

Participant Organisation Agreement



This agreement, dated _____, is between THE UNIVERSITY OF QUEENSLAND ABN 63 942 912 684, a body corporate established pursuant to the University of Queensland Act 1998 (Qld) ("AusCERT"), and

_____ ("Participant Organisation"),

a _____

(insert name and address of school/university/organisation and description of legal status, e.g. "incorporated with company number/ABN number...").

AusCERT has entered into a Sub CA Agreement with Comodo CA Limited ("Comodo") under which Comodo has provided to AusCERT four intermediary certificates to sign and issue digital certificates for non-Monetary Transactions to qualifying educational and research institutions.

Participant Organisation now wishes to have AusCERT issue digital certificates from its Sub CA chained to these intermediary certificates for Participant Organisation's own use. Participant Organisation also wishes to be appointed as an organisation authorised to validate and authorise issuance of Certificates to qualifying Subscribers.

Whereas AusCERT desires to make such appointment, conditional upon Participant Organisation's acceptance and compliance with the terms of this agreement.

Now therefore, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

1. General

- 1.1. Appointment as Participant Organisation. Effective immediately after AusCERT validates Participant Organisation, AusCERT grants Participant Organisation a limited, revocable, non-exclusive, non-transferable licence to validate, manage, revoke, and authorise the issuance of AusCERT-branded Certificates in accordance with the CPS for the sole use of Participant Organisation and Qualifying Entities.
- 1.2. Registration. The rights and licences granted to Participant Organisation under this agreement are contingent upon AusCERT's successful validation of Participant Organisation. Participant Organisation authorises AusCERT to carry out a background check, a credit check, or both, as part of the validation process. Participant Organisation shall provide any additional information reasonably requested by AusCERT. Participant Organisation shall promptly update all information provided to AusCERT, as the information changes. If Participant Organisation cannot be validated to AusCERT's satisfaction, AusCERT may terminate this agreement, without liability, immediately by notice to Participant Organisation.
- 1.3. Participant Organisation. Subject to the balance of this clause 1, Participant Organisation may authorise the issuance of an unlimited number of SSL, code signing and S/MIME (personal) certificates. Participant Organisation may not authorise the issuance of any Certificates to anyone other than itself or Qualifying Entities. AusCERT may modify or discontinue any Certificates upon notice to Participant Organisation. All rights not expressly granted herein to the Certificates are reserved to AusCERT.
- 1.4. Account. AusCERT shall create accounts that Participant Organisation may use to authorise issuance of Certificates. Participant Organisation acknowledges that the accounts contain Confidential Information and that Participant Organisation shall not allow any person other than a Registration Authority (RA) to access the account. Participant Organisation shall be responsible for any Certificates ordered through the account, regardless of whether the order was approved or authorised by Participant Organisation.

- 1.5. Non-Exclusive. All rights granted to Participant Organisation herein are non-exclusive. AusCERT may appoint other Certificate distributors and may provide the Certificates directly to Qualifying Entities without incurring any obligation for commission or compensation to Participant Organisation.
- 1.6. Reporting of Errors. Participant Organisation shall document and promptly report to AusCERT any errors or malfunctions in the Certificates or Software. Participant Organisation shall promptly assist AusCERT in rectifying any errors or malfunctions in the Software or Certificates upon AusCERT's reasonable request.
- 1.7. CPS. Participant Organisation shall comply with its obligations as set out in the CPS and fill its role as, and follow the procedures set out for, a participant organisation under the CPS in respect of the Subscription Services. All obligations placed on the Participant Organisation and all representations and warranties made by the Participant Organisation under the CPS shall be incorporated into this agreement by reference.
- 1.8. Validation. Participant Organisation shall validate each Certificate ordered through its account before authorising issuance of the Certificate. When validating orders, Participant Organisation shall follow the procedures and processes listed in the most current version of the CPS.
- 1.9. EV Certificates. AusCERT does not issue EV Certificates and all EV Certificates ordered through AusCERT's Certificate Service Manager are provided by Comodo and subject to Comodo's certificate subscriber agreement. Comodo will perform all EV Certificate validations for Participant Organisation or its customer in accordance with Comodo's EV Policies and the EV Guidelines. If Comodo determines in its sole discretion that an applicant for an EV Certificate does not qualify for an EV Certificate under Comodo's EV Policies or the EV Guidelines, Comodo may issue a Comodo SSL Certificate to the customer instead of an EV Certificate.
- 1.10. Training. Participant Organisation shall ensure that personnel performing validation duties ("Registration Authorities" or "RAs") receive and possess sufficient training and skill to perform the validation required for each Certificate. AusCERT may, at its discretion, provide training for Participant Organisation and its personnel. This training may be in the form of train the trainer approach and/or materials online. Each RA must complete a training program before validating or authorising the issuance of Certificates. Participant Organisation shall educate its personnel and Subscribers in relation to the obligations contained in this agreement, the Subscriber Agreement and the CPS. Participant Organisation shall be responsible for all acts and omissions of its RAs.
- 1.11. Document Retention. Participant Organisation shall record in detail every action taken to validate a Certificate request. Participant Organisation shall retain all documentation generated or received in connection with the validation process for at least seven years after the expiration of the Certificate relying on the documentation. Participant Organisation shall make this documentation available to AusCERT upon request.
- 1.12. Audits. AusCERT may audit Participant Organisation's compliance with this agreement and the CPS at Participant Organisation's own expense. If the audit reveals that Participant Organisation has failed to follow the CPS or has otherwise breached this agreement:
 - (a) Participant Organisation shall indemnify AusCERT for all costs associated with the audit; and
 - (b) AusCERT may terminate this agreement with immediate effect and clause 8.5 shall apply.
- 1.13. Software. Participant Organisation shall have access to the Software and may use the Software to order or authorise the issuance of Certificates, control the Certificate life cycle management and to review on-line its Certificate status.
- 1.14. Contacts. Participant Organisation hereby appoints each of the contacts set out in Schedule 1 for the purposes specified therein.
- 1.15. Support. AusCERT shall provide technical support to Participant Organisation, including email and telephone support available 9am to 5pm on business days in Queensland. Participant Organisations and their RAs may telephone +61 7 3365 4417 or email cs@auscert.org.au for support.

2. Certificates

- 2.1. Certificate issuance. Participant Organisation may request issuance of Certificates only to Subscribers who have passed the validation requirements described in clause 2.2.
- 2.2. Validation. Certificate validation for Certificates shall be performed by Participant Organisation in accordance with the CPS valid at the time the Certificate was issued, in a manner that is auditable by AusCERT and Comodo.
- 2.3. Subscriber Agreement. Before requesting issuance of a Certificate, Participant Organisation must ensure the Subscriber has entered into a Subscriber Agreement that details the obligations of the party receiving the Certificate. Participant Organisation shall ensure each Subscriber complies with the Subscriber Agreement and a breach of a Subscriber Agreement by a Subscriber may be considered to be a breach by Participant Organisation of this agreement.
- 2.4. Branding. Certificates issued under this agreement shall be AusCERT branded Certificates. Participant Organisation shall not and shall ensure Subscribers do not, re-brand AusCERT Certificates.
- 2.5. Certificate Use. Participant Organisation shall not and shall ensure that its Subscribers do not, use AusCERT Certificates to conduct Monetary Transactions, including secure credit card transactions or online payments or otherwise outside the limitations applicable to a Certificate. AusCERT has signed an agreement with Comodo providing a low cost for EV SSL Certificates which may be used to secure credit card transactions and online payments. Participant Organisation may purchase these Certificates from Comodo as described in clause 1.9.
- 2.6. Certificate markings. Participant Organisation shall ensure that each copy of a Certificate must include all copyright notices, restricted rights legends, proprietary markings and the like exactly as they appear on the Certificate delivered by AusCERT to Participant Organisation or a Subscriber.
- 2.7. Certificate Life Cycle. Participant Organisation may order Certificates for the lifecycles listed in the CPS. Participant Organisation may renew expiring Certificates for successive life cycles after revalidating the Certificate information as described in the CPS. AusCERT may modify Certificate life cycles at any time.
- 2.8. Updates. Participant Organisation shall notify AusCERT as soon as is practicably possible if:
 - (a) the information contained in a pending Certificate application or an issued Certificate has changed; or
 - (b) the contact details for an RA or the domains s/he is authorised to issue certificates for has changed; or
 - (c) an RA is no longer authorised to act as an RA for the Participant Organisation.
- 2.9. Revocation. AusCERT may revoke Certificates for the reasons described in the CPS. In addition, AusCERT may revoke any Certificate if AusCERT believes that:
 - (a) Participant Organisation has requested revocation of one of its or its Subscribers' Certificates;
 - (b) the original Certificate request was not authorised and authorisation is not retroactively granted;
 - (c) Confidential Information related to the Certificate has been misused or compromised;
 - (d) Participant Organisation has violated any of its material obligations under this agreement;
 - (e) Participant Organisation's account or the Certificate is used for fraud or illegal activity or is being used contrary to industry standards, law, rule, or regulation;
 - (f) inaccurate or incomplete information is present in the Certificate;
 - (g) the Certificate was not issued in accordance with the applicable validation guidelines and policies or was issued as a result of fraud or negligence;
 - (h) AusCERT's Certificate operations cease or are terminated under any applicable guidelines;

- (i) Participant Organisation has been added as a denied party or prohibited person to a blacklist, or is operating from a prohibited destination under the laws of AusCERT's jurisdiction of operation;
- (j) the Certificate was issued to a person or entity identified as publishers of malicious software or that impersonated other persons or entities;
- (k) this agreement expires or is terminated;
- (l) the Certificate, if not revoked, may compromise the trust status of AusCERT; or
- (m) Comodo has requested revocation of the Certificate.

3. Participant Organisation Responsibility

3.1. Obligations. Participant Organisation shall and ensure that its Subscribers shall:

- (a) abide by the CPS and all applicable laws, network policies, and guidelines when appointing RAs, receiving and verifying Subscriber applications, authorising issuance of Certificates, accessing or using the Software or Certificates or carrying out any other activities in connection with this agreement or a Subscriber Agreement;
- (b) install and use each Certificate only on domains owned or controlled by Participant Organisation or Subscriber, as the case may be and only on the server(s) accessible at the domain name listed in the Certificate;
- (c) review and verify the accuracy of the data in each Certificate prior to installing and using the Certificate and immediately inform AusCERT if any information provided changes or ceases to be accurate;
- (d) be responsible for:
 - (i) its conduct and its website maintenance, operation, development, and content: and
 - (ii) all computers, telecommunication equipment, software, access to the Internet, and communications networks (if any) required to use the Software or Certificates;
- (e) promptly inform AusCERT if Participant Organisation becomes aware of any misuse of the Certificates and assist AusCERT in preventing, curing, and rectifying any misuse;
- (f) obtain and keep in force any authorisation, permission or licence necessary for Participant Organisation and Subscribers to use the Certificates and Software and in the case of Participant Organisation, carry out any other activities in connection with this agreement;
- (g) immediately cease using a Certificate and the related Private Key and request revocation of the Certificate if:
 - (i) any information in the Certificate is or becomes incorrect or inaccurate; or
 - (ii) there is any actual or suspected misuse or compromise of the Private Key associated with the Certificate;
- (h) cease all use of the Certificate and its Private Key upon expiration or revocation of the Certificate or termination of this agreement; and
- (i) immediately notify AusCERT of any breach of this agreement in the case of Participant Organisation or the Subscriber Agreement in the case of Subscribers.

3.2. Restrictions. Participant Organisation shall not and shall ensure that Subscribers do not:

- (a) impersonate or misrepresent Participant Organisation's or Subscriber's affiliation with any entity;
- (b) use the Software or Certificates to:
 - (i) engage in conduct that is offensive, abusive, contrary to public morality, indecent, defamatory, obscene, or menacing;
 - (ii) breach the confidence of a third party;
 - (iii) cause AusCERT or a third party distress, annoyance, denial of any service, disruption or inconvenience;
 - (iv) send or receive unsolicited bulk correspondence; or
 - (v) create a Private Key that is substantially similar to an AusCERT or third party's Private Key;
- (c) upload or distribute any files or software that may damage the operation of another's computer;

- (d) interfere with the proper functioning of the AusCERT website or with any transactions conducted through the AusCERT website;
- (e) take any action that imposes an unreasonably or disproportionately large load on AusCERT's infrastructure;
- (f) use a Certificate after its expiration, its revocation, or the termination of this agreement;
- (g) alter, modify or revise a Certificate;
- (h) reverse engineer, de-compile or disassemble a Certificate; or
- (i) use a Certificate if it has reason to believe that the Certificate or the associated Private Key has been compromised.

4. Pricing

- 4.1. Annual fee. Provided Participant Organisation does not terminate the agreement in accordance with clause 8 of this agreement, Participant Organisation shall pay to AusCERT an annual fee, according to the applicable tier level as specified in Schedule 1. Annual fees are payable in advance and following the initial 12 month term, this agreement shall automatically renew for successive 12-month periods until such time as it is terminated by either party in accordance with clause 8. Annual fees paid under this agreement are not subject to pro-rata reductions and are not refundable. A CPI (All Groups) increase on the previous year's fee shall apply for each annual renewal.
- 4.2. Fees for EV SSL certificates are specified in Schedule 1. AusCERT will invoice Participant Organisations separately for EV SSL certificates ordered via the AusCERT CS Certificate Service Manager.
- 4.3. Invoice. Participant Organisation agrees to pay AusCERT's fees within 30 days of receipt of a correctly rendered invoice.
- 4.4. Taxes. Participant Organisation shall pay all taxes connected with or resulting from Participant Organisation's entry into this agreement and/or participation in or use of the Subscription Services and products connected with this agreement. The parties acknowledge that GST may be payable on the Subscription Services supplied pursuant to this agreement. If GST is payable, the relevant amounts payable by Participant Organisation will be increased by the amount equal to that which AusCERT is obliged to remit as GST on the supply of the Subscription Services.
- 4.5. AusCERT product pricing. AusCERT may at any time establish, change, alter or amend, in its sole discretion, the price list related to the sale of AusCERT branded products. All changes are effective upon the earliest of AusCERT's posting of the changes on the Repository or Participant Organisation's receipt of such changes.
- 4.6. Participant Organisation Compensation. AusCERT shall not be responsible for providing any compensation to Participant Organisation for its marketing, sales, or other activities. Participant Organisation shall retain the amount it collects from its customers for ordered AusCERT products. Participant Organisation is not entitled to any compensation from AusCERT for consulting services or field service performed in connection with the agreement.

5. Marketing

- 5.1. Restrictions. Participant Organisation shall not use any advertising material or documentation that refers to AusCERT or the Certificates without receiving written prior approval from AusCERT, which shall not be unreasonably withheld. Participant Organisation shall use only facts that AusCERT itself uses in its non-confidential written materials when referring to the Subscription Services. Participant Organisation is not licensed to use any "University of Queensland" trade marks under this agreement.
- 5.2. AusCERT Marketing. Participant Organisation hereby grants AusCERT the right to list it as a subscription service customer in AusCERT's marketing material and for the purpose of reporting to the sector.

6. Intellectual Property Rights

- 6.1. IP Rights. AusCERT retains, and neither Participant Organisation nor its Subscribers shall obtain or claim, any and all title, interest, and ownership rights in:
- (a) the Certificates and any other products licensed herein;
 - (b) the techniques and ideas embedded in the Certificates or any other products licensed herein;
 - (c) all copies or derivative works of the Certificates or Software, regardless of who produced, requested, or suggested the copy or derivative work;
 - (d) all documentation and materials provided by AusCERT to Participant Organisation; or
 - (e) all of AusCERT's copyrights, patent rights, trade secret rights and other proprietary rights.
- 6.2. Restrictions. The parties shall protect each other's intellectual property, good will, and reputation when accessing or using the other party's services or products. Participant Organisation may not decompile or create derivative works of the Certificates or Software without the prior written consent of AusCERT. AusCERT may terminate this agreement or restrict access to the Certificates or Software if AusCERT reasonably believes that the Certificates or Software is being used to post or make accessible any material that infringes the copyright of a third party.
- 6.3. Use of Trade marks. Participant Organisation shall not register an AusCERT trade mark or any confusingly similar marks. Except with the express written permission of AusCERT, Participant Organisation shall not use any AusCERT trade mark as part of Participant Organisation's name or as Participant Organisation's domain names. Participant Organisation shall not use, promote, sell, or otherwise make available the Subscription Services in a way that might diminish or damage AusCERT's reputation, including using a AusCERT trade mark on a website that could be considered associated with crime, defamation, or copyright infringement.

7. Confidentiality

- 7.1. Confidential Information. Except as allowed herein, neither party ("Receiving Party") may use or disclose any Confidential Information provided by the other party (the "Disclosing Party") other than for the purpose of performing its obligations under this agreement. The Receiving Party shall take reasonable measures to prevent unauthorised disclosure and shall ensure that any person receiving Confidential Information complies with the restrictions in this clause 7. The Receiving Party may disclose Confidential Information to the extent the information:
- (a) is already possessed by the Receiving Party before receipt from the Disclosing Party;
 - (b) is, or becomes available, in the public domain without fault of the Receiving Party;
 - (c) is received by the Receiving Party from a third party who is not under an obligation of confidentiality to the Disclosing Party or a restriction on the use and disclosure of the information;
 - (d) is disclosed in response to the requirements of a law, governmental order, regulation, or legal process, provided that, if possible in the circumstances, the Receiving Party first gives prior notice to the Disclosing Party of the requirement to disclose the information; or
 - (e) is disclosed under operation of law to the public without a duty of confidentiality.
- A party asserting one of the exceptions to Confidential Information above shall prove the assertion using verifiable documentary evidence.

8. Term and Termination

- 8.1. Term. Unless otherwise terminated as allowed herein, this agreement shall commence on the Effective Date and continue in effect until terminated in accordance with this clause 8.
- 8.2. Termination. Either party may terminate the agreement on twenty (20) business days' notice for convenience. Either party may terminate the agreement:
- (a) if the other party materially breaches this agreement and fails to remedy the breach within ten (10) days after receiving notice of the breach;

- (b) immediately, if the other party violates the limitations on the licences granted herein, its duty of confidentiality, its duty to adhere to industry standards, or any of the representations it made herein;
 - (c) if an Insolvency Event occurs in respect of the other party;
 - (d) upon ten (10) days' notice by AusCERT in its sole discretion; or
 - (e) upon reasonable notice, if AusCERT is no longer allowed to issue Certificates (including because its Sub CA Agreement has terminated or expired or will imminently terminate or expire) or if a change in industry standards, regulations, or law prevents further use or issuance of Certificates.
- 8.3. Termination by AusCERT. AusCERT may terminate this agreement immediately, if Participant Organisation:
- (a) requests issuance of a Certificate to a party other than Participant Organisation or a Qualifying Entity ;
 - (b) is engaged in illegal or fraudulent activity or an activity that could harm AusCERT's business practices; or
 - (c) fails to follow the CPS when validating and authorising the issuance of Certificates.
- 8.4. Events Upon Termination. Upon termination of the agreement, all rights and licences granted herein to Participant Organisation terminate and revert to AusCERT and AusCERT shall revoke all certificates issued to Participant Organisation and Subscribers. In addition, Participant Organisation shall:
- (a) immediately cease using, validating, and issuing Certificates;
 - (b) immediately discontinue all representations or statements that could infer that a relationship exists between AusCERT and Participant Organisation;
 - (c) immediately cease using AusCERT's trade marks and make any transfers requested by AusCERT to ensure that all rights in the trade marks remain with AusCERT;
 - (d) within ten (10) days, transfer any domain names containing a AusCERT trade mark to AusCERT and pay to AusCERT any fees owed as of the date of termination; and
 - (e) continue to comply with the confidentiality requirements in this agreement.
- 8.5. Without prejudice. Termination of this agreement shall be without prejudice to any rights or liabilities of the respective parties accrued prior to the date of termination.

9. Indemnification

- 9.1. Indemnification. Participant Organisation shall indemnify AusCERT and its affiliates and their respective directors, officers, employees, and agents (each an "Indemnified Person") against all liabilities, losses, expenses, or costs (including reasonable attorney's fees) (collectively "Losses") that, directly or indirectly, are based on or connected with:
- (a) Participant Organisation's breach of this agreement;
 - (b) a Subscriber's breach of a Subscriber Agreement;
 - (c) Participant Organisation's actions in relation to the Subscription Services;
 - (d) a claim by a Subscriber or a Relying Party;
 - (e) Participant Organisation's services or products;
 - (f) Participant Organisation's failure to disclose a material fact related to the issuance or use of a Certificate; or
 - (g) Participant Organisation's or its customers' (including Subscribers' and Relying Parties') infringement or alleged infringement on the rights of a third party.
- Participant Organisation shall reimburse each Indemnified Person for all Losses as they are incurred.
- 9.2. Indemnification Procedure. Each Indemnified Person must notify Participant Organisation promptly of any demand for indemnification. However, any failure to notify will not relieve Participant Organisation from its indemnification obligations. Participant Organisation may assume the defense of any action, suit, or proceeding giving rise to an indemnification

obligation unless assuming the defense would result in potential conflicting interests as determined by the Indemnified Person in good faith. Participant Organisation may not settle any claim, action, suit or proceeding related to this agreement unless the settlement also includes an unconditional release of all Indemnified Persons from liability, which release must be approved by AusCERT before it is signed.

- 9.3. Additional Liability. The indemnification obligations of Participant Organisation are not AusCERT's sole remedy for Participant Organisation's breach and are in addition to any other remedies AusCERT may have against Participant Organisation under this agreement. Participant Organisation's indemnification obligations survive the termination of this agreement.

10. Disclaimer and Limitation of Liability

- 10.1. Internet. Participant Organisation acknowledges that Certificates and Software are subject to the operation and telecommunications infrastructures of the Internet and the operation of Participant Organisation's Internet connection services, all of which are beyond AusCERT's control.
- 10.2. Warranty Disclaimer: Assumption of Risk. AUSCERT EXPRESSLY DISCLAIMS ALL WARRANTIES EITHER EXPRESS OR IMPLIED BY STATUTE, GENERAL LAW, EQUITY, INTERNATIONAL CONVENTION OR CUSTOM, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INTEROPERABILITY AND NON-INFRINGEMENT, TO THE MAXIMUM EXTENT ALLOWED BY LAW. AUSCERT DOES NOT GUARANTEE THAT: (a) THE CERTIFICATE OR SOFTWARE WILL MEET PARTICIPANT ORGANISATION'S REQUIREMENTS OR EXPECTATIONS; OR (b) THAT ACCESS TO THE SOFTWARE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE.
- 10.3. Damage Limitation. THE TOTAL LIABILITY OF AUSCERT AND ITS AFFILIATES, AND EACH OF THEIR OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AND CONTRACTORS, RESULTING FROM OR CONNECTED TO THIS AGREEMENT IS LIMITED TO THE REMEDY DESCRIBED IN CLAUSE 11.3. AUSCERT HEREBY EXCLUDES ALL LIABILITY FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES. THIS EXCLUSION INCLUDES ALL DAMAGES FOR LOST PROFITS, REVENUE, USE, OR DATA AND SHALL APPLY EVEN IF AUSCERT IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. These limitations apply to the maximum extent permitted by law regardless of (a) the reason for or nature of the liability, including tort claims, (b) the number of claims, (c) the extent or nature of the damages; and (d) whether any other provisions of this agreement have been breached or proven ineffective.
- 10.4. Exceptions. If any legal right disallows an exclusion of warranties or disallows limiting certain damages, then the disclaimers of warranty and limitations on liability herein apply to the maximum extent allowed by law.

11. Remedy

- 11.1. Injunctive Relief. Participant Organisation acknowledges that its breach of this agreement may result in irreparable harm to AusCERT that cannot adequately be redressed by compensatory damages. Accordingly, the Participant Organisation acknowledges that, in addition to any other legal remedies which may be available, AusCERT may seek and obtain an injunctive order against a breach or threatened breach of the agreement by Participant Organisation.
- 11.2. Limitation on Actions. Except for actions and claims related to a party's indemnification and confidentiality obligations, all claims and actions arising from this agreement must be brought within nine (9) months from the date when the cause of action occurred.
- 11.3. Remedy. Participant Organisation's sole remedy for any claim in connection with this agreement is for AusCERT to use commercially reasonable efforts to arrange for Comodo to attempt to correct or cure any reproducible defect in relation to a Certificate notified to AusCERT by Participant Organisation by issuing corrected instructions, a restriction, or a bypass, or, in the event that Comodo does not correct or cure the material defect in twenty-five (25) business days, to arrange for a pro-rata refund of the amount paid for the defective product. This remedy applies only to the extent AusCERT is able to procure such remedy from Comodo under the Sub CA Agreement. AusCERT will not be obliged to seek correction

of a defect or a pro rata refund under this clause 11.3 if Participant Organisation (a) misused, damaged, or modified the Certificate, (b) did not promptly report the defect to AusCERT, or (c) had breached any provision of this agreement.

12. Miscellaneous

- 12.1. Laws and Industry Standards. Both parties shall comply with all laws and industry or privacy standards applicable to the Certificates and any other aspect of this agreement. If such laws or industry standards change, AusCERT and Participant Organisation shall work together in good faith to amend this agreement to comply with the changes. If such change increases AusCERT's costs or discontinues a product, AusCERT and Participant Organisation shall work together to adjust the pricing and product offerings associated with this agreement to address the change.
- 12.2. Independent Contractors. AusCERT and Participant Organisation are independent contractors and not agents or employees of each other. Neither party has the power to bind the other and each party is responsible for its own expenses and employees.
- 12.3. Notices. All notices must be in writing, in English, and sent by registered mail, return receipt requested, to the address specified below each party's signature.
- 12.4. Entire Agreement. The agreement, along with any attached schedules which are incorporated herein, constitutes the entire agreement between the parties with respect to the subject matter, superseding all other agreements that may exist between the parties. The parties may execute one or more counterparts of the agreement, each of which will be deemed an original copy of the agreement. Section headings in this agreement are for reference and convenience only and are not part of the interpretation of the agreement.
- 12.5. Modifications. Except as otherwise allowed herein, neither party may amend this agreement unless the amendment is in writing and signed by both parties. In AusCERT's sole discretion, AusCERT may discontinue any Certificate offerings. AusCERT may also amend any of (a) its website, (b) the CPS, (c) its Subscriber Agreements, and (d) any documents listed in the Repository. Amendments are effective upon the earlier of (i) AusCERT's posting the amendment on its website or (ii) Participant Organisation's receipt of the amendment. Participant Organisation's continued use of its account constitutes Participant Organisation's acceptance of the amendment. If an amendment materially affects Participant Organisation's rights herein, Participant Organisation may terminate the agreement within twenty (20) days of the effective date of the amendment by providing AusCERT notice of termination.
- 12.6. Waiver. A party's failure to enforce a provision of this agreement will not waive (a) the party's right to enforce the same provision later; or (b) the party's right to enforce any other provision of this agreement. To be effective, all waivers must be both in writing and signed by the party benefiting from the waived provision.
- 12.7. Force Majeure and Internet Frailties. Neither party will be liable under this agreement for a delay or failure to perform an obligation to the extent that the delay or failure is caused by an occurrence beyond a party's reasonable control. Each party acknowledges that the operation of the Internet is beyond the other party's reasonable control, and neither party will be liable for a delay or failure caused by an interruption or failure of telecommunication or digital transmission links, Internet slow-downs or failures, or other such transmission failure.
- 12.8. Governing Law and Venue. The laws of Queensland, Australia govern the interpretation, construction, and enforcement of this agreement and all proceedings arising out of it, including tort claims, without regard to any conflicts of law principles. All proceedings or legal action arising from this agreement must be commenced in the Courts of Queensland, Australia. Both parties agree to the exclusive venue and jurisdiction of these Courts.
- 12.9. Assignment. Participant Organisation shall not assign any of its rights, duties, or obligations under this agreement without the prior written consent of AusCERT. Any transfer without consent will be void. AusCERT may assign its rights, duties, and obligations without Participant Organisation's consent.
- 12.10. Severability. Any provision determined invalid or unenforceable by rule of law will be reformed to the minimum extent necessary to make the provision valid and enforceable. If reformation

is not possible, the provision will be deemed omitted and the balance of the agreement will remain valid and enforceable.

12.11. Survival. All provisions of this agreement related to confidentiality, proprietary rights, indemnification, and limitations of liability survive the termination of the agreement.

12.12. Rights of Third Parties. There are no intended third party beneficiaries under this agreement.

13. Definitions

13.1. **“Certificate”** has the meaning given in the CPS.

13.2. **“Confidential Information”** means all material, data, systems and other information or processes disclosed by a party to the other that is not accessible or known to the general public, regardless of whether the information was marked as being confidential. Confidential Information shall include, but not be limited to: (a) any and all information regarding or related to any software utilised by the parties to create, operate or perform their respective obligations hereunder, including, but not limited to, all personal identification numbers and passwords: and (b) any information which concerns technical details of the operation of any of the AusCERT or Comodo services or products related to this agreement.

13.3. **“CPS”** means AusCERT’s CPS from time to time available online at the Repository.

13.4. **“Effective Date”** means the date on which both parties have signed this agreement.

13.5. **“EV Certificate”** means a Certificate that is signed by the Comodo extended validation root certificate and has been issued in accordance with the EV Guidelines.

13.6. **“EV Guidelines”** means the official, adopted guidelines established by the CA/Browser Forum that set forth certain minimum requirements that a certificate authority must meet in order to issue EV Certificates, and which are available online at <http://www.cabforum.org>.

13.7. **“EV Policies”** means Comodo’s EV Certificate practices, policies and procedures, such as a certification practice statement (CPS) and certificate policy (CP), as further defined in Section 4 of the EV Guidelines.

13.8. **“Insolvency Event”** means any of the following:

- (a) the party becomes unable to pay its debts as and when they fall due;
- (b) an application for winding up is made regarding the party and not stayed within fourteen (14) days;
- (c) a winding up order is made against the party;
- (d) a controller, administrator, receiver and manager, provisional liquidator or liquidator is appointed to the party;
- (e) a mortgagee enters into the possession of any property of the party;
- (f) notice is given of a meeting of creditors of the party for the purposes of a deed of arrangement; or
- (g) any actions of a similar effect are taken.

13.10. **“Monetary Transaction”** means any online financial transaction which is secured or encrypted by a Certificate.

13.11. **“Private Key”** means the key of a key pair that is kept secret by the holder of the key pair, and that is used to create digital signatures and/or to decrypt electronic records or files that were encrypted with the corresponding Public Key.

13.12. **“Public Key”** means the key of a key pair that may be publicly disclosed by the holder of the corresponding Private Key and that is used by a Relying Party to verify digital signatures created with the holder's corresponding Private Key and/or to encrypt messages so that they can be decrypted only with the holder's corresponding Private Key.

13.13. **“Qualifying Entity”** means an entity:

- (a) for which Participant Organisation owns the domains and/or that is owned or part owned by Participant Organisation; and
- (b) that is a member of the education and research community of Australia, New Zealand, Fiji or Papua New Guinea.

- 13.14 **“Registration Authority”** has the meaning given in clause 1.10 and the CPS.
- 13.15 **“Relying Party”** means an entity that has relied, or claims to have relied, upon a Certificate, or information contained within a Certificate, issued by Participant Organisation.
- 13.16 **“Repository”** refers to the publicly available collection of databases and documents for storing and retrieving information relating to Certificates and which may be accessed via the AusCERT website at cs.auscert.org.au/repository.
- 13.17 **“Software”** means the ordering platform, the relevant documentation, and any other software provided to Participant Organisation to order and validate Certificates.
- 13.18 **“Sub CA Agreement”** means the agreement of that name entered by Comodo AC Limited and AusCERT.
- 13.19 **“Subscriber”** means an entity that has applied to Participant Organisation for a Certificate or to whom Participant Organisation has authorised issuance of a Certificate.
- 13.20 **“Subscriber Agreement”** means the standard AusCERT Subscriber Agreement from time to time available online at the Repository.
- 13.21 **“Subscription Services”** means the certificate services described in the CPS.

The parties are signing this agreement as of the Effective Date.

<p>For and on behalf of the University of Queensland ABN 63 942 912 684</p> <p>Authorised Signatory: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Witness: _____</p> <p>Name of Witness: _____</p>	<p>For and on behalf of _____</p> <hr/> <p>(Participant Organisation name and ABN or equivalent outside Australia (if applicable))</p> <p>Authorised Signatory: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Witness: _____</p> <p>Name of Witness: _____</p>
<p>Address for Notices</p> <p>AusCERT Certificate Service AusCERT The University of Queensland QLD 4072 Australia Email: cs@auscert.org.au</p>	<p>Address for Notices</p>