

Issued



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

Ref. tSd0254

Version 4.09

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

An Agreement between
tScheme Limited
and an
Electronic Trust Service 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 30 of this agreement.

"Approval" means the formal ratification by tScheme that the Service meets the requirements of the tScheme approval profile(s) listed in Schedule C 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 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.

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

"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, details of which are set out in Schedule B.

"Service" means the electronic trust service 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 [].

"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 website, 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 website 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 due under clause 15 and on the terms and conditions of this agreement. Without prejudice to Sub-clause 24(c), 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, provided that such use does not reduce or erode the quality of the Mark.

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 30 to 32, 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 of Grant for a period of one year.
7. This agreement will automatically be extended annually for further periods of one year unless:
 - (a) the Supplier has failed to pay fees due under Clause 15; or
 - (b) the Supplier has failed to follow the required extension procedure as specified in Clause 8; or

(c) this agreement has been terminated in accordance with the provisions of Section D (TERMINATION).

8. Where the Supplier is seeking an annual extension of this agreement under Clause 7, the Supplier undertakes to provide tScheme with an Approval renewal assessment report prepared by an Assessor relating to the Service and dated no more than three months prior to the next anniversary of the original Grant date.
9. The renewal report is to be submitted to tScheme within one calendar month of the next Grant anniversary date, or as reasonably requested by tScheme at any other time under Clause 20; and the Supplier agrees to act as soon as reasonably practicable to remedy any deficiencies found in the renewal assessment, as reasonably directed by tScheme.

D. TERMINATION

10. The Supplier may terminate this agreement:
 - (a) by notice in writing at any time; or
 - (b) if any person successfully challenges tScheme's right to use and/or license the Mark and the Supplier shall be reimbursed pro rata the value of the licence fee for the unused term of that licence fee.
11. tScheme may terminate this agreement on not less than 30 days written notice in the event:
 - (a) that the Supplier fails to pay the fees in accordance with any calendar period referred to in Clause 15; or
 - (b) that there is any change to the Service, to the manner of its operation, or any other relevant factor that would have caused tScheme to withhold Approval had it pertained at the time of application for Approval; or
 - (c) that the Supplier challenges tScheme's title to the Mark; or
 - (d) that there is a material change of control of the Supplier that would have caused tScheme to withhold Approval had it pertained at the time of application for Approval.

12. 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 the Terminating Party's written Subject to Clause notice to the Defaulting Party specifying the breach and requiring its remedy (and for this purpose non-payment of fees under Clause 15 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 "£5,000");
 - (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.
13. 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.
14. 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.

E. FEES

15. Upon execution of the agreement and on receipt of tScheme invoice, the Supplier agrees to pay the sum of £[] (exc VAT) as the Approval Fee for the Service being £[] (exc VAT) less the Registration Fee specified in the Applicant Request letter and paid to tScheme pursuant to the agreement dated [dd mmm yyyy]. Thereafter, 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 at http://www.tscheme.org/process/index_fees.html, 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 be suspended until payment.
16. tScheme undertakes not to change the scale of fees at less than three months' notice. Any revised fee shall take effect following the end of the notice period and shall apply to the payment of the fees at the next anniversary of the date of Grant.
17. Without prejudice to Clause 10, tScheme shall not refund in part or whole any fees properly received.

F. UNDERTAKINGS

18. 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.
19. 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.
20. 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 for the purposes of ensuring continuing adherence by the Supplier and the Service to the standards and conditions required for Approval and shall allow tScheme, or its delegated Assessor, reasonable access and co-operation on reasonable notice and at reasonable times of its normal working day to

premises, staff and documents, subject to reasonable consideration for security, confidentiality and the legal requirements of the Supplier.

21. tScheme undertakes to maintain the confidentiality of commercially sensitive information revealed to it during the course of inspections under Clause 20 and to require that those to whom it may delegate such inspections be similarly bound.
22. tScheme undertakes that it shall include the Supplier's name and the Service's name and description on tScheme's website as being "tScheme Approved" for so long as the Supplier has the right to claim current tScheme Approval of the Service.
23. tScheme confirms that it has the necessary rights to licence the Mark and that in licensing the Mark it is not infringing any third party Intellectual Property Rights.
24. tScheme undertakes that it shall not:
 - (a) use the Supplier's name and description except as provided in this agreement, including in respect of any marketing or sales activity, except with the Supplier's express prior written consent;
 - (b) employ a third party Assessor without the prior written consent of the Supplier and then only on terms that have been agreed with the Supplier; and/or
 - (c) permit any third party, to behave in any manner that brings, or might reasonably be calculated to bring, the Service, the Supplier or the Mark into disrepute.
25. 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 directly 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 material 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;
 - (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;
 - (iv) tScheme takes all reasonable measures to mitigate the amount of such claim or liability; and
 - (v) it has not made and will not make any admission, nor will it settle or otherwise compromise any claim, without the Supplier's prior written consent.

G. SANCTIONS

26. 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.
27. 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.

H. USAGE

28. The Supplier agrees to display the Mark in strict compliance with tScheme's instructions for same provided by tScheme from time to time and as otherwise permitted by this agreement.
29. 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.

I. APPEAL

30. 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.
31. 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.
32. 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.

J. INTELLECTUAL PROPERTY

33. 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.
34. 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 of the termination of this agreement and to remove all claims to tScheme Approval thenceforth in its publications and public communications.
35. 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.
36. 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, and all reasonable expenses incurred by the Supplier relative to such assistance shall be reimbursed by tScheme.

K. GENERAL

37. 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.
38. No variation of this agreement shall be effective unless made in writing and signed by authorised representatives of both parties.
39. 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.
40. 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.
41. 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;
 - (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;

- (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; or
- (d) 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.

- 42. 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.
- 43. 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.
- 44. 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.

L. LIMITATION OF LIABILITY

- 45. 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.
- 46. tScheme shall have no liability in relation to the conduct of Assessors except if they are acting as a result of a tScheme-instigated inspection under clause 20, in which case tScheme shall have no liability in relation to the lawful and proper conduct of Assessors.

47. Neither party limits its liability for death or personal injury arising from its negligence or for the fraud or fraudulent misrepresentation of its personnel.

M. LAW AND JURISDICTION

48. 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.

49. 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

Signed by

Phil Flaxton, Chief Executive

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 Marks for an Approved Service

The relevant tScheme Approval Mark will be supplied in .png format, for use in association with the Approved Service.

The url required to link from the Mark to the tScheme website, for verification of the authenticity of the Mark against details of the Approved Service, will be supplied following formal Grant of Approval and execution of this agreement.

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



The tScheme Mark denoting Approval for an IdP (non-PKI) related service is illustrated below:



Schedule C

Relevant tScheme Approval Profiles

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

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.