

ARX Subscriber Agreement ('Agreement')

This Agreement is made as of the later of the two signature dates set forth below ("Effective Date"), by and between ARX Inc., whose principal place of business address is 855 Folsom Street Suite 939, San Francisco, CA 94107, USA ("ARX") and [please insert full name] an [please provide place of incorporation] corporation, whose principal place of business address is [please insert full address] (the 'Subscriber').

WHEREAS, ARX represents that it is a certificate authority that provides, among other products and services, digital certificates; and

WHEREAS Subscriber wishes to enter into an Agreement with ARX, pursuant to which Subscriber will acquire digital certificates for its End-Users, in accordance with the terms and conditions hereunder.

NOW, THEREFORE, in consideration of the foregoing premises and agreements hereinafter contained, the parties hereto mutually agreed as follows:

1. Application of Terms

1.1 These terms and conditions and schedules thereto, set out below govern the relationship between the 'Subscriber' and ARX.

2. Definitions and Interpretations

2.1 In this Agreement, unless the context requires otherwise, the following terms and expressions shall have the following meanings:

'**Business Day**' means Monday to Friday inclusive excluding any days on which the banks are closed for business;

'**Certificate Period**' means the time period during which a Digital Certificate remains valid and may be used as set out in Schedule 1;

'**Commencement Date**' means the date when ARX receives the Subscriber's request for Subscriber Services set out in the Enrolment Form;

'**ARX CPS**' means the ARX Certificate Practice Statement, a document setting out the working practices that ARX employs for the Subscriber Services and which defines the underlying certificate processes and Repository operations, as may be amended from time to time;

'**ARX Group**' means an ARX subsidiary or holding company, or a subsidiary of that holding company;

'**Confidential Information**' means all information obtained as a result of the parties entering into this agreement which relates to the provisions and subject matter of this Agreement (including but not limited to all Private Keys, personal identification numbers and passwords) and the business, systems or affairs of the other party and which is marked or designated in writing by the other party as being confidential.

'**CoSign**' means a non-forgable, simple-to-use digital signature appliance.

'**CRL**' means a certificate revocation list that contains details of Digital Certificates that have been revoked by ARX;

'**Digital Certificate**' means a digitally signed electronic data file (conforming to the X509 version 3 ITU standard) issued by ARX in order to identify a person or entity seeking to conduct business over a communications network using a Digital Signature and which contains the identity of the person authorized to use the Digital Signature and a copy of their Public Key, a serial number, a time period during which the Digital Certificate may be used and a Digital Signature issued by ARX;

'**Digital Signature**' means an encrypted electronic data file which is attached to or logically associated with other electronic data and which identifies and is uniquely linked to the signatory of the electronic data, is created using the signatory's Private Key and is linked in a way so as to make any subsequent changes to the electronic data detectable;

'**Domain Name**' means a name registered with an Internet registration authority for use as part of a Subscriber's URL;

'**End User**' means an employee of the Subscriber or its affiliate;

'**Enrolment Form**' means Schedule 2;

'**Force Majeure Event**' means, in relation to any party any circumstances beyond the reasonable control of that party including without prejudice to the generality of the foregoing any natural

disaster, act or regulation of any governmental or supra-national authority, lack or shortage of materials supplied by a third party (other than where such circumstances arise due to lack of reasonable planning), war or natural emergency, accident, epidemic, fire or riot;

'**Insolvency Event**' means, in respect of any company that is party to this Agreement, that such company has ceased to trade, been dissolved, suspended payment of its debts or is unable to meet its debts as they fall due, has become insolvent or gone into liquidation (unless such liquidation is for the purposes of a solvent reconstruction or amalgamation), entered into administration, administrative receivership, receivership, a voluntary arrangement, a scheme of arrangement with creditors or taken any steps for its winding-up.

'**Issue Date**' means the date of issue of a Digital Certificate to the Subscriber;

'**Private Key**' means a confidential encrypted electronic data file designed to interface with a Public Key using the same encryption algorithm and which may be used to create Digital Signatures, and decrypt files or messages which have been encrypted with a Public Key;

'**Public Key**' means a publicly available encrypted electronic data file designed to interface with a Private Key using the same encryption algorithm and which may be used to verify Digital Signatures and encrypt files or messages;

'**Repository**' means a publicly available collection of databases for storing and retrieving Digital Certificates, CRL's and other information relating to Digital Certificates and which may be accessed via ARX's website;

'**Schedule**' means a schedule attached to this Agreement;

'**Scope of Use**' shall have the meaning, if any, set out in Schedule 1 to this Agreement;

'**Site**' means a place at which ARX agrees to provide the Subscription Service;

'**Selected Subscriber Data**' means all of the Subscriber Data set out in Schedule 1 to this Agreement marked with the initials 'SSD'

'**Software**' means any software provided by ARX to enable the Subscriber to access or use the Subscription Service;

'**Subscriber**' means the corporate named on the Enrolment Form and anyone that acts or purports to act with that corporate's authority or permission;

'**Subscriber Data**' means information about the Subscriber required by ARX to provide the Subscription Services, including without limitation, the information set out in Schedule 1 to this Agreement which must be provided by the Subscriber on the Enrolment Form;

'**Subscription Service**' means the Digital Certificate subscription services and any products (including Digital Certificates, Public Keys and Private Keys) described in Schedule 1 to this Agreement;

'**Third Party Data**' means data, information or any other materials (in whatever form) not owned or generated by or on behalf of the Subscriber;

2.2 Subject to Clause 16, references to 'indemnifying' any person against any circumstance include indemnifying and keeping him harmless from all actions, claims and proceedings from time to time made against him and all loss, damage, payments, cost or expenses suffered made or incurred by him as a consequence of that circumstance;

2.3 The schedules to this Agreement form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement shall include the schedules. To the extent that there is an inconsistency between the terms of the body of this Agreement and its schedules, the terms of the body of this Agreement shall prevail.

3. Provision of Digital Certificate Subscription Services

3.1 Provided that ARX is able to validate, to its satisfaction, the Subscriber Data, ARX shall accept a Subscriber's application for the Subscription Service (as such application is set out in the Enrolment Form) and shall provide the Subscriber with the Subscription Service set out in Schedule 1 in accordance with the terms of this Agreement and the Schedule, save that ARX reserves the right to refuse a Subscriber's application for the Subscription Service by notifying the Subscriber as soon as reasonably possible.

4. Use of the Subscription Service

4.1 The Subscription Service is provided by ARX for the Subscriber's own use and the Subscriber hereby agrees not to resell or attempt to resell (or provide in any form whether for consideration or not) the Subscription Service (or any part of it) to any third party and shall not allow any third party to use the Subscription Service without the written consent of ARX.

4.2 The Subscriber shall:

4.2.1 use or access the Subscription Service only in conjunction with CoSign.

4.2.2 request and authorize certificate requests on behalf of its End Users. Such requests and authorizations will be sent directly by the CoSign appliance installed by the Subscriber to the ARX PKI infrastructure. The certificate request shall demonstrate to ARX ownership of the private key half of the End-User's key pair through the submission of a valid PKCS#10 Certificate Signing Request (CSR). The CoSign appliance will issue the above mentioned requests and authorizations only as a response to an action in an IT system it synchronizes with.

4.2.3 allow only authorized and properly trained individuals (administrators) to manage its IT systems.

4.2.4 acknowledge that the acts of defining a new user, deleting a user, or modifying user details in the aforementioned IT systems by an administrator constitutes a request and authorization by the customer for a new certificate to be issued or revoked as appropriate.

4.2.5 take on the responsibility to make sure that user records created and managed in its IT system are accurate (specifically user name and email address) and are directly and properly mapped to persons.

4.2.6 be responsible to implement a credential management policy which aims to ensure that only the authorized person has access to the credentials required to access the CoSign appliance for the purpose of generating digital signatures using their issued certificate.

4.2.7 implement a procedure and policy for validating the identity of persons and of credential issuance in order to comply with the above requirements.

4.2.8 be responsible, at its own expense, for access to the Internet and all other communications networks (if any) required in order to use the Subscription Service and for the provision of all computer and telecommunications equipment and software required to use the Subscription Service save where the same is not expressly provided under the terms of this Agreement;

4.2.9 remain responsible for the generation of any Subscriber's Private Key and shall take all reasonable precautions to prevent any violation of, loss of control over, or unauthorized disclosure of confidential information (including user name and password) relating to the Subscription Service; and

4.2.10 shall be solely responsible for any transactions of any kind entered into between the Subscriber and any third party using or acting in reliance on the Subscription Service and acknowledges that ARX shall not be a party to, or be responsible in any way for, any such transaction.

4.3 The Subscriber shall not use the Subscription Service to transmit (either by sending by email or uploading using any format of communications protocol), receive (either by soliciting an e-mail or downloading using any format of communications protocol), view or in any other way use any information which may be illegal, offensive, abusive, contrary to public morality, indecent, defamatory, obscene or menacing, or which is in breach of confidence, copyright or other intellectual property rights of any third party, cause distress, annoyance, denial of any service,

disruption or inconvenience, send or provide advertising or promotional material or other form of unsolicited bulk correspondence or create a Private key which is identical or substantially similar to any Public Key.

5. License of Digital Certificate Technology

- 5.1 ARX grants the Subscriber a revocable, non-exclusive, non-transferable license to use any Digital Certificates provided in accordance with the Subscription Service, any **Digital Signature** generated using the Subscriber's Public Key and Private Key and any manuals or other documents relating to the above insofar as is necessary for the Subscriber to utilize the Subscription Services.
- 5.2 The Subscriber shall not copy or decompile, enhance, adapt or modify or attempt to do the same to the Digital Certificates, Public Keys and Private Keys, or any Digital Signature generated using any Public Key or Private Key; or any documents or manuals relating to the same without ARX's prior written consent.

6. Charges and Payment Terms

- 6.1 The amount due shall be paid by the Subscriber on or before the Issue Date.
- 6.2 All payments made by the Subscriber to ARX for the Subscription Service shall be non-refundable.

7. Security

- 7.1 The Subscriber shall take all reasonable measures to ensure the security and proper use of all personal identification numbers, Private Keys and passwords used in connection with the Subscription Service. The Subscriber shall also immediately inform ARX if there is any reason to believe that a personal identification number, Private Key or password has or is likely to become known to someone not authorized to use it, or is being, or is likely to be used in an unauthorized way, or if any of the Subscriber Data provided by the Subscriber using the on-line registration process or subsequently notified to ARX ceases to remain valid or correct or otherwise changes.
- 7.2 The Subscriber shall have sole responsibility for all statements, acts and omissions which are made under any password provided by it to ARX.
- 7.3 ARX reserves the right to revoke a Subscriber's Digital Certificate in the event that ARX has reasonable grounds to believe that:
- 7.3.1 a personal identification number, Private Key or password has, or is likely to become known to someone not authorized to use it, or is being or is likely to be used in an unauthorized way;
 - 7.3.2 a Subscriber's Digital Certificate has not been issued in accordance with the policies set out in the ARX CPS;
 - 7.3.3 the Subscriber has requested that its Digital Certificate be revoked;
 - 7.3.4 there has been, there is, or there is likely to be a violation of, loss of control over, or unauthorized disclosure of Confidential Information relating to the Subscription Service; or
 - 7.3.5 the Subscriber Data is no longer correct or accurate, save that ARX has no obligation to monitor or investigate the accuracy of information in a Digital Certificate after the Issue Date of that Digital Certificate; or
 - 7.3.6 the Subscriber has used the Subscription Service with third party software not authorized by ARX for use with the Subscription Service.

and ARX may, in its absolute discretion after revocation of a Digital Certificate, reissue a Digital Certificate to the Subscriber or terminate this Agreement in accordance with the

provisions of Clause 15.

- 7.4 The Subscriber agrees to discontinue all use of the Subscriber's Digital Certificate if the Subscriber's Digital Certificate is revoked in accordance with this Agreement, the Certificate Period expires, this Agreement is terminated, or any of the information constituting the Subscriber Data ceases to remain valid or correct or otherwise changes.

8. Confidentiality

- 8.1 Neither party shall use any Confidential Information other than for the purpose of performing its obligations under this Agreement save where Confidential Information is required for the provision of the Subscription Service.
- 8.2 Each party shall procure that any person to whom Confidential Information is disclosed by it complies with the restrictions set out in this clause 8 as if such person were a party to this Agreement.
- 8.3 Notwithstanding the previous provisions of this clause 8 either party may disclose Confidential Information if and to the extent required by law, for the purpose of any judicial proceedings or any securities exchange or regulatory or governmental body to which that party is subject, wherever situated, whether or not the requirement for information has the force of law, and if and to the extent the information has come into the public domain through no fault of that party.
- 8.4 The restrictions contained in this clause 8 shall continue to apply to each party for the duration of this Agreement and for the period of 5 years following the termination of this Agreement.

9. Subscriber Data

- 9.1 The Subscriber acknowledges that in order to provide the Subscription Service the Selected Subscriber Data shall be embedded in the Subscriber's Digital Certificates and the Subscriber hereby consents to the disclosure to third parties of such Selected Subscriber Data held therein.
- 9.2 The Subscriber hereby grants ARX permission to examine, evaluate, process and in some circumstances transmit to third parties the Subscriber Data insofar as is reasonably necessary for ARX to provide the Subscription Service.
- 9.3 ARX shall in performing its obligations under this Agreement, comply with any legislation or guidelines which governs the use of data provided hereunder and shall take appropriate technical and organizational measures against the unauthorized or unlawful processing of personal data and against actual loss or destruction of or damage to such data.

10. Intellectual Property Rights

- 10.1 Unless otherwise agreed in writing, the parties agree that Digital Certificates, ARX Public Keys, and ARX Private Keys are the property of ARX and the Subscribers Private Keys are the property of the Subscriber.
- 10.2 The Subscriber agrees not to use the ARX name, brand or logo in any way except with ARX's prior written consent.

11. ARX Obligations

11.1 ARX agrees to:

- 11.1.1 provide the Subscription Service with the reasonable skill and care of a competent provider of similar Digital Certificate services save that ARX does not undertake to provide a fault free service;
- 11.1.2 investigate and verify prior to the Issue Date the accuracy of the information to be incorporated in the Digital Certificate in

accordance with the procedures set out in Schedule 1 to this Agreement ;

11.1.3 use its reasonable endeavors to provide the Subscription Service by the date agreed in writing with the Subscriber but that ARX is under no obligation to meet any agreed date and has no liability to the Subscriber for failure to provide the Subscription Service (or any part thereof) by such date; and

11.1.4 maintain a copy in the Repository and details in the CRL of each Digital Certificate which has been revoked or has expired for a reasonable period after the Digital Certificate's revocation or expiry.

12. Subscriber Warranties, Representations and Indemnities

12.1 The Subscriber warrants, represents and undertakes that:

12.1.1 all Subscriber Data is, and any other documents or information provided by the Subscriber are, and will remain accurate and will not include any information or material (or any part thereof), the accessing or use of which would be unlawful, contrary to public interest or otherwise likely to damage the business or reputation of ARX in any way;

12.1.2 it has and will comply with all consumer and other legislation, regulations, instructions or guidelines issued by regulatory authorities, relevant licenses and any other codes of practice which apply to the Subscriber or ARX and that the Subscriber has obtained all licenses and consents necessary for performing its obligations to extend full co-operation at all times to third parties working from time to time with ARX; and

12.1.3 it has full power and authority to enter into this Agreement and to perform all of its obligations under this Agreement.

12.2 Subscriber shall promptly disclose in writing to ARX anything which constitutes a breach of, or is inconsistent with any of the warranties and undertakings in Clause 12.1.

12.3 The Subscriber shall indemnify ARX against any claims or legal proceedings which are brought or threatened against ARX by any third party as a result of the Subscriber's breach of the provisions of this Agreement. ARX will notify the Subscriber of any such claims or proceedings and keep the Subscriber informed as to the progress of such claims or proceedings.

12.4 The Subscriber agrees not to make any representations regarding the Subscription Services to any third party except as agreed in writing by ARX.

13. Exclusion of Warranties

Save as expressly provided under this Agreement all other warranties either expressed or implied are hereby excluded to the fullest extent permissible by law.

14. Term and Termination

14.1 This Agreement shall commence on the Commencement Date and shall continue for the Certificate Period unless terminated earlier in accordance with this Clause 14.

14.2 Either party may terminate this Agreement for any reason by providing to the other 60 Business Day's written notice.

14.3 This Agreement may be terminated forthwith or on the date specified in the notice:

14.3.1 by either party if the other commits any material breach of any term of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within 60 Business Days of a written request by the other party to remedy the same or by either party, if in respect of the other party, an Insolvency Event occurs or that other party ceases to carry on its business;

14.3.2 by ARX if ARX is unable to validate, to its satisfaction, all or part of the Subscriber Data.

15. Consequences of Termination

15.1 If this Agreement is terminated by ARX under Clause 14 for any reason or under Clause 17.3 ARX may (in the event that a Subscriber's Digital Certificate has not already been revoked) revoke the Subscriber's Digital Certificates without further notice to the Subscriber and the Subscriber shall pay any Charges payable but not yet paid under this Agreement.

16. Limitation of Liability

16.1 Nothing in this Agreement shall exclude or limit the liability of either party for death or personal injury resulting from the negligence of that party or its directors, officers, employees, contractors or agents, or in respect of fraud or of any statements made fraudulently by either party;

16.2 Subject to clause 16.1 ARX shall not be liable to the Subscriber whether in contract (including under any indemnity or warranty), in tort (including negligence), under statute or otherwise for any loss of profit, loss of revenue, loss of anticipated savings, loss or corruption of data, loss of contract or opportunity or loss of goodwill whether that loss is direct, indirect or consequential and whether or not ARX was advised, in advance, of such potential loss, and if ARX shall be liable to the Subscriber in contract (including under any indemnity or warranty), in tort (including negligence), under statute or otherwise, ARX's maximum liability to the Subscriber shall be limited to the Charges paid by the Subscriber under this Agreement or \$10,000, whichever is the greater.

16.3 ARX shall not be liable to the Subscriber for any loss suffered by the Subscriber due to use of the Digital Certificate outside the Scope of Use.

16.4 Without prejudice to Subscriber's rights to terminate this Agreement, Subscriber's sole remedy at law, in equity or otherwise in respect of any claim against ARX shall be limited to damages.

17. Force Majeure

17.1 Neither party hereto shall be liable for any breach of its obligations hereunder resulting from a Force Majeure Event.

17.2 Each of the parties hereto agrees to give written notice forthwith to the other upon becoming aware of a Force Majeure Event such notice to contain details of the circumstances giving rise to the Force Majeure Event and its anticipated duration. If such duration is more than 60 days then the party not in default shall be entitled to terminate this agreement, with neither party having any liability to the other in respect of such termination.

17.3 The party asserting a Force Majeure Event shall not be excused performance of its obligations unaffected by such a Force Majeure Event and shall endeavor to seek an alternative way of fulfilling its affected obligations without any materially adverse affect on the other party.

18. Waiver

The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

19. Notices

19.1 Notices shall be in writing, and shall be sent to the other party marked for the attention of the person either at the address set out in 19.2 below in the case of ARX, or the address of the Subscriber as set out on the Enrolment Form. Notices may be sent by first-class mail or facsimile transmission provided that facsimile transmissions are confirmed within 12 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed

to have been delivered 48 hours after posting and correctly directed facsimile transmissions shall be deemed to have been received 12 hours after dispatch.

19.2 The address for ARX Inc. is 855 Folsom Street Suite 939, San Francisco, CA 94107. Tel: (415) 839 8161. Fax: (415) 723 7110 to be marked for the attention of The Digital Certificate Subscriber Agreement Administrator.

20. Invalidity and Severability

If any provision of this Agreement (not being of a fundamental nature to its operation) is judged to be invalid, illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions will not be prejudiced.

21. Entire Agreement

21.1 This Agreement and Schedules and all documents referred to herein contain the entire and exclusive agreement and understanding between the parties on the subject matter contained herein and supersedes all prior agreements, understandings and arrangements relating thereto. No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to this Agreement except as may be expressly stated in this Agreement.

21.2 Without prejudice to any liability for fraudulent misrepresentation, no party shall be under any liability or shall have any remedy in respect of misrepresentation or untrue statement unless and to the extent that a claim lies for breach of this Agreement.

22. Assignment

Neither party may assign or transfer or purport to assign or transfer a right or obligation under this Agreement without first obtaining the other party's written consent.

23. Governing Law and Jurisdiction

This Agreement and all matters arising from or connected with it, are governed by and shall be construed under the laws of the state of Delaware, U.S.A. and the parties hereby submit to the exclusive jurisdiction of the state of Delaware, U.S.A. courts.

24. Rights of Third Parties

For the avoidance of doubt no third party shall be entitled to any rights under this Agreement which it may enter against ARX.

IN WITNESS WHEREOF, each party has entered into this Agreement by signature of its duly authorized representative.

ARX Inc.:

By: _____
Title: _____
Date: _____

Subscriber:

By: _____
Title: _____
Date: _____

Schedule 1: CoSign Certificates

1. Definitions used in this Schedule

'CoSign Certificate' means the Digital Certificate produced pursuant to the service described in this

Digital Signatures That Keep Your Business Moving

Schedule;

2. The Subscription Service

2.1 ARX shall provide the Subscriber with CoSign Certificates which will enable the Subscriber to use Worldwide Verifiable Digital Signatures.

3. Scope of Use

3.1 The Subscriber shall use the CoSign Certificates for personal use or for business use.

3.2 The Subscriber shall use the CoSign Certificates in conjunction with CoSign for the purposes of adding a digital signature to a document which the Subscriber wishes to send to a third party or internally.

3.3 The Subscriber shall only use the CoSign Certificates with ARX CoSign.

4. Certificate Period

The Certificate Period shall commence on the Issue Date and shall continue for 365 days or until revocation of the Digital Certificate by ARX in accordance with the terms of this Agreement, whichever is earlier.

Subscriber Data

The Subscriber shall provide the following Subscriber Data: Certificate Signing Request (CSR) (SSD), Company Name (SSD), Street address 1, Street Address 2, PO Box, City, County/State, Postal/Zip code, Domain Name (SSD), Administrator contact details, proof of existence and organizational status (if applicable), proof of applicant's identity, and an acknowledgement of Subscriber's consent to the terms of this Agreement.

Items marked as SSD will be embedded into the Subscriber's Certificates.

Schedule 2: Enrollment Form

Please fill the following fields:

Company Name	
Company Address	
City	
Zip Code	
State/Country	
Telephone Number	
Fax Number	
Contact Name	
Contact Telephone Number	
Email address	
Mail Domain	

We would request to provide us with at least 3 of the following documentation to assist in our verification.

1. Articles of Incorporation (with address)
2. Business License (with address)
3. Trading License (with address)
4. Copy of utilities bill/bank statement/ cheque containing your company name and address
5. Duns Number

If you do not have access to ANY of the above documentation, we would ask that you supply:

If the documents are not in English, we would ask you to please supply a copy of the original documents and an English translation signed and verified by a notary public.

Kindly also ensure that the whois details of the given domain matches the address details in the account, if not then please update the whois.

Please fax this validation documentation to: (415) 723 7110. You may also email documentation as an attachment, in one of the following formats: .jpg, .gif, .pdf, .efx or .bmp, to legal@arx.com.

Should you have any questions or queries, please do not hesitate to contact us.