

# Data Privacy Foundation

## Claim Code Compliance Document

### 2022

#### INTRODUCTION

The Data Privacy Foundation (the "**Foundation**") was established in 2019 to represent the interests of users, former users and/or their legal guardians of any product or service capable of storing, transmitting, or processing Data regarding the user who are, or at any time have been, subject to a Privacy Intrusion (as defined in clause 1 of the Articles of Association of the Foundation (the "**Articles**")); to investigate and establish, either directly or indirectly, any liability, for said Privacy Intrusions and all consequences therefrom or otherwise; and to perform all activities, or further activities, that are incidental to these ends.

The Foundation endorses the Claim Code that came into force on 1 July 2011 as amended on 4 March 2019 (the "**Claim Code**"). The Claim Code is a self-regulatory instrument for interest groups that was drafted by the Claim Code Committee. The Claim Code consists of principles (the "**Principles**") that are considered to be broadly accepted general guidelines and views on how claim foundations and associations should represent collective interests, including — but not limited to — litigation. The Principles create a set of standards for the founders, directors, supervisory boards, consultants, external funders and advisors engaged by the Foundation or association.

The Foundation currently has a Management Board (the "**Board**") consisting of directors and a Supervisory Board (the "**Supervisory Board**") consisting of supervisory directors. The Board is charged with the management of the Foundation and requires prior written approval of the Supervisory Board (amongst others) for certain resolutions that may significantly impact the Foundation and/or its endeavors to achieve its objects.

#### PRINCIPLE I: COMPLIANCE WITH THE CLAIM CODE

The compliance of the Foundation to the Claim Code will be discussed annually in a joint meeting of the Board and the Supervisory Board. Should the Board ever wish to deviate from one or more Principles of the Claim Code, it will require prior written approval of the Supervisory Board as set out in clause 7.1 of the Articles. The Board is required to explain the reasons for such deviation in its Claim Code Compliance Document.

This document is intended to comply with the requirements set out in clause 7.2 of the Articles and in Elaboration 1 of Principle I of the Claim Code, and is published on the Foundation's website: [www.dataprivacystichting.com](http://www.dataprivacystichting.com).

## **PRINCIPLE II: PROTECTING COLLECTIVE INTERESTS ON A NON-PROFIT BASIS**

The Foundation acts as a non-profit organization in the collective interests of users, former users and/or their legal guardians, of any product or service capable of storing, transmitting, or processing Data (as defined in the Articles) regarding the user, who is, or at any time has been, subject to a Privacy Intrusion (as defined in the Articles), whether domiciled or residing either in the Netherlands or abroad, and who are persons whose interests the Foundation represents pursuant to its object, all terms broadly defined (the "**Aggrieved Parties**").

The Foundation does not generate revenue by requiring the Aggrieved Parties to pay a registration fee. There is therefore no risk of inappropriate use of such funds as identified by the Claim Code in Principle II and for which the Claim Code provides important safeguards.

Clause 27.5 of the Articles provides that if the Board adopts a resolution to dissolve the Foundation, it will need to stipulate how surplus funds on winding up, if any, are to be allocated, in line with the objects of the Foundation and will be deployed for an institution serving the public good. The resolution to dissolve the Foundation (including the allocation of a possible surplus) is subject to prior written approval of the Supervisory Board (clause 27.2 in conjunction with clause 26.1 of the Articles) and can, in principle, only be passed by a majority of two thirds of the votes cast at a board meeting at which at least two thirds of the Board members are present or represented (pursuant to clause 27.2 in conjunction with clause 26.2 of the Articles).

Elaboration II.3 of Claim Code provides that the Articles should also contain a provision that a liquidation surplus should be distributed amongst the Aggrieved Parties or deployed for an institution serving the public good, as referred to in section 6.33 paragraph 1(b) of the Income Tax Act 2001, including a charity institution outside the Netherlands in a country designated by ministerial regulation. Per clause 27.5 of the Articles, the Board will determine the destination of any liquidation surplus with the understanding that such determination will be aligned with the statutory objects of the Foundation and will be deployed for an institution serving the public good.

## **PRINCIPLE III: EXTERNAL FUNDING**

The Foundation entered into an agreement with Lieff Cabraser Heimann & Bernstein, LLP ("**LCHB**") and has engaged LCHB (i) to provide the funding to the Foundation and (ii) to render services to the Foundation, including drafting marketing and advertising activities, website operations and possible

contacts with individual Aggrieved Parties, and all tasks reasonably related thereto (the "**LCHB Engagement**").

The Foundation has investigated the track record and reputation of LCHB and is satisfied that LCHB is wholly independent from any defendant in litigation. LCHB has agreed to fund litigation initiated by the Foundation through a judgment on the merits by the Court of First Instance.

The members of the management Board, members of the Supervisory Board, and the lawyers of the Foundation are all independent from LCHB and its affiliates. The funding conditions do not conflict with the collective interests the Foundation aims to protect on the basis of its Articles. The control over the strategy of the Foundation as well as the engagement of Attorneys lies exclusively with the Foundation. In return for the services rendered and the risks and costs assumed by LCHB, a fee applies of 18% of any financial recovery achieved through a collective settlement or litigation.

#### **PRINCIPLE IV: INDEPENDENCE OF THE FOUNDATION AND AVOIDING CONFLICTS OF INTERESTS**

In accordance with the Claim Code and the Articles, any apparent conflict of interest between the Foundation's engaged advisors, the Supervisory Board, and the Board should be avoided. In all cases where there is a direct or indirect conflict of interest between the interests of the Foundation and the interests of one or more members of the Board or the Supervisory Board, the individual with the conflict of interest will not take part in the deliberations and shall abstain from voting with respect to the matter in which he or she has a conflict of interest (Clauses 13.1 and 19.2 of the Articles). If all members of the Board have a conflict of interest, the resolution shall be taken by the Supervisory Board (Clause 13.2 of the Articles).

The Articles do not explicitly prohibit the Foundation from entering into agreements with a legal entity in which a member of the Board or Supervisory Board acts as a director, founder, shareholder, partner, member of the Supervisory board and/or employee. The Foundation is currently not engaged in such an agreement. Since the Foundation has an adequate conflict of interest policy, the current governance of the Foundation provides sufficient safeguards in this respect and sufficiently complies with Elaboration IV.3 of the Claim Code.

#### **PRINCIPLE V: COMPOSITION, TASK AND MODUS OPERANDI OF THE BOARD**

The Board represents the Foundation. Elaboration V.1 of the Claim Code provides that the Board of the Foundation should consist of at least three individuals. Currently, the Board consists of: Mr. H.Th. (Dick) Bouma (former (managing)partner at law firm Pels Rijcken & Droogleever Fortuijn, an expert on class actions and settlements with financial expertise as a curator in large scale bankruptcies), The Right Honourable Dame Elizabeth Gloster, DBE PC (former Lady Justice at the Court of Appeal in London, former Vice-President of the Civil Division of that Court and current judge at the Bermuda Court of Appeal), and Mr. I.S. (Ira) Rubinstein (Senior Fellow at the Information Law Institute at NYU

Law School). Given the current composition of the Board, it has adequate legal and financial expertise and experience.

The Board runs a website for the Foundation: [www.dataprivacystichting.com](http://www.dataprivacystichting.com). On this website, stakeholders have access to all relevant information, including — but not limited to — the following documents: (i) the Articles, (ii) this Claim Code Compliance Document, (iii) the résumés of the members of the Board and the Supervisory Board, (iv) updates on any pending litigation, and (v) the ability to contact the Foundation.

#### **PRINCIPLE VI: RENUMERATION OF THE MEMBERS OF THE BOARD**

Directors are entitled to a management fee for services rendered to the Foundation (pursuant to clause 6.6 of the Articles). The Board members have the specific expertise (including legal expertise) required for their roles within the Foundation. Given the complex international setting of the matters in which the Foundation operates, the exposure, and the specific requirement of legal knowledge, the Foundation deems it justified to provide an hourly rate of EUR 350 / USD 400 / GBP 350 (excluding VAT) for time spent by its Board members.

#### **PRINCIPLE VII: THE SUPERVISORY BOARD**

Currently, the Supervisory Board consists of three individuals: Ms. A.P.M. (Ada) van der Veer-Vergeer (former board and supervisory board member of various multinational companies, including financial institutions), Mr. A.H. (Benk) Korthals (former defense secretary and justice secretary of the Dutch Government), and Mr. P. (Peter) Ingelse (former President of the Enterprise Chamber of the Amsterdam Court of Appeal). Given the current composition of the Board, it has adequate legal and financial expertise and experience. The Supervisory Board meets at least once a year and organizes an annual combined meeting with the Board to discuss the strategy of the Foundation. The Board keeps the Supervisory Board informed on all material matters of the Foundation. As Elaboration VII.7 suggests, the articles of association contain a requirement for the Supervisory Board to order the Board to have the annual accounts verified by a registered auditor. The Supervisory Board is charged with the approval of the annual accounts.

For her/his services and duties, each member of the Supervisory Board is entitled to an amount of EUR 7,000 per annum (excluding VAT). Any costs and/or out of pocket expenses can be charged separately to the Foundation. Given the current composition of the Supervisory Board, it has adequate legal and financial expertise and experience, in accordance with Elaboration VII of the Claim Code.