

## Heads of Terms between Data Protection Commission ("DPC") and the Irish National Accreditation Board ("INAB")

### 1. Background

INAB is the national accreditation body for Ireland under Regulation (EC) No 765/2008. Under Section 35 of the Data Protection Act 2018 (the "DPA") INAB has been appointed as the accreditation body for Ireland for the purposes of Article 43(1) of the General Data Protection Regulation (the "GDPR"). In order to ensure the proper operation of the accreditation of certification bodies, the DPC and INAB wish to enter into an agreement that sets out the roles of the DPC and INAB and the manner in which they will co-operate (the "Agreement"). These Heads of Terms set out the main matters that the Agreement will address.

### 2. Status of Heads of Terms

These Heads of Terms are not legally binding on either party, and have been developed by the parties in order to facilitate the development of the Agreement.

### 3. Defined Terms

For the purposes of these Heads of Terms, the following terms shall have the following meanings:

- (a) "Accreditation Requirements" means the additional accreditation requirements established by the DPC pursuant to Article 43(1)(b) of the GDPR.
- (b) "CAB" means a conformity assessment body (sometimes known as a certification body) that applies for accreditation from INAB, or which has received accreditation from INAB, pursuant to INAB's appointment under Section 35 of the DPA as the accreditation body for Ireland for the purposes of Article 43(1) of the GDPR.
- (c) "Certified Organisation" means an entity that has been certified by a CAB.
- (d) "GDPR Certification Criteria" means certification scheme criteria that have been issued or approved by the DPC under Article 58(3)(f) of the GDPR.
- (e) "Scheme Owner" means an entity responsible for the design and governance of a certification scheme or mechanism.

### 4. Required Terms

#### 4.1 Co-operation Provisions

- (a) The Agreement will include a requirement for the parties to co-operate in relation to:
  - (i) The operation of the accreditation of CABs;
  - (ii) Concerns or complaints in relation to certification activities of CABs;
  - (iii) Monitoring the CABs;
  - (iv) Establishment of any additional accreditation requirements in accordance with Article 43(1)(b) of the GDPR;
  - (v) Appeals by CABs that have had their accreditation suspended or withdrawn; and

- (vi) The promotion of the establishment of certification mechanisms by the DPC, pursuant to its obligation under Article 57(1)(n) of the GDPR.
- (b) The Agreement will include a governance schedule, which sets out the arrangements between the parties to address on-going governance (e.g. quarterly meetings of relevant staff). The governance schedule shall be reviewed by the parties annually, and amendments made where the parties agree these are required.

#### 4.2 Information Sharing in Relation to CABs

- (a) The Co-Operation Agreement will include a general obligation for the parties to share information, which will refer to a schedule setting out detailed information that will be shared by the parties, including the format and frequency of the provision of information where relevant.
- (b) The Schedule will record that the DPC will share the following information with INAB:
  - (i) On request from INAB, the DPC will verify if a CAB is subject to any investigation or regulatory action relevant to consideration under Section 4.1 of the Accreditation Requirements;
  - (ii) The DPC shall inform INAB where it has approved GDPR Certification Criteria;
  - (iii) The DPC shall inform INAB where the DPC has determined the requirements for certification are no longer met by a Certified Organisation and has ordered the CAB to withdraw or not issue a certification under Article 58(2)(h) of the GDPR; and
  - (iv) On receipt of a complaint from a person or organisation relating to a CAB's accreditation by INAB, the DPC will inform the complainant to contact INAB directly.
- (c) The Schedule will record that INAB will share the following information with the DPC:
  - (i) On receipt of an application for accreditation by a proposed CAB, or contact from a potential Scheme Owner, INAB will notify the DPC of the relevant details;
  - (ii) In limited defined circumstances, details of potential conflicts of interest identified in the accreditation process for a CAB which the CAB has been required to manage as part of its accreditation;
  - (iii) After issuing/renewing accreditation INAB will provide the DPC with agreed details in respect of the CAB's accreditation assessment;
  - (iv) Details of any valid complaints received about the applicant/accredited CABs and provide a report in relation to the conclusion of the investigation of the complaint, and any measures agreed with the CAB to address the complaint;
  - (v) Details of any suspension, or withdrawal of accreditation from a CAB, whether voluntary or imposed;
  - (vi) Details of any appeals by a CAB relating to suspension or withdrawal of accreditation; and

- (vii) Details of major non-conformities by a CAB with specific aspects of the Accreditation Requirements which have been identified by the DPC.

#### 4.3 Appeals

INAB shall notify the DPC of any appeal by a CAB relating to suspension or withdrawal of accreditation. INAB shall consider any submissions that the DPC makes to it in relation to the appeal. The DPC acknowledges that INAB shall have sole discretion in determining INAB's submissions as part of any appeal.

#### 4.4 Areas of Responsibility

The Agreement will include a Schedule which clearly sets out each party's areas of responsibilities in relation to the operation of the accreditation process.

#### 4.5 Term

The Agreement will commence on signature, and continue in force for as long as INAB remains the accreditation body under the DPA, and the DPC is the designated supervisory authority under the DPA for the purposes of the GDPR.

#### 4.6 Confidentiality

- (a) The Agreement will include provisions under which both parties agree to treat information received under the Agreement confidentially, subject always to their statutory obligations.
- (b) The Agreement will address the provision of confidential information in relation to CABs from INAB to the DPC.

#### 4.7 Data Protection

- (a) The Agreement will include provisions that govern the transfer of personal data between the parties.
- (b) It is envisaged that such transfers will occur on a controller to controller basis.

#### 4.8 Freedom of Information

The Agreement will address co-operation in relation to requests received under the Freedom of Information Act 2014.

#### 4.9 Dispute Resolution

- (a) The Agreement will include provisions that govern the resolution of disputes between the parties. It is envisaged that this will take the form of a tiered resolution process, whereby disputes are escalated until eventually referred to the senior management of each organisation.
- (b) Disputes that cannot be resolved via the procedure set out at (a) shall be referred either to mediation or expert determination (depending on the nature of the dispute and the agreement of the parties).

- (c) Nothing in the dispute resolution process will prevent a party from seeking to enforce the terms of the Agreement in the event of an urgent matter where they would be prejudiced if the dispute resolution procedure is followed.

**4.10 Standard/Boilerplate Provisions**

The Agreement will include boilerplate provisions addressing: (i) Force majeure; (ii) Notices; (iii) Counterparts/execution; (iv) Variation; and (v) Governing law.

SIGNED by

on behalf of THE DATA PROTECTION  
COMMISSION



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SIGNED by

on behalf of THE IRISH NATIONAL  
ACCREDITATION BOARD

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