



**MODEL AGREEMENT
FOR *tScheme*-RECOGNISED ASSESSORS**

An Agreement between
tScheme Limited
and an
Accredited Assessment Body
regarding
tScheme Recognition

Agreement Made Between
an Accredited Assessment Body
and
tScheme Limited

on

A. DEFINITIONS

1. In this Agreement:

"Appeal" means the appeal procedure described in Clause 30 of this agreement.

"Approval" means the formal ratification by tScheme that an electronic trust service meets the requirements of a tScheme approval profile and that the supplier of such service has entered into an agreement with tScheme in regard to its future conduct of such service.

"Assessor" means the accredited assessment body known aswhose registered office is at and whose address for the service of notices is, and whose electronic mail address is

"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 in Appendix 1.

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

"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.

"Senior Representative" means such person as each party shall from time to time nominate in writing as its representative for the purpose of referring any dispute

pursuant to Clause 30 of this agreement, the initial nominee of each party being those persons identified in Appendix 2.

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 Assessor. The notice period shall commence on the day when tScheme transmits the alert.

Where the Assessor is required to give notice to tScheme on any matter relating to this agreement, it shall be sufficient for the Assessor to provide such notice in writing to tScheme at its registered office.

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 Assessor:

- (a) the non-transferable, non-exclusive right to perform assessments of electronic trust services against the tScheme approval profiles listed in Schedule A;
- (b) access to tScheme technical material and expertise; and
- (c) the non-transferable, non-exclusive right to describe himself as "tScheme-Recognised" and to display the Mark described in Schedule B in relation to assessment services offered for the purposes of (a) above,

for the period, against the payments and on the terms and conditions of this agreement. tScheme grants no other rights to the Assessor under this agreement and nothing in this agreement shall prevent tScheme or any person authorised by tScheme from permitting other persons to use tScheme approval profiles, to perform assessments against those profiles or to describe themselves as "tScheme-Recognised" in the United Kingdom or elsewhere.

3. The Assessor is not permitted to claim tScheme-recognition or to display the Mark in association with any other service which is not itself the subject of a contractual arrangement with tScheme granting those specific rights or in respect of which tScheme-recognition has been suspended or withdrawn.
 4. The Assessor acknowledges that under this agreement tScheme grants no right to the Assessor to grant to others any rights to the use of the Mark or any other tScheme mark or the tScheme name or to grant tScheme Approval to any service.
- C. PERIOD
5. This agreement becomes effective on the date first appearing above for a period of one year and will then be renewed for further periods of one year unless:
 - (a) the Assessor has failed to pay fees due under Clause 6; or
 - (b) this agreement has been terminated in accordance with Clauses 18 or 19.
- D. FEES
6. The Assessor agrees to pay the appropriate fee or fees from the scale of fees as published from time to time by tScheme for the grants in Clause 2, payment falling due on receipt from tScheme of a correct invoice. If the Assessor fails to pay any fee within 30 days of it falling due, without prejudice to any other right or remedy, the grants in Clause 2 shall be suspended until receipt by tScheme of payment in full or until this agreement is terminated. tScheme reserves the right to charge reasonable interest on payments overdue by more than 30 days.
 7. tScheme undertakes not to change the scale of fees at less than three months' notice.
 8. tScheme shall not refund in part or whole any fees properly received notwithstanding the exercise of any rights conferred by Clauses 18, 19 or 20.
- E. UNDERTAKINGS
9. The Assessor undertakes, for the duration of this agreement, to give notice to tScheme if and when he, for whatever reason, ceases to offer his services as a tScheme-Recognised Assessor for any of the tScheme approval profiles listed in Schedule A and to give notice to tScheme if and when he re-commences to offer those services.
 10. The Assessor agrees to set his charges for the performance of any assessment against a tScheme Approval Profile at a level that reasonably reflects the necessary work content to complete the assessment in a professional manner.

11. The Assessor undertakes to take into account the tScheme Code of Conduct in performing assessments for so long as he continues to offer his services as a tScheme-Recognised Assessor or otherwise claims, or might reasonably be construed to claim, current tScheme-recognition.
12. The Assessor undertakes to be, and to remain for the duration of this agreement, accredited for the performance of tScheme-related assessments by one or more of the accreditation bodies which tScheme may notify from time to time.
13. The Assessor gives permission for tScheme, or its delegated representative, to carry out, whether at the instigation of the Assessor or of tScheme, inspections of its tScheme-related assessment services, 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 Assessor, for the purposes of ensuring continuing adherence by the Assessor and his assessment services to the standards and conditions required for tScheme-recognition.
14. tScheme undertakes to maintain the confidentiality of personal and 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. The Assessor undertakes:
 - (a) not to contravene any relevant statute or regulation applying within any territory in which he operates, including but not limited to human rights and data protection legislation;
 - (b) to maintain continuous liability insurance commensurate with the liabilities implied by his tScheme assessment services or otherwise to ensure that such liabilities will be met and to provide documentary evidence of such upon request;
 - (c) not to behave in any manner which brings, or might reasonably be calculated to bring, tScheme-recognised assessment, tScheme or the Mark into disrepute;
 - (d) not to make any change to his tScheme-recognised assessment service, its manner of operation or any other material factor which would have caused tScheme to withhold recognition had it pertained at the time of application for recognition unless tScheme has given prior approval to the change; and
 - (e) to indemnify tScheme against all claims and liabilities arising out of the provision of his tScheme-recognised assessment services or any defects or

deficiencies in those services or any activities of the Assessor under this agreement or breach of it by the Assessor, provided that:

- (i) the Assessor 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 Assessor as soon as reasonably practical of any such claim within sufficient time so as not to prejudice the defence of such claim and, at the Assessor's expense, provides the Assessor with all reasonable assistance in disputing it; and
- (iii) Subject to the Assessor indemnifying tScheme in respect of all costs, fees and expenses (including legal expenses and all VAT), tScheme shall take such action as the Assessor may reasonably request to dispute, resist, appeal against, compromise or defend any such action, provided that tScheme shall not be required to take any action which in its reasonable opinion would be detrimental to tScheme.

F. SANCTIONS

16. The Assessor agrees to co-operate expeditiously and openly with tScheme in tScheme's investigation of any complaint received by tScheme relating to any assessment performed by the Assessor.
17. tScheme shall have the right, subject to Appeal:
 - (a) to require the Assessor to make specified remedial modifications to his tScheme assessment service where such modifications are:
 - (i) necessary to ensure the reliability or trustworthiness of tScheme approved electronic trust services;
 - (ii) in tScheme's opinion necessary to protect the reputation and integrity of tScheme or the Mark;or both;
 - (b) to suspend the Assessor's right to claim tScheme recognition in the event that the Assessor is in breach of any of the terms of this agreement and for such period as such breach shall persist;
 - (c) to require the Assessor to cease to provide, to offer or to promote tScheme assessment services and/or any claim to tScheme recognition in the event of the Assessor being in breach of this agreement for such period as such breach shall persist;

or any combination of these.

18. The Assessor may terminate this agreement by three months' prior written notice at any time.
19. tScheme may terminate this agreement by three months' prior written notice at any time.
20. tScheme shall be entitled to terminate forthwith this agreement and the rights granted hereunder by written notice to the Assessor in the event of:
 - (a) any material breach by the Assessor of any of his obligations under this agreement which, being a breach capable of remedy, is not remedied within thirty days of notice to the Assessor specifying the breach and requiring its remedy (and for this purpose non-payment of fees under Clause 6 shall constitute a remediable, material breach);
 - (b) the Assessor challenging tScheme's title to the Mark;
 - (c) tScheme giving the Assessor notice to terminate the agreement at the end of any calendar period referred to in Clause 6;
 - (d) a material change of control of the Assessor which would have caused tScheme to withhold recognition had it pertained at the time of application for recognition;
 - (e) any change to the tScheme assessment service, to its manner of operation, to the Assessor or to any other relevant factor which would have caused tScheme to withhold recognition had it pertained at the time of application for recognition;
 - (f) any meeting of the Assessor's creditors being held or any arrangement or any composition with or for the benefit of his creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being proposed or entered into by or in relation to the Assessor;
 - (g) a supervisor, receiver, trustee in bankruptcy, 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 Assessor's assets;
 - (h) the Assessor ceasing or threatening to cease to carry on business or being or becoming or appearing unable to pay his 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 Assessor; or
 - (j) any event analogous to any of the foregoing occurring in any jurisdiction.
21. 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.
22. When this agreement is terminated the right to claim tScheme recognition shall cease forthwith.
- G. USAGE
23. The Assessor agrees to perform assessments in strict compliance with tScheme's reasonable instructions for same provided by tScheme from time to time.
24. The Assessor further agrees to provide services and perform assessments pursuant to this Agreement in a prompt and professional manner and with reasonable care and skill.
25. tScheme shall provide the necessary written instructions and other related material as are reasonably required by the Assessor to perform assessments in a compliant manner.
26. The Assessor shall not perform assessments in circumstances that involve any conflict of interest. The Assessor agrees to consult with tScheme on becoming aware of any actual or potential conflict of interest and to abide by any resulting ruling from tScheme.
27. The Assessor agrees to provide to tScheme such reports on his tScheme assessment activities as tScheme may reasonably request from time to time. tScheme agrees to maintain the confidentiality of any such material that is commercially sensitive.
28. The Assessor agrees to display the Mark in strict compliance with tScheme's instructions for same provided by tScheme from time to time. Any goodwill arising from the Assessor's use of the mark or the name tScheme will accrue to tScheme, and tScheme may call for a free transfer of such goodwill from the Assessor.
29. tScheme shall provide the necessary digital images, Web addresses, model program code and written instructions as are reasonably required by the Assessor to display the Mark in a compliant manner.

F. APPEAL

30. In the event of a dispute, it shall be referred in the first instance to the Senior Representative of each party who shall meet within 14 days with a view to resolving such dispute. If within 14 days of such meeting the matter in dispute has not been resolved the same shall be referred to the decision of an expert to be agreed by the parties or, if agreement is not reached within 7 days, to be appointed on the application of either party by the President for the time being of The Law Society (in the case of disputes of a legal nature) or by the President for the time being of the British Computer Society (in the case of all other disputes). 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.

Subject to Clause 31 the parties agree that their sole remedy for the settlement of disputes under this Agreement shall be the method described in this Clause 30.

31. Nothing in this agreement restricts either party's right to seek emergency injunctive relief. In particular, either party may seek emergency injunctive relief without first implementing or completing the Appeal procedure set out in Clause 29.

H INTELLECTUAL PROPERTY

32. 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 Assessor shall not apply for or obtain registration of the Mark or the name tScheme for any goods or services in any country.
33. The Assessor agrees to return or to destroy forthwith all copies of all material supplied by tScheme 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 recognition thenceforth in its publications and public communications.
34. The Assessor agrees to report immediately to tScheme any claim of infringement of others' rights resulting from the Assessor's use of the name tScheme or any of the material provided by tScheme pursuant to this agreement as soon as reasonably possible.
35. The Assessor 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 Assessor's consent, in the joint names of tScheme and the Assessor. tScheme shall be

responsible for the costs of any legal proceedings that it requires and shall be entitled to any damages, account of profits and/or awards of costs recovered. The Assessor 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.

I GENERAL

36. This agreement together with any documents to which it refers constitutes the whole agreement between the parties relating to its subject matter.
37. No variation of this agreement shall be effective unless made in writing and signed by the parties.
38. 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.
39. 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.
40. 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.

41. 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.
42. The rights of the Assessor under this agreement are personal and the Assessor 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.
43. The Assessor shall notify tScheme forthwith should the Assessor undergo a change of control in respect of itself or its holding company or ultimate holding company or any change in managerial control that might be prejudicial to tScheme or to tScheme's belief in the Assessor's ability to comply with the terms of this agreement.

J LIMITATION OF LIABILITY

44. Except in relation to third party claims against tScheme, 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.
45. tScheme shall have no liability in relation to the conduct of assessments by the Assessor.

K LAW AND JURISDICTION

46. 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.
47. 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 tScheme Approval Profiles listed below.

<i>Title</i>	<i>Identity</i>
Base Approval Profile	tSd0111
Approval Profile for a Certification Authority	tSd0102
Approval Profile for Signing Key Pair Management	tSd0103
Approval Profile for Certificate Generation	tSd0104
Approval Profile for Certificate Dissemination	tSd0105
Approval Profile for Certificate Status Management	tSd0106
Approval Profile for Certificate Status Validation	tSd0107
Approval Profile for Registration	tSd0042

Schedule B

Description of the Recognised Assessor mark

NB – This is a specific mark, distinct from the tScheme logo and other marks, and will be supplied in .GIF and .EPS formats, as 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

Senior Representatives pursuant to Clause 1

for tScheme Limited:

Stephen Upton, Chief Executive, *tScheme* Limited, 2nd Floor Russell Square House, 10-12 Russell Square, London WC1 5EE.

Electronic mail: Stephen.upton@tScheme.org

Telephone (020) 7331 2021 Fax (020) 7331 2040

for