon).

3.11.15 Delay for Acting

The Certification Body shall 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 Certification Body, 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.

3.11.16 Exclusion

The Certification Body shall not be liable to the Client nor to any third party:

- for any loss, damage or expense arising from (i) a failure by Client to comply with any of its obligations herein (ii) any actions taken or not taken on the basis of the Reports or the Certificates; and (iii) any incorrect results, Reports or Certificates arising from unclear, erroneous, incomplete, misleading or false information provided to the Certification Body;
- for loss of profits, loss of production, loss of business or costs incurred from business interruption, loss of revenue, loss of opportunity, loss of contracts, loss of expectation, loss of use, loss of goodwill or damage to reputation, loss of anticipated savings, cost or expenses incurred in relation to making product recall, cost or expenses incurred in mitigating loss and loss or damage arising from the claims of any third party (including without limitation product liability claims) that may be suffered by the Client; and
- any indirect or consequential loss or damage of any kind (whether or not falling within the types of loss or damage identified in (b) above).

Except for cases of proven negligence or fraud by the Certification Body, the Client further agrees to hold harmless and indemnify the Certification Body and its officers, employees, agents or subcontractors against all claims (actual or threatened) by any third party for loss, damage or expense of whatsoever nature including all legal expenses and related costs and howsoever arising (i) relating to the performance, purported performance or non-performance, of the Services or (ii) out of or in connection with the Client's management system, product, process or service the subject of the certification (including, without limitation, product liability claims).

3.11.17 Insurance

Each Party shall take out adequate insurance to cover its liabilities under the Contract.

3.11.18 Attestation of Clarity

To the extent permitted by law, the Client acknowledges that it has not been induced to enter into the Contract 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 Client unconditionally and irrevocably waives any claims, rights or remedies which might arise to the Client in relation thereto.

3.11.19 Written Form

Any terms and conditions or stipulations in the Client's standard documents or forms which are inconsistent with, or which purport to modify or add to, these general Terms and Conditions shall have no effect unless expressly accepted in writing by the Certification Body.

3.11.20 Duration

This clause 3.11 shall survive the termination or expiry of the Contract.

3.13. Duration and Termination

3.13.1. Default Duration

Upon commencement of this Contract, Parties commit to maintain contractual relations for an initial certification period of three (3) years, subject to clause 3.10.3.

3.13.2. Automatic Renewal

By default, on expiration date of the certification, the contract between the parties shall renew automatically on the same conditions, unless and until either party notifies the other in writing that the contractual relation will terminate. Notification shall be made at least three (3) months prior to the expiration date of the initial certification or on three (3) months' notice any time after the Initial Term.

If the Certification Body submits a new Offer with different financial conditions, the renewal of contractual relations requires the formal acceptance of the Offer by the Client.

3.13.3. Termination

The Certification Body is entitled, at any time prior to the issue of a Certificate, to terminate the Contract if the Client is in material breach of its obligations and, following receipt of notice of such breach, the Client fails to remedy to the satisfaction of the Certification Body such breaches within thirty (30) days.

Either Party 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.

In case of unilateral termination of the contract by the Client before the end of a certification cycle, the Client shall pay a sum not less than a third of the price of the initial certification audit.

3.13.4. After Termination

3.12.4.1 Effect of Termination

On termination of the Licence, the Client:

- (a) must immediately cease using and has no further right to use:
 - (i) the Licensed Certification Mark; or
 - (ii) any trade mark including a Certification mark that is substantially identical with or deceptively similar to the Licensed Certification Mark;
- (b) may continue to sell goods marked with the Licensed Certification Mark before the termination of the Licence unless the Scheme Owner directs that the Certification Mark be erased or masked from the goods before their sale;
- (c) must remove the Licensed Certification Mark from, or destroy all materials bearing the Licensed Certification Mark in the Client's custody, possession or control; and
- (d) must promptly return the Certificate and Licence to the Scheme Owner

3.12.4.2 No effect for accrued rights

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

3.13.5. Failure to Complete Surveillance Audit

Where Surveillance Audits are required and 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:

- First Surveillance audit: the end of the twelfth month;
- Second Surveillance Audit: the end of the twenty-fourth month;

3.13.6. Remaining Obligations

Unless otherwise agreed in writing, the rights and obligations of the parties defined in clauses of sections 3,2, 3.4, 3.6, 3.7 and 3.8 shall apply notwithstanding the completion of the Services or termination of the Contract.

3.14. Force Majeure

If the Certification Body is prevented from performing or completing any service for which the Contract has been made by reason of any cause whatsoever outside Certification Body's 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 or failure by Client to comply with any of its obligations under the Contract, the Certification Body shall receive from the Client:

- the amount of the costs incurred or caused by the discontinuation of the performance of the Contract;
- a proportion of the agreed fees equal to the proportion (if any) of the services rendered;

In this context, the Certification Body shall be relieved of any responsibility whatsoever for the partial or total non-performance of the 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 sending Party's e-mail transmission message.

3.15.2. Language of the Contract

This Contract can be made in English and French. If the contract is made in both languages, and in the event of a dispute as to the terms of this Contract the English version shall prevail.

3.15.3. Language of Certification-related Documentation

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

Unless differently agreed by the Parties, all the auditing activities and any other subsequent exchange of information between them shall be carried out in English or French.

If the Parties agree, the Client may provide internal documents, policies and information in languages other than English. If required documentation cannot be provided in a language acceptable parties, the cost of any translation required shall fall on the Client.

Unless agreed by the Parties in writing in advance of the certification process, the final Report shall be provided in English. Where any other language is agreed by the Parties, any subsequent translation costs that may occur shall fall on the Client.

3.15.4. Independence of the Parties

The Parties acknowledge that the Certification Body provides the services to the Client as an independent contractor and that the Contract does not create any partnership, agency, employment or fiduciary relationship between the Certification Body and the Client.

3.15.5. Transfer of Rights

Except as expressly provided for in these General Terms and Conditions, the Client shall not assign or transfer any of its rights hereunder without the Certification Body's prior written consent.

3.15.6. Independent Contractors

The parties to the Contract are independent contractors and nothing in the Contract shall be deemed to place the parties in the relationship of employer/employee, principal/agent, partners or a joint venture.

3.15.7. Contract Assignment

Neither Party shall assign the Contract without the prior written consent of the other Party. Such consent shall not be unreasonably withheld. Any assignment shall not relieve the assignor from any liability or obligation under the Contract.

3.15.8. Effect of Failure to Require

Any failure by the Certification Body to require the Client to perform any of its obligations under the terms of the Contract shall not constitute a waiver of its right to require performance of this or any other obligation.

3.15.9. Appeals

The Client may have rights of appeal against licensing decisions of the Scheme Owner including rights given by applicable Rules. Applicable Rules and appeals information are published by the Scheme Owner from time to time, and available to the Client upon request

12.1 Shall the Client wish to complain or appeal a decision of the Scheme Owner, it shall do so in accordance with the the Scheme Owner Complaints and Appeals Processes (as amended from time to time) which are posted on the Scheme Owner's website and available on request,

3.14 Data Protection

In compliance with the provisions set out by Regulation EU 2016/679 (hereinafter also "Regulation"), personal data that will be exchanged between the Parties in execution of the Contract, 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 Data Protection Authority, and shall be processed by way of manual and/or automated means, according to principles of lawfulness and fairness, and in order to protect confidentiality and rights, in compliance with the appropriate security measures provided for by the Regulation. 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. Personal Data Breach

3.15.1 Notification to supervisory authority

In the case of a personal data breach, the party concerned shall without undue delay and, where feasible, not later than 72 hours after having become aware of it, notify the personal data breach to the supervisory authority competent 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.

3.15.2 Notification to data subject

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.

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 Switzerland. Any dispute related to this obligation shall be settled before the appropriate court of law in the Canton of Geneva (Switzerland).

3.17.2. 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.



4. Signature by Authorized Representatives

The undersigned confirm on behalf of the signing Party that:

- they are duly authorized and in capacity to engage and sign contracts on behalf of the Party;
- the Party accepts and commits to comply with the terms and conditions contained above without any reservation.

The Applying Party

Company Name:

Name:

Title:

Signature: _____

Place:

Date:

Name:

Title:

Signature: _____

Place:

Date:

To be completed and returned with original signatures to:

- EIPACC International Office
Regulierenring 10
3981 LB
Bunnik (Utrecht) | Netherlands