

CHARTER OF THE APEC CROSS-BORDER PRIVACY RULES AND PRIVACY RECOGNITION FOR PROCESSORS SYSTEMS JOINT OVERSIGHT PANEL

1. CHARACTER OF THIS DOCUMENT

1.1 This Charter is to be read consistently with the APEC Privacy Framework.

Nothing in this Charter is intended to:

- i. Create any binding obligations on APEC Economies and/or their government agencies, or affect their existing rights and obligations under international or domestic law;
- ii. Impede any governmental activities authorized by domestic or international law;
- iii. Create any obligations or expectations of cooperation that would exceed a CBPR or PRP Participant's scope of authority and jurisdiction; or
- iv. Create obligations or expectations for non-participating government agencies.

1.2 This Charter, and any amendments thereto, will take effect upon endorsement by the Electronic Commerce Steering Group (ECSG).

2. COMMENCEMENT OF PARTICIPATION IN THE CROSS BORDER PRIVACY RULES SYSTEM

2.1 An APEC Member Economy is considered a Participant in the Cross Border Privacy Rules (CBPR) System (CBPR Participant), after the Chair of the Electronic Commerce Steering Group (ECSG Chair) has notified the Economy that the following conditions have been met:

- (i) The Economy's ECSG delegation, or appropriate governmental representative, submits to the ECSG Chair a letter indicating its intention to participate in the CBPR System and confirming that at least one Privacy Enforcement Authority in that Economy is a participant in the APEC Cross Border Privacy Enforcement Arrangement (CPEA);
- (ii) The Economy indicates its intention to make use of at least one APEC-recognized Accountability Agent subject to the procedures outlined in paragraph 7.2;
- (iii) The Economy's ECSG delegation, or appropriate governmental representative, after consulting with the Joint Oversight Panel, submits

to the Chair of the ECSG an explanation of how the CBPR System program requirements may be enforced in that Economy; and

- (iv) The Joint Oversight Panel submits to the Chair of the ECSG a report as to how the conditions in (i)-(iii) above have been satisfied.

3. COMMENCEMENT OF PARTICIPATION IN THE PRIVACY RECOGNITION FOR PROCESSORS SYSTEM

3.1 An APEC Member Economy is considered a Participant in the Privacy Recognition for Processors (PRP) System (PRP Participant), after the ECSG Chair has notified the Economy that the following conditions have been met:

- (i) The Economy's ECSG delegation, or appropriate governmental representative, submits to the ECSG Chair a letter indicating its intention to participate in the PRP System and where under (iii), the oversight of processors recognized under the PRP includes direct government backstop enforcement through a Privacy Enforcement Authority, confirming that the relevant Privacy Enforcement Authority or Authorities in that Economy are participants in the APEC CPEA;
- (ii) The Economy indicates its intention to make use of at least one APEC-recognized Accountability Agent subject to the procedures outlined in paragraph 7.2;
- (iii) The Economy's ECSG delegation, or appropriate governmental representative, after consulting with the Joint Oversight Panel, submits to the Chair of the ECSG an explanation of oversight and enforcement mechanisms available to ensure the effective oversight of processors recognized under the PRP in that Economy, even if direct government backstop enforcement is not applicable; and
- (iv) The Joint Oversight Panel submits to the Chair of the ECSG a report as to how the conditions in (i)-(iii) above have been satisfied.

4. TRANSPARENCY

- 4.1 A CBPR and/or PRP Participant will provide notice to the APEC ECSG Chair of any new laws or regulations and any amendments to existing laws or regulations as well as all other developments that may affect the operation and enforcement of either system.
- 4.2 The APEC ECSG Chair will promptly notify APEC Economies of any notification received pursuant to paragraph 4.1.

5. TERMINATION OF PARTICIPATION

- 5.1 A CBPR Participant may cease participation in the CBPR System by giving one month's written notice to the APEC ECSG Chair. A PRP Participant may cease participation in the PRP System by giving three months' written notice to the APEC ECSG Chair.
- 5.2 The APEC ECSG Chair will promptly notify APEC Economies of any notification received pursuant to paragraph 5.1.
- 5.3 In the event that a CBPR and/or PRP Participant terminates participation in either system, or is suspended or terminated from either system, recognition of any previously recognized Accountability Agent to operate in that Participant's Economy will automatically be suspended or terminated from the applicable system and the certification of those organizations certified by that Accountability Agent will be terminated from the applicable system until such time as the Economy is able to again fulfil the requirement for participation in the CBPR and/or PRP System, at which time any previously-certified applicant organizations should complete a new certification process.

6. CAUSE FOR SUSPENSION OR TERMINATION

- 6.1 Participation by an APEC Economy in the CBPR and/or PRP Systems may be suspended or terminated by a consensus determination by the other APEC Economies that one or more of the following conditions have been met:
 - i. Revocation, repeal or amendment of any domestic laws and/or regulations having the effect of making participation in the APEC CBPR and/or PRP Systems impossible;
 - ii. The Participant's Privacy Enforcement Authority as defined in paragraph 4.1 of the CPEA ceases participation pursuant to paragraph 8.2 of the CPEA; or
 - iii. the oversight and enforcement mechanisms available to ensure the effective oversight of processors recognized under the PRP in that Economy cease to be available.
- 6.2 A request for a consensus determination that any condition identified in paragraph 6.1 has been met may be made by any CBPR or PRP Participant at any time.

7. JOINT OVERSIGHT PANEL

- 7.1 The ECSG hereby establishes a Joint Oversight Panel, consisting of representatives from three APEC Economies, for a two-year appointment, subject to ECSG endorsement and the terms set out in paragraph 8.2. The ECSG will endorse a Chairperson for a two-year appointment from these three Economies. The Joint Oversight Panel will meet at the request of the ECSG, or more frequently as decided by CBPR and PRP Participants to assist in the effective implementation of the

CBPR and/or PRP Systems. The ECSG may appoint succeeding panels as it may deem appropriate.

7.2 The Joint Oversight Panel will perform the following functions:

- i. Engage in consultations with those Economies that have indicated an intention to participate in the CBPR and/or PRP Systems and issue a report as to how the conditions set out in paragraph 2.1 and/or 3.1 respectively have been met;
- ii. Make recommendations to the APEC Economies whether to recognize an applicant Accountability Agent as compliant with the requirements of the CBPR and/or PRP Systems. In making such recommendations, the Joint Oversight Panel should be satisfied of the following:
 - a) The applicant Accountability Agent has a location in an Economy participating in the relevant system or is otherwise subject to the enforcement and oversight identified by the economy for the relevant system, and
 - b) The applicant Accountability Agent meets the Recognition Criteria established under the system in which it is seeking recognition and has provided all necessary documentation as requested by the Joint Oversight Panel;
- iii. Consider and recommend suspension of the recognition of an Accountability Agent at any time;
- iv. Collect all case notes received by recognized Accountability Agents as required under the Accountability Agent Recognition Criteria and circulate to APEC Economies;
- v. Collect complaint statistics from recognized Accountability Agents as required under the Accountability Agent Recognition Criteria and circulate to APEC Economies;
- vi. Advise recognized Accountability Agents whether or not to withdraw from particular engagements if a potential conflict is alleged, considering any evidence provided by the recognized Accountability Agents as to internal structure and procedural safeguards that are in place to address any potential and actual conflicts of interest;
- vii. Verify that each recognized Accountability Agent complies with the re-certification process as required under the Accountability Agent Recognition Criteria;
- viii. Review any reported material change by the recognized Accountability Agent (e.g. ownership, structure or policies) as required under the Accountability Agent Recognition Criteria and report to APEC Economies its recommendation as to whether such change impacts the appropriateness of

recognizing the Accountability Agent as compliant with the requirements of the CBPR and/or PRP Systems;

- ix. Facilitate the review and edit of primary documentation associated with the CBPR and PRP Systems when necessary in conjunction with APEC Economies; and
- x. Perform all other functions as identified and decided by APEC Economies as necessary to the operation of the CBPR and PRP Systems.

7.3 All recommendations of the Joint Oversight Panel will be made by simple majority. A dissenting member of the Joint Oversight Panel may circulate its dissent from the majority's recommendation on any matter to APEC Economies.

7.4 In no circumstance should a member of the Joint Oversight Panel participate in any of the activities under 7.2 when the Accountability Agent is a public (or governmental) entity in the member's Economy or any of the activities under 2.1 and/or 3.1 where the interested Economy is a member of the Joint Oversight Panel. In such instances, the Data Privacy Subgroup Chair will designate another APEC Economy to temporarily function as a member of the Joint Oversight Panel.

7.5 The Joint Oversight Panel may establish working teams to address each of the above functions and request assistance from the APEC Secretariat or APEC Economies as necessary.

7.6 Recommendations by the Joint Oversight Panel will take effect upon endorsement by the ECSG.

78. ADMINISTRATIVE MATTERS

8.1 The Chairperson of the Joint Oversight Panel will provide a summary report detailing all activities carried out by the Joint Oversight Panel under paragraph 7 to the Data Privacy Subgroup Chair no later than one month in advance of each Data Privacy Subgroup meeting.

8.2 The initial terms of membership for the initial Joint Oversight Panel are as follows:

- i. One Chair to be appointed for a two-year term;
- ii. One member to be appointed for an 18 month-term, and;
- iii. One member to be appointed for a one-year term.

8.3 Upon expiration of the initial term, each appointment will have a two-year term subject to re-appointment at the discretion of the ECSG based on 7.1.