



## Model HMG PKI Applicant Agreement

Ref. tSd 0278

Issue 1-00

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**MODEL AGREEMENT RELATING TO  
TScheme-REGISTERED APPLICANTS**

**(Document reference: tSd 0278)**

An Agreement between

tScheme Limited

and a

Public Body

regarding their

Eligible Certification Authority

## Agreement Made Between

[ ]

and

**tScheme Limited**

on [dd mmm yyyy]

### A. DEFINITIONS

#### 1. In this Agreement:

"Applicant" means the organisation that operates the ECA, whose registered office is at [ ] and whose address for the service of notices is [ ].

"Assessor" means any assessment body designated on the tScheme website as being a *tScheme*-recognised Assessor.

"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.

"Compliance Approval " means the formal ratification by tScheme that the ECA has demonstrated compliance with the CPs listed in Schedule B and that the Applicant has entered into an agreement with tScheme in regard to its future operation of the ECA.

"ECA" means the eligible Certification Authority operated by the Applicant and described in Schedule A.

"Recognised Certificate Policies" means those certificate policies that are identified on the tScheme website as being available for Compliance Approval.

"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.

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 Applicant. 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 Applicant on receipt of the Clause 7 payment and for the duration of this agreement:
  - (a) a non-transferable, non-exclusive licence to claim "tScheme Compliance Applicant" status in regard to the ECA, including on the Applicant's Web site or sites relating to the ECA, and to display any mark which tScheme uses to indicate such status;
  - (b) the inclusion on tScheme's Web site of the Applicant's name and the specific policy or policies that the ECA is demonstrating compliance with; and
  - (c) reasonable access to expert advice and guidance on the achievement of Compliance Approval for the ECA as described in Clause 10.

C. UNDERTAKINGS

3. The Applicant undertakes:
  - (a) to appoint an Assessor;
  - (b) to commence compliance assessment of the ECA; and
  - (c) to submit an assessment Report with a formal application for Compliance Approval

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

4. The Applicant undertakes to subscribe to the tScheme Code of Conduct appended to this agreement for the duration of this agreement.
5. The Applicant undertakes not to use any tScheme mark or to make any claim in regard to tScheme Compliance Approval or otherwise of the ECA, of itself or any other of its CAs, that does not comply with its contractual rights under this or any other agreement with tScheme.
6. The Applicant undertakes to display any tScheme mark, whether on its Web site or elsewhere, in strict compliance with tScheme's standards as published from time to time.

D. PAYMENT

7. The Applicant will pay tScheme the agreed registration fee on commencement of this agreement.
8. tScheme agrees to reduce any subsequent Compliance Approval fee for the ECA by an equal amount, providing that the Applicant adheres to the timetable appended to this agreement, or as varied by mutual agreement, and providing that such Compliance Approval fee falls due within twelve months of the date of this agreement.
9. The registration fee is non-refundable.

E. ADVICE AND GUIDANCE

10. For the purposes of providing advice and guidance under Clause 2 (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 Applicant's representatives at their premises for the purposes of discussing Compliance Approval of the ECA; and
  - (c) introduce the Applicant to other independent experts on tScheme who may then charge the Applicant for their services.
11. 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.

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

F. TERMINATION AND EXTENSION

13. This agreement shall terminate on the date shown in the appended timetable or earlier by thirty days' notice in writing by either party, unless extended by mutual agreement in writing.
14. tScheme reserves the absolute right to refuse to extend this agreement.
15. The Applicant acknowledges that each extension will require the payment of a further registration fee by the Applicant to tScheme at the rates then in force, unless waived by tScheme at its discretion.
16. Where the Applicant pays extension fees, only the most recent fees apply in abating subsequent Compliance Approval fees for the ECA.
17. tScheme shall be entitled to terminate this agreement and the licence granted hereunder by written notice to the Applicant in the event of:
  - (a) any material breach by the Applicant 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 Applicant 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 Applicant challenging tScheme's title to any Mark;
  - (c) any meeting of the Applicant'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 Applicant;
  - (d) 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 Applicant's assets;
  - (e) the Applicant 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;

- (f) 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 Applicant; or
- (g) any event analogous to any of the foregoing occurring in any jurisdiction.

G. GENERAL

- 18. This agreement together with any documents to which it refers constitutes the whole agreement between the parties relating to its subject matter.
- 19. No variation of this agreement shall be effective unless made in writing.
- 20. 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.
- 21. 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.
- 22. 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.

23. 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.
24. The rights of the Applicant under this agreement are personal and the Applicant 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.
25. The Applicant shall notify tScheme forthwith should the Applicant 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 Applicant's ability to comply with the terms of this agreement.

#### H. LIMITATION OF LIABILITY

26. 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.
27. tScheme shall have no liability in relation to the conduct of Assessors.

#### I. LAW AND JURISDICTION

28. 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.
29. 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**

[Identifying description of the ECA]

## **Schedule B**

[List of Recognised Certificate Policies for which Compliance Approval is being sought]

## Timetable

<b>Event</b>	<b>Period after agreement date</b>
Appoint an Assessor	Q
Commence compliance assessment of the ECA	R
Submission of an assessment Report with a formal application for Compliance Approval	S
Agreement termination unless superseded	T

## 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.