

## ACCOUNTABILITY AGENT RECOGNITION CRITERIA

### CRITERIA

#### *Conflicts of Interest*

- 1) General Requirements:
  - a. An Accountability Agent must be free of actual or potential conflicts of interest in order to participate in the APEC Cross Border Privacy Rules (CBPR) System. For the purposes of participation as an Accountability Agent in the CBPR System, this means the ability of the Accountability Agent to perform all tasks related to an Applicant organization's certification and ongoing participation in the CBPR System free from influences that would compromise the Accountability Agent's professional judgment, objectivity and integrity.
  - b. An Accountability Agent must satisfy the APEC member economies with evidence that internal structural and procedural safeguards are in place to address potential and actual conflicts of interest. Such safeguards should include but not be limited to:
    - i. Written policies for disclosure of potential conflicts of interest and, where appropriate, withdrawal of the Accountability Agent from particular engagements. Such withdrawal will be required in cases where the Accountability Agent is related to the Applicant organization or Participant to the extent that it would give rise to a risk that the Accountability Agent's professional judgment, integrity, or objectivity could be influenced by the relationship.
    - ii. Written policies governing the separation of personnel handling privacy certification functions from personnel handling sales and consulting functions.
    - iii. Written policies for internal review of potential conflicts of interest with Applicant organizations and Participating organizations.
    - iv. Published certification standards for Applicant organizations and Participating organizations (see paragraph 4 'Program Requirements').
    - v. Mechanisms for regular reporting to the relevant government agency or public authority on certification of new Applicant organizations, audits of existing Participant organizations, and dispute resolution.
    - vi. Mechanisms for mandatory publication of case reports in certain circumstances.
- 2) Requirements with respect to particular Applicant organizations and/or Participant organizations

- a. At no time may an Accountability Agent have a direct or indirect affiliation with any Applicant organization or Participant organization that would prejudice the ability of the Accountability agent to render a fair decision with respect to their certification and ongoing participation in the CBPR System, including but not limited to during the application review and initial certification process; during ongoing monitoring and compliance review; during re-certification and annual attestation; and during dispute resolution and enforcement of the Program Requirements against a Participant. Such affiliations, which include but are not limited to the Applicant organization or Participant organization and the Accountability Agent being under common control such that the Applicant organization or Participant organization can exert undue influence in the Accountability Agent, constitute relationships that require withdrawal under 1(b)(i).
- b. For other types of affiliations that may be cured by the existence of structural safeguards or other procedures undertaken by the Accountability Agent, the existence of any such affiliations between the Accountability Agent and the Applicant organization or Participant organization must be disclosed promptly to the Joint Oversight Panel, together with an explanation of the safeguards in place to ensure that such affiliations do not compromise the Accountability Agent's ability to render a fair decision with respect to such an Applicant organization or Participant organization. Such affiliations include but are not limited to:
  - i. officers of the Applicant organization or Participant organization serving on the Accountability Agent's board of directors in a voting capacity, and vice versa;
  - ii. significant monetary arrangements or commercial relationship between the Accountability Agent and the Applicant organization or Participant organization, outside of the fee charged for certification and participation in the APEC CBPR System; or
  - iii. all other affiliations which might allow the Applicant organization or Participant organization to exert undue influence on the Accountability Agent regarding the Applicant organization's certification and participation in the CBPR System.
- c. Outside of the functions described in paragraphs 5-14 of this document, an Accountability Agent will refrain from performing for its Participants or Applicants services for a fee or any interest or benefit such as the following categories:
  - i. consulting or technical services related to the development or implementation of Participant organization's or Applicant organization's data privacy practices and procedures;
  - ii. consulting or technical services related to the development of its privacy policy or statement; or

- iii. consulting or technical services related to its security safeguards.
  - d. An Accountability Agent may be engaged to perform consulting or technical services for an Applicant organization or Participant organization other than services relating to their certification and on-going participation in the CBPR System. Where this occurs, the Accountability Agent will disclose to the Joint Oversight Panel:
    - i. the existence of the engagement; and
    - ii. an explanation of the safeguards in place to ensure that the Accountability Agent remains free of actual or potential conflicts of interest arising from the engagement [*such safeguards may include segregating the personnel providing the consulting or technical services from the personnel performing the functions described in paragraphs 5 -14 of this document*].
  - e. Provision of services as required in Sections 3 through 6 shall not be considered performing consulting services which might trigger a prohibition contained in this document.
- 3) In addition to disclosing to the Joint Oversight Panel all withdrawals described above in Section 1(b)(i), an Accountability Agent also shall disclose to the Joint Oversight Panel those activities or business ventures identified in subsection 1(b) above that might on their face have been considered a conflict of interest but did not result in withdrawal. Such disclosures should include a description of the reasons for non-withdrawal and the measures the Accountability Agent took to avoid or cure any potential prejudicial results stemming from the actual or potential conflict of interest.

### ***Program Requirements***

- 4) An Accountability Agent evaluates Applicant organizations against a set of program requirements that encompass all of the principles of the APEC Privacy Framework with respect to cross border data transfers and that meet the CBPR program requirements developed and endorsed by APEC member economies (to be submitted along with this form, see Annex A). (*NOTE: an Accountability Agent may charge a fee to a Participant for provision of these services without triggering the prohibitions contained in paragraph 1 or 2.*)

### ***Certification Process***

- 5) An Accountability Agent has a comprehensive process to review an Applicant organization's policies and practices with respect to the Applicant organization's participation in the Cross Border Privacy Rules System and to verify its compliance with the Accountability Agent's program requirements. The certification process includes:
- a) An initial assessment of compliance, which will include verifying the contents of the self-assessment forms completed by the Applicant organization against the program requirements for Accountability Agents, and which may also

include in-person or phone interviews, inspection of the personal data system, Web site scans, or automated security tools.

- b) A comprehensive report to the Applicant organization outlining the Accountability Agent's findings regarding the Applicant organization's level of compliance with the program requirements. Where non-fulfillment of any of the program requirements is found, the report must include a list of changes the Applicant organization needs to complete for purposes of obtaining certification for participation in the CBPR System.
- c) Verification that any changes required under subsection (b) have been properly completed by the Applicant organization.
- d) Certification that the Applicant organization is in compliance with the Accountability Agent's program requirements. An Applicant organization that has received such a certification will be referred to herein as a "Participant" in the CBPR System.

#### ***On-going Monitoring and Compliance Review Processes***

- 6) Accountability Agent has comprehensive written procedures designed to ensure the integrity of the Certification process and to monitor the Participant throughout the certification period to ensure compliance with the Accountability Agent's program.
- 7) In addition, where there are reasonable grounds for the Accountability Agent to believe that a Participant has engaged in a practice that may constitute a breach of the program requirements, an immediate review process will be triggered whereby verification of compliance will be carried out. Where non-compliance with any of the program requirements is found, the Accountability Agent will notify the Participant outlining the corrections the Participant needs to make and a reasonable timeframe within which the corrections must be completed. The Accountability Agent must verify that the required changes have been properly completed by the Participant within the stated timeframe.

#### ***Re-Certification and Annual Attestation***

- 8) Accountability Agent will require Participants to attest on an annual basis to the continuing adherence to the CBPR program requirements. Regular comprehensive reviews will be carried out to ensure the integrity of the re-Certification. Where there has been a material change to the Participant's privacy policy (as reasonably determined by the Accountability Agent in good faith), an immediate review process will be carried out. This re-certification review process includes:
  - a) An assessment of compliance, which will include verification of the contents of the self-assessment forms (Project 1) updated by the Participant, and which may also include in-person or phone interviews, inspection of the personal data system, Web site scans, or automated security tools.
  - b) A report to the Participant outlining the Accountability Agent's findings regarding the Participant's level of compliance with the program requirements.

The report must also list any corrections the Participant needs to make to correct areas of non-compliance and the timeframe within which the corrections must be completed for purposes of obtaining re-certification.

- c) Verification that required changes have been properly completed by Participant.
- d) Notice to the Participant that the Participant is in compliance with the Accountability Agent's program requirements and has been re-certified.

### ***Dispute Resolution Process***

- 9) An Accountability Agent must have a mechanism to receive and investigate complaints about Participants and to resolve disputes between complainants and Participants in relation to non-compliance with its program requirements, as well as a mechanism for cooperation on dispute resolution with other Accountability Agents recognized by APEC economies when appropriate and where possible. An Accountability Agent may choose not to directly supply the dispute resolution mechanism. The dispute resolution mechanism may be contracted out by an Accountability Agent to a third party for supply of the dispute resolution service. Where the dispute resolution mechanism is contracted out by an Accountability Agent the relationship must be in place at the time the Accountability Agent is certified under the APEC CBPR system.
- 10) The dispute resolution process, whether supplied directly or by a third party under contract, includes the following elements:
  - a) A process for receiving complaints and determining whether a complaint concerns the Participant's obligations under the program and that the filed complaint falls within the scope of the program's requirements.
  - b) A process for notifying the complainant of the determination made under subpart (a), above.
  - c) A process for investigating complaints.
  - d) A confidential and timely process for resolving complaints. Where non-compliance with any of the program requirements is found, the Accountability Agent or contracted third party supplier of the dispute resolution service will notify the Participant outlining the corrections the Participant needs to make and the reasonable timeframe within which the corrections must be completed.
  - e) Written notice of complaint resolution by the Accountability Agent or contracted third party supplier of the dispute resolution service to the complainant and the Participant.
  - f) A process for obtaining an individual's consent before sharing that individual's personal information with the relevant enforcement authority in connection with a request for assistance.

- g) A process for making publicly available statistics on the types of complaints received by the Accountability Agent or contracted third party supplier of the dispute resolution service and the outcomes of such complaints, and for communicating that information to the relevant government agency and privacy enforcement authority (see Annex E).
- h) A process for releasing in anonymised form, case notes on a selection of resolved complaints illustrating typical or significant interpretations and notable outcomes (see Annex D).

### ***Mechanism for Enforcing Program Requirements***

- 11) Accountability Agent has the authority to enforce its program requirements against Participants, either through contract or by law.
- 12) Accountability Agent has a process in place for notifying Participant immediately of non-compliance with Accountability Agent's program requirements and for requiring Participant to remedy the non-compliance within a specified time period.
- 13) Accountability Agent has processes in place to impose the following penalties, which is proportional to the harm or potential harm resulting from the violation, in cases where a Participant has not complied with the program requirements and has failed to remedy the non-compliance within a specified time period. [NOTE: In addition to the penalties listed below, Accountability Agent may execute contracts related to legal rights and, where applicable, those related intellectual property rights enforceable in a court of law.]
  - a) Requiring Participant to remedy the non-compliance within a specified time period, failing which the Accountability Agent shall remove the Participant from its program.
  - b) Temporarily suspending the Participant's right to display the Accountability Agent's seal.
  - c) Naming the Participant and publicizing the non-compliance.
  - d) Referring the violation to the relevant public authority or privacy enforcement authority. [NOTE: this should be reserved for circumstances where a violation raises to the level of a violation of applicable law.]
  - e) Other penalties – including monetary penalties – as deemed appropriate by the Accountability Agent.
- 14) Accountability Agent will refer a matter to the appropriate public authority or enforcement agency for review and possible law enforcement action, where the Accountability Agent has a reasonable belief pursuant to its established review process that a Participant's failure to comply with the APEC Cross-Border Privacy Rules System requirements has not been remedied within a reasonable time under the procedures established by the Accountability Agent pursuant to paragraph 2 so long as such failure to comply can be reasonably believed to be a violation of applicable law.

- 15) Where possible, Accountability Agent will respond to requests from enforcement entities in APEC Economies that reasonably relate to that Economy and to the CBPR-related activities of the Accountability Agent.