



**MODEL AGREEMENT  
PERMITTING USE OF  
THE *tScheme* MARK**

Ref. tSd0254

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**MODEL AGREEMENT  
PERMITTING USE OF  
THE *tScheme* MARK**  
(Document reference: tSd0254)

An Agreement between  
**tScheme Limited**  
and an  
Electronic Trust Services Provider  
Regarding a  
Specified Electronic Trust Service

## Agreement Made Between

[ ]

and

**tScheme Limited**

on [dd mmm yyyy]

### A. DEFINITIONS

#### 1. In this Agreement:

"Appeal" means the appeal procedure described in Clause 24 of this agreement.

"Approval" means the formal ratification by tScheme that the Service meets the requirements of the tScheme approval profile, annexed in Schedule A and as amended under tScheme's Rules from time to time, and that the Supplier has entered into an agreement with tScheme in regard to its future conduct of the named service.

"Assessor" means a body recognised by tScheme as competent to undertake assessments of compliance by electronic trust services to tScheme approval profiles.

"tScheme" means the company incorporated under the name tScheme Limited under company number 04000985 whose registered office is at 15 Court Lodge, Shorne, GRAVESEND, Kent, DA12 3EQ, United Kingdom.

"Code of Conduct" means the guiding principles, mandated from time to time by tScheme, for the regulation of the conduct of itself, its members and electronic trust services providers operating electronic trust services approved by tScheme, the extant version being appended to this agreement.

"Grant" means the published confirmation of Approval in the directory of Approved Services on tScheme's public website.

"Mark" means the tScheme mark owned and licensed by tScheme, details of which are set out in Schedule B, and relating to the specific Service Approval.

"Service" means the electronic trust service or services offered by the Supplier and described in Schedule A.

"Supplier" means the provider of electronic trust services known as [ ] whose registered office is at [ ] and whose address for the service of notices is [ ].

Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, digital representation and other modes of representing or reproducing words in an intelligible form.

References to Schedules, Appendices and Clauses are references to schedules, appendices and clauses of this agreement.

Where tScheme is required to give notice of a change of scale of fees, Code of Conduct or other arrangement generally applicable to all agreements of this type, it shall be sufficient for tScheme to post such on its public Web site, provided that tScheme also sends an electronic alert to the Supplier. The notice period shall commence on the day when tScheme transmits the alert.

Words importing the singular number only shall include the plural number and vice versa. Words importing the masculine gender only shall include the feminine gender and words importing persons shall include corporations.

## B. PERMISSIONS

### 2. tScheme grants to the Supplier:

- (a) a non-transferable, non-exclusive licence to display the Mark, in the United Kingdom and in all other territories in which tScheme from time to time has rights in the Mark, in association with the Service, including on the Supplier's Web site or sites relating to the Service; and
- (b) the non-transferable, non-exclusive right to describe the Service as "tScheme Approved";

for the period, against the payments and on the terms and conditions of this agreement. tScheme grants no other rights to the Supplier under this agreement and nothing in this agreement shall prevent tScheme or any person authorised by tScheme from using the Mark in any manner and in relation to any goods or services in the United Kingdom or elsewhere.

### 3. The Supplier is not permitted to display the Mark or to claim tScheme approval in association with any other service which is not itself the subject of a contractual arrangement with tScheme granting those specific rights and for which the

Supplier does not have Approval, or in respect of which Approval has been suspended or withdrawn.

4. tScheme permits the Supplier, during the operation of this agreement, to make modifications to and variants of and to rename the Service providing that no change materially affects the primary characteristics of the Service as described in the representations presented to tScheme which gave rise to this agreement, and providing that the Supplier promptly informs tScheme of such change.
5. Subject only to Appeal or other dispute resolution under Clauses 24 to 26, tScheme's decision on what constitutes material alteration of the Service for the purposes of Clause 4 shall be final and binding.

C. PERIOD

6. This agreement becomes effective on the date first appearing above for a period of one year and will then automatically be extended annually for further periods of one year unless:
  - (a) the Supplier has failed to pay fees due under Clause 7; or
  - (b) the Supplier has failed to follow the required extension procedure as specified in Clause 12; or
  - (c) this agreement has been terminated in accordance with Clauses 18 or 19.

D. FEES

7. The Supplier agrees to pay the appropriate fee or fees from the scale of fees for the use of the Mark as published from time to time by tScheme, including fees due on extension of this agreement under Clause 6. If the Supplier fails to pay any fee due within 30 days of it falling due, without prejudice to any other right or remedy, the licence in Clause 2 shall cease until payment.
8. tScheme undertakes not to change the scale of fees at less than three months' notice.
9. tScheme shall not refund in part or whole any fees properly received notwithstanding the exercise of any rights conferred by Clauses 18 or 19.

## E. UNDERTAKINGS

10. The Supplier undertakes to subscribe to the Code of Conduct for so long as it continues to display the Mark or otherwise claims, or might reasonably be construed to claim, current tScheme approval of the Service.
11. The Supplier shall ensure that it has current Approval for its Service throughout any period when it displays the Mark or claims tScheme approval in relation to the Service.
12. The Supplier undertakes to produce to tScheme, where the Supplier is seeking an annual extension of this agreement under Clause 6, an Approval renewal assessment report prepared by a tScheme-recognised Assessor relating to the Service and dated no more than three months prior to the next anniversary of the original Grant date. Such Approval renewal assessment reports are to be submitted to tScheme at least one calendar month prior to the next Grant anniversary date, or as reasonably requested by tScheme at any other time under Clause 13; and the Supplier agrees to act forthwith to remedy any deficiencies found in the renewal assessment, as reasonably directed by tScheme.
13. The Supplier gives permission for tScheme, or its delegated assessor, to carry out, whether at the instigation of the Supplier or of tScheme, inspections of the Service, including giving reasonable access and co-operation on reasonable notice to premises, staff and documents, subject to reasonable consideration for security, confidentiality and the legal obligations of the Supplier, for the purposes of ensuring continuing adherence by the Supplier and the Service to the standards and conditions required for Approval.
14. tScheme undertakes to maintain the confidentiality of commercially sensitive information revealed to it during the course of inspections under Clause 13 and to require that those to whom it may delegate such inspections are similarly bound.
15. Notwithstanding the provisions of the Code of Conduct, the Supplier undertakes:
  - (a) to perform its obligations under this agreement in such a way as to comply with all legal and regulatory requirements from time to time in force within any territory or jurisdiction in which it operates, including but not limited to human rights, data protection and data privacy legislation;
  - (b) to maintain continuous liability insurance commensurate with the liabilities implied by the Service or otherwise to ensure that such liabilities will be met;
  - (c) to provide the means for promptly and fairly resolving reasonable complaints from all those who rely on the Service;

- (d) not to behave in any manner which brings, or might reasonably be calculated to bring, the Service, tScheme or the Mark into disrepute;
- (e) not to make any change to the Service, its manner of operation or any other material factor which would have caused tScheme to withhold Approval had it pertained at the time of application for Approval unless tScheme has given prior approval to the change; and
- (f) to indemnify tScheme against all claims and liabilities against tScheme arising out of the provision of the Service or any defects or deficiencies in the Service or any activities of the Supplier under this agreement or breach of it by the Supplier, provided that:
  - (i) the Supplier shall not be liable to the extent that the claim or liability has been increased or is due to tScheme's fault or negligence or tScheme's breach of its statutory or other obligations;
  - (ii) tScheme notifies the Supplier of any such claim within sufficient time so as not to prejudice the defence of such claim and, at the Supplier's expense, provides the Supplier with all reasonable assistance in disputing it; and
  - (iii) tScheme gives the Supplier conduct of all matters relating to handling the complaint or liability and does nothing to prejudice the favourable outcome of the dispute.

## F. SANCTIONS

- 16. The Supplier agrees to co-operate expeditiously and openly with tScheme in tScheme's investigation of any complaint received by tScheme relating to the Service.
  - 17. tScheme shall have the right, subject to Appeal:
    - (a) to require the Supplier to make specified remedial modifications to the Service where such modifications are:
      - (i) necessary to ensure the reliability or trustworthiness of the Service;
      - (ii) in tScheme's opinion necessary to protect the reputation and integrity of tScheme or the Mark;
- or both;

- (b) to suspend the Supplier's licence to use the Mark and right to claim tScheme approval in the event that the Supplier is in breach of any of the terms of this agreement and for such period as such breach shall persist;
- (c) to require the Supplier to cease to provide, to offer or to promote the Service in conjunction with the Mark and/or any claim to tScheme approval in the event of the Supplier being in breach of this agreement for such period as such breach shall persist;

or any combination of these.

18. The Supplier may terminate this agreement by notice in writing at any time.
19. tScheme shall be entitled to terminate this agreement and the licence granted hereunder by written notice to the Supplier in the event of:
  - (a) any material breach by the Supplier of any of its obligations under this agreement which, being a breach capable of remedy, is not remedied within thirty days of notice to the Supplier specifying the breach and requiring its remedy (and for this purpose non-payment of fees under Clause 7 shall constitute a remediable, material breach);
  - (b) the Supplier challenging tScheme's title to the Mark;
  - (c) tScheme giving the Supplier notice to terminate the agreement at the end of any calendar period referred to in Clause 7;
  - (d) a material change of control of the Supplier which would have caused tScheme to withhold Approval had it pertained at the time of application for Approval;
  - (e) any change to the Service, to its manner of operation, to the Supplier or to any other relevant factor which would have caused tScheme to withhold Approval had it pertained at the time of application for Approval;
  - (f) any meeting of the Supplier's creditors being held or any arrangement or any composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being proposed or entered into by or in relation to the Supplier;
  - (g) a supervisor, receiver, administrator, administrative receiver or other encumbrancer taking possession of or being appointed over or any distress execution or other process being levied or enforced (and not being discharged with seven days) upon the whole or any substantial part of the Supplier's assets;

- (h) the Supplier ceasing or threatening to cease to carry on business or being or becoming or appearing unable to pay its debts within the meaning of Section 123 or 268 of the Insolvency Act 1986;
  - (i) a petition being presented or a meeting being convened for the purpose of considering a resolution for the making of an administration order or the winding up, bankruptcy or dissolution of the Supplier; or
  - (j) any event analogous to any of the foregoing occurring in any jurisdiction.
20. The termination of this agreement for whatever cause shall not affect any provision hereof which is expressed to survive or operate in the event of termination of this agreement and shall not prejudice or affect the rights of either party against the other in respect of any breach of this agreement or in respect of any monies payable in relation to any period prior to termination.
21. When this agreement is terminated the licence to use the Mark and the right to claim tScheme approval in relation to the Service shall cease forthwith.

#### G. USAGE

22. The Supplier agrees to display the Mark in strict compliance with tScheme's instructions for same provided by tScheme from time to time.
23. tScheme shall provide the necessary digital images, Web addresses, model program code and written instructions as are reasonably required by the Supplier to display the Mark in a compliant manner.

#### H. APPEAL

24. In the event of a dispute, the Supplier may appeal to an expert agreed by the parties or, if agreement is not reached within 7 days, appointed by the British Computer Society. The expert shall be instructed to reach his decision as soon as reasonably practicable and shall be appointed as an expert, not as an arbitrator. The decision of that expert shall be final and binding on the parties. The costs of such expert shall be borne equally by the parties unless the expert decides that one party has acted unreasonably, in which case he shall have discretion as to costs.
25. In the event that the Supplier avails himself of Appeal, tScheme and the Supplier agree to be bound by the decision reached, which decision shall not be susceptible of further appeal or review.

26. As an alternative (but not in addition) to Appeal, tScheme and the Supplier shall be entitled to refer any dispute on any matter to binding arbitration by an independent third party (by mutual agreement of tScheme and the Supplier) or to the Courts.

#### I. INTELLECTUAL PROPERTY

27. All rights attaching to the Mark, the name tScheme and all program code and written material provided by tScheme under this agreement shall remain the property of tScheme or tScheme's licensors. The Supplier shall not apply for or obtain registration of the Mark for any goods or services in any country.
28. The Supplier agrees to return or to destroy forthwith all copies of the Mark as soon as is reasonable after termination and in any event within 60 days on the termination of this agreement and to remove all claims to tScheme approval thenceforth in its publications and public communications.
29. The Supplier agrees to report immediately to tScheme any claim of infringement of others' rights resulting from the Supplier's use of the Mark, the name tScheme or any of the material provided by tScheme pursuant to this agreement as soon as reasonably possible.
30. The Supplier agrees to co-operate fully with tScheme in taking all steps reasonably required by tScheme in connection with any claimed infringement, including without limitation legal proceedings in the name of tScheme or, with the Supplier's consent, in the joint names of tScheme and the Supplier. tScheme shall be responsible for the costs of any legal proceedings which it requires and shall be entitled to any damages, account of profits and/or awards of costs recovered. The Supplier shall use all reasonable endeavours to assist tScheme in any legal proceedings relating to any such infringement, but shall not have to incur any material expense without reimbursement from tScheme.

#### J. GENERAL

31. This agreement together with any documents to which it refers constitutes the whole agreement between the parties relating to its subject matter, and supersedes any previously existing Registered Applicant agreement between the parties in respect of the same Service.
32. No variation of this agreement shall be effective unless made in writing.

33. If any provision of this agreement shall be held to be illegal, void, invalid or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of this agreement in that jurisdiction shall not be affected and the legality, validity and enforceability of the whole of this agreement shall not be affected in any other jurisdiction.
34. No failure to exercise nor any delay in exercising any right, power, privilege or remedy under this agreement, by either party to this agreement, shall impair or operate as a waiver of such right, power, privilege or remedy.
35. Any notice required to be given under this agreement or in connection with the matters contemplated in it shall, except where otherwise specifically provided, be in writing and be:
- (a) personally delivered, in which case it shall be deemed to have been given upon delivery at the relevant address of the party in question specified in this agreement or notified for the purpose of this agreement, or if delivered outside business hours on the next business day;
  - (b) sent by first class, pre-paid post to the relevant address, in which case it shall be deemed to have been given forty eight hours after posting;
  - (c) sent by facsimile, in which case it shall be deemed to have been given when dispatched subject to confirmation by transmission report of uninterrupted transmission, or if sent outside business hours on the next business day; or
  - (d) sent by electronic mail, in which case it shall be deemed to have been given one hour after dispatch by the sender, subject to no notification of non-delivery being reported to the sender, or if sent outside business hours on the next business day.
36. Nothing in this agreement shall constitute or be deemed to constitute a partnership between the parties nor, except as expressly provided, shall it constitute or be deemed to constitute either party being or becoming the agent of the other party for any purpose.
37. The rights of the Supplier under this agreement are personal and the Supplier shall not be entitled to assign, transfer, delegate, sub-contract or sub-license any of the rights or obligations under this agreement without the prior written consent of tScheme.
38. The Supplier shall notify tScheme forthwith should the Supplier undergo a change of control in respect of itself or its holding company or ultimate holding company or any change in managerial control which might be prejudicial to tScheme or to tScheme's belief in the Supplier's ability to comply with the terms of this agreement.

K. LIMITATION OF LIABILITY

- 39. Neither party shall be liable to the other party for any indirect or consequential loss (including, without limitation, loss of profits, business interruption and loss of information) whether arising from negligence, breach of contract or otherwise, whether or not the other party notified the first party of the possibility of such loss.
- 40. tScheme shall have no liability in relation to the conduct of Assessors.

L. LAW AND JURISDICTION

- 41. Except as otherwise expressly agreed in this agreement, nothing in this agreement confers any rights on any person (other than the parties hereto) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 42. This agreement shall be governed by and construed in accordance with the laws of England and Wales and each of the parties irrevocably submits to the non-exclusive jurisdiction of the Courts of England and Wales and waives any objection to the proceedings in such courts of venue or on the grounds that the proceedings have been brought in an inconvenient forum.

In witness whereof this Agreement has been entered into on the date set out above.

Signed by .....

duly authorised for and on behalf of .....

Signed by .....

duly authorised for and on behalf of tScheme Limited

## Schedule A

This agreement relates to the Service identified and described below.

*[S3A content including certified Service Description]*

## Schedule B

### Description of the tScheme Mark for a Digital Certificate Service

The relevant tScheme approval Mark, which contains the tScheme 'shield' logo and is distinct from other marks issued by tScheme, will be supplied in .GIF and .EPS formats, for use in association with the approved service.

The url required to link from the Mark to the tScheme website, for user verification of approval Mark authenticity against details of the approved service, will be supplied following formal Grant of approval and on due execution of this agreement.

The tScheme Mark denoting Approval for a digital certificate-related service is illustrated below:



## Appendix 1

### **The *tScheme* Code of Conduct**

Participants in the electronic trust services industry strive:

- to act in an honest, fair, reasonable and trustworthy manner;
- not to bring electronic trust services into disrepute;
- to provide clear information about what each electronic trust service provides, including limitations and exclusions, to those who rely on that service;
- to meet service commitments and obligations;
- to be proactive in identifying and correcting faults and deficiencies in electronic trust services;
- to operate in accordance with appropriate standards;
- to act promptly in resolving complaints relating to electronic trust services.

## Appendix 2

### Relevant *tScheme* Approval Profiles

*[Short form description of the Profiles on which the Service assessment is based]*