

Issued



**MODEL AGREEMENT
RELATING TO *tScheme*
REGISTERED APPLICANTS**

Ref. tSd0253

Version 3.09

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**MODEL AGREEMENT
RELATING TO *tScheme*
REGISTERED APPLICANTS**

(Document reference: tSd0253)

An Agreement between

tScheme Limited

and an

Electronic Trust Services Provider

regarding

Specified Electronic Trust Services

Agreement Made Between

[]

and

tScheme Limited

on [dd mmm yyyy]

Comment [RJT1]: Applicant TSP should insert organisation name here and fill in all other items between square brackets “[]” i.e. date; Supplier details signatory name, title and organisation on signing page; Schedule A and Schedule B.

Comment [RJT2]: Insert date when signed.

A. DEFINITIONS

1. In this agreement:

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

"Approval Fee" means the appropriate fee or fees from the scale of fees for the use of the Mark as published from time to time by tScheme under the terms of the agreement entered into with tScheme upon Approval of its Service.

"Assessor" means any member of a tScheme-recognised Assessor.

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

"Mark" means tScheme's registered trademark, trade name or any other device used by tScheme to indicate that a supplier's service has been Approved by tScheme or granted a particular status by tScheme.

"Registration Fee" means that sum of money referred to in the Supplier's 'Registered Applicant Request' letter.

"Service" means the electronic trust service or services offered by the Supplier and described in Schedule A as amended periodically and notified to tScheme.

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

Comment [RJT3]: Please complete.

"Timetable" means the timetable of events agreed for the completion of the Approval process and described in Schedule B as amended periodically and notified to tScheme.

"tScheme" means the company incorporated under the name tScheme Limited under company number 04000985 whose registered office is at Mulberry Grove, PO Box 3653, WOKINGHAM, RG40 9NN, United Kingdom.

"tScheme-recognised Assessor" means a body formally recognised by tScheme as competent to perform assessments of the Service for the purpose of gaining Approval and designated as such on the tScheme website.

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. GRANTS

2. tScheme grants to the Supplier on receipt of the Clause 8 payment and for the duration of this agreement:

- (a) a non-transferable, non-exclusive licence to claim "tScheme Registered Applicant" status in regard to the Service, including on the Supplier's Web site or sites relating to the Service, and to display any Mark which tScheme uses to indicate such status;
- (b) the inclusion of the Supplier's and the Service's names and descriptions on tScheme's Web site as having "tScheme Registered Applicant" status or equivalent; and
- (c) reasonable access to expert advice and guidance on the achievement of tScheme Approval for the Service as described in Clause 11.

C. UNDERTAKINGS

3. The Supplier undertakes:

- (a) to complete a specification of the Service in the form of a tScheme "Specification of Service Subject to Assessment " document;
- (b) to appoint a tScheme-recognised Assessor; and
- (c) to commence assessment of the Service

within the periods described in the Timetable appended to this agreement, as varied by mutual agreement in writing.

- 4. The Supplier undertakes to subscribe to the tScheme Code of Conduct appended to this agreement for the duration of this agreement.
- 5. The Supplier undertakes not to use any tScheme Mark or to make any claim in regard to tScheme Approval or otherwise of the Service, of itself or any other of its services which does not comply with its contractual rights under this or any other agreement with tScheme.
- 6. The Supplier undertakes to display any tScheme Mark, whether on its Web site or elsewhere, in strict compliance with the information provided in Schedule C.
- 7. tScheme undertakes to:
 - (a) promptly grant "tScheme Registered Applicant" status for the Service;
 - (b) following grant of "tScheme Registered Applicant" status, promptly include the Supplier's and the Service's name and description on

tScheme's Web site as having "tScheme Registered Applicant" status or equivalent;

- (c) in accordance with the provisions of Clause 11, provide advice and guidance promptly and using its professional skill and diligence; and
- (d) not unreasonably withhold or delay its Approval for the Service.

D. PAYMENT

- 8. The Supplier will pay tScheme the agreed Registration Fee of £5,000 (exc VAT) on commencement of this agreement and annually thereafter on the anniversary of this agreement, for the term of this agreement.
- 9. tScheme agrees to reduce any subsequent Approval Fee for the Service by an amount equal to one year's Registration Fee, providing that the Supplier adheres to the Timetable appended to this agreement, or as varied by mutual agreement, and providing that such Approval Fee falls due within twelve months of the payment of the annual Registration Fee.
- 10. The Registration Fee is non-refundable.

E. ADVICE AND GUIDANCE

- 11. For the purposes of providing advice and guidance under Clause 2 (c) or Clause 7(c), tScheme will at its discretion:
 - (a) answer, at no further charge, relevant questions submitted to it in writing or by telephone;
 - (b) meet, at no further charge, with the Supplier's representatives at tScheme's or other mutually agreeable premises for the purposes of discussing Approval of the Service; and
 - (c) introduce the Supplier to other independent experts on tScheme who may then charge the Supplier for their services.
- 12. Without prejudice to Clause 7(c), tScheme does not accept liability for the accuracy or appropriateness of any advice and guidance given, except where this is specifically stated in writing at the time of the giving of that advice or guidance, and does not accept liability for failing to provide advice or guidance within any particular time.

13. tScheme reserves the right to decline to provide advice and guidance but undertakes not to decline unreasonably.

F. TERMINATION AND EXTENSION

14. This agreement shall terminate on the earliest of:

- (a) Approval of the Service; or
- (b) thirty days' notice in writing by the Supplier; or
- (c) on the date shown in the Timetable appended to this agreement, unless extended by mutual agreement in writing.

15. The Supplier acknowledges that each extension will require the payment of a further Registration Fee by the Supplier to tScheme at the rates then in force, unless waived by tScheme at its discretion.

16. Where the Supplier pays further Registration Fees, only the most recent fee applies in abating the subsequent Approval Fee for the Service.

17. Either party ("Terminating Party") may terminate this agreement and the licence granted hereunder by written notice to the other ("Defaulting Party") in the event of:

- (a) any material breach by the Defaulting Party 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 Defaulting Party specifying the breach and requiring its remedy (and for this purpose non-payment of fees under Clause 8 shall constitute a remediable, material breach);
- (b) any meeting of the Defaulting Party'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 Defaulting Party;
- (c) 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 Defaulting Party's assets;

- (d) the Defaulting Party 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 (save that reference in that section to "£750" shall be replaced by "£50,000");
- (e) 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 Defaulting Party; or
- (f) any event analogous to any of the foregoing occurring in any jurisdiction.

18. tScheme may terminate this agreement and the licence granted hereunder by written notice to the Supplier in the event that the Supplier challenges tScheme's title to the Mark.

G. GENERAL

19. This agreement together with any documents to which it refers constitutes the whole agreement between the parties relating to its subject matter.

20. No variation of this agreement shall be effective unless made in writing and signed by authorised representatives of both parties.

21. If any provision of this agreement shall be held to be illegal, void, invalid or unenforceable under the laws of any competent jurisdiction then that provision shall be severed, and 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.

22. 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.

23. 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) sent by email to the Supplier at [] or to tScheme at legal@tscheme.org, in which case it shall be deemed to have been given when an email confirming receipt is received from the other party by the party sending the initial email;

Comment [RJT4]: If this clause is retained, please insert appropriate email address.

- (b) 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; or
 - (c) 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 (on production of proof of postage).
24. 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.
25. 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.
26. 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 that might be prejudicial to tScheme or to tScheme's belief in the Supplier's ability to comply with the terms of this agreement.
- H. LIMITATION OF LIABILITY
27. 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.
28. tScheme shall have no liability in relation to the conduct of Assessors.
29. Neither party limits its liability for death or personal injury arising from its negligence or for the fraud or fraudulent misrepresentation of its personnel.

I. LAW AND JURISDICTION

- 30. 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 other than those that exist or are available otherwise than pursuant to that Act.
- 31. 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

[insert name, title]

duly authorised for and on behalf of [insert name of Supplier]

Comment [RJT5]: Please complete

Signed by

Phil Flaxton, Chief Executive

duly authorised for and on behalf of tScheme Limited

Schedule A

[Insert identifying description of the Service – taken from Public Service Description, section 3.2 in the outline S3A based on the Model document tSd0230]

Comment [RJT6]: Please complete.

Schedule B - Timetable

Event	Period after agreement date
Complete the full specification of the Service in the form of a tScheme "Specification of Service Subject to Assessment" document	[P]
Appoint a tScheme-recognised Assessor	[Q]
Commence detailed assessment of the Service	[R]
Submit assessment report with a formal application for tScheme Approval	[S]
Agreement termination unless extended	1 year

[Note: P, Q, R and S in the above table to be replaced by the corresponding entries in the Registered Applicant Request letter based on tSi0076]

Comment [RJT7]: Please complete table as indicated.

Schedule C – Registered Applicant Marks

Marks

For PKI Services:



For IdP Services:



Usage

The above Marks must only be displayed in relation to the Service (according to whether the Service is a PKI service or an IdP service) and, as appropriate, should either act as a hyperlink to the relevant page on the *tScheme* website or be associated with the URL for that page. This page will fulfil the intention of Clause 6 and provide information on the Service including the type of Approval sought and the Timetable agreed for completion of the Approval process.

The URL of the relevant page on the *tScheme* website will be supplied following signing of this Agreement and confirmation of the contents of the page by the Supplier.

No Mark other than one or other of the above Marks can be used resulting from this Agreement unless otherwise agreed in writing by both parties.

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.