

## **Subscriber Agreement for (a) the e-ID Account and (b) the Certificates within the National Electronic Identity Card**

Subscribers must carefully read the terms and conditions in this Subscriber Agreement (the "Agreement") prior to use of any Electronic Identity Account ("the e-ID Account") and/or Authentication and Digital Signature Certificates (jointly referred as the "Certificates") within the National Electronic Identity Card issued by the Government of Malta.

**Purpose.** This Agreement contains the terms and conditions under which a Subscriber shall use:

- a) the e-ID Account.
- b) the Certificates. This Agreement also contains the terms and conditions relating to the use and reliance upon the Certificates as per the Certificate Authority's ("CA") Certification Practice Statement ("CPS").

**Entire Agreement.** This Agreement, together with the CPS and the Certificate Policy in the case of the Certificates, form the entire and sole agreement between the Government of Malta and the Subscriber with respect to the subject matter of this Agreement and shall supersede all previous negotiations, communications and other agreements whether written or oral relating to it. There are no representations, terms, statements or conditions binding on the parties other than those contained in this Agreement and the CPS and the Subscriber has not relied or is not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated in this Subscriber Agreement. Nothing in this paragraph shall affect any party's liability for fraud or fraudulent misrepresentation. Should any of the provisions of this Agreement contradict the provisions of the CPS in relation to the Certificates, the CPS shall prevail.

**Definitions.** Unless otherwise stated in this Agreement, the terms and words used in this Agreement in relation to the Certificates, have the same meaning as in the CA's CPS which can be found at <http://repository.qca.gov.mt>. 'NIDMS Application Form' refers to the application form signed by the citizen to be issued with the National Electronic Identity Card.

### **Part A – Terms Specific to e-ID Account (Applicable only in cases where the Applicant has applied for an e-ID Account)**

**Authority responsible for e-ID Account.** The Authority responsible for the e-ID Account and for the relative terms and conditions set out hereunder shall be the Registration Authority ("RA"). The Identity Management Office (IDMO) within the Land and Public Registry shall act as the RA.

**Use of e-ID Account.** The Subscriber shall:

- a) ensure that his/her usernames, passwords and activation code key (PIN) relating to the e-ID Account ("e-ID Credentials") are not compromised;
- b) immediately notify the RA if he/she becomes aware that his/her e-ID Credentials are compromised, or there is substantial risk of compromise;
- c) ensure that all information provided to the RA in relation to the generation and issuance of his/her e-ID Account (including all information submitted by him/her during the registration process) is true, complete and up-to-date;
- d) immediately notify the RA if there is any other change to his/her e-ID registration information or any other information provided to the RA;
- e) make use of his/her e-ID Account only for the purposes for which it was issued and within the usage and reliance limitations as specified in this Agreement and all other applicable laws, agreements and terms and conditions of use related to the subject matter of this Agreement;
- f) check the details set out in his/her e-ID Account on receipt and promptly notify the RA if incorrect or improper information has been created.

**Warranties by the RA on the e-ID Account.** The Subscriber agrees that use of the e-ID Account, including access and usage of any functionality or multiple profile contained in the e-ID Account as well as access and usage of any electronic service connected to the electronic portal of the Government of Malta is solely at the Subscriber's own risk. The RA expressly disclaims all warranties of any kind, whether express or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement. The Subscriber understands and agrees that any transaction, material and/or data downloaded or otherwise obtained through the use of e-ID Account is done at the Subscriber's own discretion and risk and that usage of the e-ID Account may be construed as an 'electronic signature' in terms of the Maltese Electronic Commerce Act.

**Warranties by the Subscriber on the use of the e-ID Account.** The Subscriber warrants:

- a) that he/she is solely responsible for any use as well as the contents of any transmission, message or transaction performed through the usage of the e-ID Account including all functionalities and profiles that can be assigned to and/or generated by him/her through the use of the e-ID Account;
- b) to all service providers who will grant access to any electronic service provided through the portal of the Government of Malta ('Service Providers') that (i) no unauthorized person has ever had access to his/her e-ID Account and that the e-ID Account is being used exclusively for appropriate, authorised and lawful purposes; and (ii) at the time that any act, use or transaction is carried out or performed through by any other person or organisation on behalf of the Subscriber through the use of the **assignment and/or** delegation function available in the e-ID Account was validly authorised by the Subscriber and that such authorization was not revoked by the Subscriber, (iii) all representations made and documents submitted by the Subscriber during the application and registration for the e-ID Account are true and up-to-date.

**Indemnity on the e-ID Account.** The Subscriber shall indemnify the RA and/or the Service Providers for any loss, damage and expense of any kind, arising out or in connection with (a) the manner and extent of the use of the e-ID Account by the Subscriber and/or by any person or organisation which the Subscriber appoints, **assigns** or delegates to appear and act on behalf of the Subscriber; (b) any negligence or wilful misconduct made by the Subscriber when using his/her e-ID Account and/or by any person or organisation which the Subscriber appoints, **assigns** or delegates to appear and act on behalf of the Subscriber; (c) any falsehood or misrepresentation of fact by the Subscriber and/or any person or organisation which the Subscriber appoints, **assigns** or delegates to appear and act on behalf of the Subscriber; (d) any failure by the Subscriber and/or any person or organisation which the Subscriber appoints or delegates to appear and act on behalf of the Subscriber to disclose a material fact with the intent to deceive the RA or the Service Providers; and (e) any failure by the Subscriber and/or any person or organisation which the Subscriber appoints, **assigns** or delegates to appear and act on behalf of the Subscriber to prevent the compromise, loss, disclosure, modification, or unauthorized use of their e-ID Credentials.

The Subscriber further agrees to release, indemnify, defend and hold harmless the RA and any of its contractors, agents, employees, officers, directors, affiliates and assigns from all liabilities, claims, damages, costs and expenses, including reasonable legal fees and expenses, of third parties relating to or arising out of any falsehoods or misrepresentations of fact by the Subscriber on the NIDMS Application Form, any breach of intellectual property or other proprietary right of any person or entity, failure to disclose a material fact on the NIDMS Application Form if the misrepresentation or omission was made negligently or with intent to deceive any party, failure to protect the subscriber's username, password, activation code key (PIN) **and – if applicable – the Personal Unlocking Key (PUK)** or to take the precautions necessary to prevent the compromise, loss, disclosure, modification or unauthorized use of same.

#### **Part B – Terms Specific to Certificates**

**Authority responsible for the Certificates.** The Authority responsible for the Certificates and for the relative terms and conditions set out hereunder shall be the Certification Authority ("CA"). The Malta Electronic Certification Services (MECS) Ltd shall act as the CA.

**Identification Information of Certificates.** The Subscriber attests that the information submitted relating to the application for the Certificates, as may be corrected or updated from time to time, is true and complete and that s/he has complied with the corresponding registration procedures.

#### **Acceptable Use or Reliance on Certificates.**

- a) The reliance placed upon any Electronic Signature created using the authentication Certificate and associated Private Key embedded within the National Identity Card shall be limited to proof-of-possession of the card and knowledge of the associated activation data. The CA does not authenticate the content of any message signed using an Electronic Signature and accordingly does not entertain any liability or risk in relation thereto.
- b) The Subscriber shall use or rely on the Certificates only for the purposes permitted by the CPS and this Agreement and for no other purpose. The Subscriber acknowledges and agrees that any use of, or reliance on, the Certificates for purposes of any other transactions is at the Subscriber's own risk and the CA offers no express warranties regarding the fitness for purpose of the Certificates for any application not specifically approved in this Agreement or in the CPS. To the fullest extent permitted by law, the CA disclaims any implied warranties to the contrary;
- c) The CA offers no express or implied warranties regarding the performance of any of the portal sites operated by the Government of Malta or other third parties;
- d) The Subscriber shall refrain from tampering with the Certificates and shall immediately inform the CA of any changes to the data on the Certificates;
- e) The Subscriber acknowledges that Certificates are not designed, intended, or authorised for use in hazardous circumstances or for uses requiring fail-safe performance.
- f) The Subscriber acknowledges and agrees that Certificates are personal to the relevant Subscriber and they are non-transferable. If a person relies upon a Certificate from an individual purporting to act on behalf of another legal person, the person does so entirely at its own risk.

#### **Restrictions on Certificate Usage.**

- a) The Subscriber shall only use the Certificates to the extent consistent with applicable law.
- b) The Subscriber acknowledges that Certificates are not designed, intended, or authorised for use or resale in hazardous circumstances or for uses requiring fail-safe performance.

#### **Suspension and/or Revocation of Certificates.**

The Subscriber shall immediately request that the CA **suspends and/or revokes** a Certificate:

- a) If the **National Electronic Identity Card**, Private Keys or passwords of the Subscriber have been, or are suspected to have been, compromised or are insecure in any way;
- b) If any of the information contained in the Certificate, or the identification and authentication information has been changed or altered, or is otherwise no longer accurate or complete.

The Subscriber acknowledges that the CA or the RA may revoke a Certificate:

- a) If any of the information in the Certificate changes;
- b) If the CA and/or the RA knows or has reason to suspect that the Private Keys or password or PIN number of the Subscriber have been compromised;
- c) If the Subscriber fails to comply with their obligations under this Agreement; or
- d) For any other reasons the CA and/or the RA deems necessary.

**Warranties by the CA on Certificates.** Section 9.6.5 of the CPS contains the sole representations and warranties provided by the CA for the benefit of Subscribers in relation to the Certificates. The obligations of the CA in relation to the Certificates are subject to the limitations and exclusions set out in Sections 9.7, 9.8 and 9.16.5 of the CPS.

**Warranties by the Subscriber on the use of the Certificates.** The Subscriber warrants and represents that s/he:

- a) accepts the procedures set by the CA in the CPS currently in effect for the provision of Certificates;
- b) when applying to the RA for the National Identity Card, s/he has submitted precise, accurate and complete information, and complied with the corresponding registration procedures;
- c) will use or rely on keys or Certificates only for purposes permitted by this CPS and for no other purpose;
- d) gives an undertaking that s/he is the sole holder of the Private Keys within the National Identity Card linked to the Public Keys to be certified;
- e) protects the Private Keys at all times against loss, disclosure, alteration or unauthorised use;
- f) will immediately notify the CA in such manner as specified by the CA in the event of the compromise or suspected compromise of the Private Keys or the activation data (e.g. PIN codes);
- g) will immediately inform the CA of any changes to the data on the Certificates;
- h) will comply with the terms and conditions of the service providers with whom it communicates while using the Certificate.

**Limitation of Liability.** The CA shall not be under any liability in respect of any loss or damage (including, without limitation, consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in relation to the use or reliance upon Certificates or associated public/private key pairs for any use other than in accordance with this Agreement. In any case, the CA's total liability for damages sustained by the Subscriber and any Third Party for any use or reliance on a Certificate shall be limited, in total, to two thousand five hundred Euro (€2,500) per transaction. This limitation shall be the same regardless of the number of Electronic Signatures, transactions or claims relating to such Certificate. The CA shall not be under any liability for failure to perform any of its obligations herein where such failure arises from a force majeure event that is an event beyond the CA's reasonable direct control, including, but not limited to, Acts of God (including weather of exceptional severity, floods, lightning or fire), general or local strikes, national emergency, acts or omission of Government or other competent authorities, fire or destruction of the CA's works or materials, insurrection or other civil disorder, war or military operations, or explosions.

**Indemnity on Certificates.** To the extent permitted by law the Subscriber agrees to indemnify and hold the CA harmless from any acts or omissions resulting in liability, any loss or damage, and any suits and expenses of any kind, including reasonable attorneys' fees that the CA may incur as a result of the Subscriber's negligence or its failure to comply with this Agreement or with the terms of the CPS.

**Privacy.** The information provided by the Subscriber shall be processed by the CA in accordance with the Data Protection Act. The CA may access and/or disclose personal information if such action is necessary to:

- a) comply with the laws of Malta;
- b) protect and defend the rights or property of the Government of Malta;
- c) act in urgent circumstances to protect the personal safety of Subscribers or members of the public.

The Subscriber acknowledges that data relating to the issuing, use, suspension and revocation of Certificates shall be retained by the CA for up to 40 years so as to enable the CA to meet legal and evidential requirements under the Maltese Electronic Commerce and other legislation.

## **Part C – Terms Common to e-ID Account and Certificates**

### **Protection of e-ID Credentials and Certificate Keys.**

- a) The Subscriber agrees to keep confidential all i) e-ID Credentials and/or ii) private keys and PINs relating to the Certificates **and/or (if applicable) the Personal Unlocking Key (PUK)**;
- b) Upon activation of the e-ID Account, the Subscriber shall be required to enter the activation PIN code and change the password. If the Subscriber fails to make to make the necessary change, the Subscriber acknowledges that the no further use of the e-ID Account can be made;
- c) Upon first **access to** the Certificates, the Subscriber shall be required to change the activation PIN code for each Certificate. The Subscriber acknowledges that no further use of the Certificates can be made **until he/she makes the necessary change**;
- d) The Subscriber agrees to take all reasonable measures to prevent the loss, disclosure, modification or unauthorised use of i) the e-ID Credentials and/or ii) any Private Keys, PINs related to the Certificates;
- e) The Subscriber undertakes that s/he is and shall remain the sole holder of i) the e-ID Credentials and/or ii) the Private Key linked to the Public Key to be certified;
- f) The Subscriber acknowledges and agrees that the CA and the RA shall not keep a copy of the Subscriber's password, PINs or digital signing keys issued for the Certificates;

The Subscriber is hereby notified that anyone who obtains the Private Key can forge his/her digital signature and take actions in his/her name. The CA will not be liable for the consequences of Subscribers failing to maintain the confidentiality of their Private Keys.

**Governing Law and Dispute Resolution.** This Agreement shall be governed by and construed in accordance with Maltese law. Any dispute, controversy or claim arising under, out of or relating to this Subscriber Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be resolved by the Courts of Malta.

**Term of Agreement.** This Agreement comes into force once the Subscriber accepts this Agreement. In relation to the e-ID Account, the Electronic Identity Subscriber Agreement as well as the Terms and Conditions shall be

applicable for as long as the e-ID Account remains valid and the Subscriber has not breached any provision of the Electronic Identity Subscriber Agreement and/or the Terms and Conditions. In relation to the Certificates, the CA a) may terminate this Agreement at any time by sending written notice to the Subscriber and b) shall terminate this Agreement without advance notice in the event that the Certificate is revoked by the CA in accordance with this Agreement. The Subscriber will be informed by the CA of such termination by written notice within three working days from the date of revocation of the Certificate.

The Subscriber may, at any time, request the **suspension**, revocation and/or **termination** of:

- a) the eID Account
- b) one of the Certificates (authentication or signature) resulting in the termination of this Agreement in relation to that specific Certificate (referring to the eID Card) or
- c) the two Certificates (authentication and signature) resulting in the termination of this Agreement (referring to the eID Card).

**Assignment.** The CA will assign specific functions with respect to the processing of Certificates to a RA, as specified in its CPS. This Agreement is personal to the Subscriber. The Subscriber shall not assign this Agreement to a third party.

**Data Protection.** All personal data shall be processed according to the Data Protection Act as well as any other applicable law or guidelines published from time to time. The RA shall transfer personal data to:

- (a) A Service Provider from whom the Subscriber requested an eService; and/or
- (b) A Service Provider providing any one or more of the eServices listed under "What Services are available from the Service Providers" in the "Frequently Asked Questions" section of the mygov website.

The Subscriber hereby authorises such Service Providers to use such data for the purpose of providing the Subscriber with the eService. For all intents and purposes such Service Providers shall be considered Data Controllers as defined in the Data Protection Act. The RA shall not transfer any personal data to any other third party unless with the Subscriber's consent or in cases where the RA is required to disclose such data by law. The Subscriber's rights as a data subject under the Data Protection Act shall apply.

**General.** The Subscriber acknowledges and agrees that:

- a) No title to the Government of Malta's Intellectual Property Rights in the e-ID Account and Certificates is transferred to the Subscriber, and that the Subscriber does not obtain any rights other than the rights expressly granted in this Agreement;
- b) Despite any termination or expiry of this Agreement, the disclaimers, limits of liability and provisions concerning indemnity shall survive;
- c) Any term or provision of this Agreement declared by a court of competent jurisdiction to be invalid, illegal or unenforceable shall be severed from this Agreement, and shall not affect the legality, enforceability, or validity of the remainder of this Agreement;
- d) This Agreement may be amended by the Government of Malta in writing from time to time. The Subscriber shall be notified of any amendments to this Agreement and shall be deemed to have accepted these amendments unless the Subscriber notifies the Government of Malta otherwise in accordance with the Notices provision below and terminates this Agreement within ten (10) days from notification;
- e) The Government of Malta will hold data relating to the Subscriber and the Subscriber's use of the Certificate in electronic form and that such electronic information may be presented by the Government of Malta as evidence in the case of any dispute.
- f) Except for indemnity obligations set out in this Agreement, the Subscriber shall not hold the Government of Malta responsible for any cessation, interruption or delay in the performance of its obligations hereunder due to earthquake, flood, fire, storm, natural disaster, act of God, war, armed conflict, terrorist action, labour strike, lockout, boycott, provided that the **Government** shall have given the Subscriber written notice thereof promptly and, in any event, within five (5) days of discovery thereof and (ii) shall take all reasonable steps reasonably necessary under the circumstances to mitigate the effects of the force majeure event upon which such notice is based.

**Notices.**

Queries (relating to the e-ID Account / Certificates and to the terms and conditions of the e-ID Account / Certificates set out above and any notices to the CA / RA shall be served as follows:

- By mail at the following address: Identity Management Office, Second Floor, Evans Building, Merchants Street, Valletta, VLT 2000, Malta.
- By telephone at +356 2122 6627/8
- By e-mail at [info@mygov.mt](mailto:info@mygov.mt)

The RA and/or the Service Provider from whom the Subscriber requested the eService may use the Subscriber's personal data to send notifications relating to the eServices. Please tick here if you do not wish to receive any such marketing or promotional material related to the eServices from the RA and/or Service Providers.

Name of Subscriber \_\_\_\_\_

ID Card No. \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_

For Office Use Only \_\_\_\_\_

Registration Officer \_\_\_\_\_

Registration Office \_\_\_\_\_

Signature \_\_\_\_\_