THE LAW SOCIETY of SCOTLAND
www.lawscot.org.uk

Smartcard

SMART | SAFE | SECURE

A quick summary of the contract for your new Smartcard

Background:

- All solicitors will be asked to sign this contract to enable them to benefit from all the features of our the Smartcard
- It may be helpful to note that it is translated from Spanish, where our Certification Authority (CA), Consejo General de la Abogacía Española, is based, and is drafted more in line with Spanish contract style. However, it has been approved by the Society, with input from our Scottish solicitors.
- The Law Society will sign on its own behalf is the Registration Authority (RA), which checks your identification, and on behalf of the CA (being authorised as 'agent' in the commercial contracts underpinning the project).

The contract and key features:

- Allows for a Digital Certificate, valid for three years, to be issued
- Incorporates the Certification Policy (CP) and the Certification Practices (CPS) – see our website at www.lawscot.org.uk/smartcard. These include technical details on the card, and general terms about liabilities, use in accordance with the law, etc).
- Obliges the CA and the RA to correctly identify you as a member and individual, keep accurate information, securely store documentation, and provide a reasonable level of service around issuance, suspension and revocation of digital certificates/signatures
- Requires you the subscriber to indemnify the CA and/or RA for any damages or claims that may be caused by any fraudulent or negligent act or omission on your part
- Allows the CA to modify the contract, as well as the CPS and CP, by providing the subscribers with no less than 30 days' notice
- Confirms that you will comply with the terms and that all information you have provided is correct, and specifically that you will:
  - not reveal your private key or associated passwords
  - use the signature in accordance with the law and the CP

For more information, visit www.lawscot.org.uk/smartcard

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CONTRACT FOR PROVISION OF DIGITAL CERTIFICATION SERVICES

among

(1) **……..**

residing at ……...

……..……

……..

(hereinafter **THE SUBSCRIBER**)

(2) **THE LAW SOCIETY OF SCOTLAND**, created by the Legal Aid and Solicitors (Scotland) Act 1949 and continuing in existence under the Solicitors (Scotland) Act 1980 as amended, having its principal office at Atria One, 144 Morrison Street, Edinburgh, EH3 8EX (hereinafter **THE LSS** or the **RA**)

(3) **CONSEJO GENERAL DE LA ABOGACÍA ESPAÑOLA**, being the Spanish National Bar constituted under Spanish law and having its principal office at 13 Paseo de Recoletos, Madrid, Spain (hereinafter the **CA**)

WHEREAS

I. The CA is a Certification Authority that associates a certain public key with a specific person or organisation through the issuance of a Digital Certificate, pursuant to the terms of this Contract and to the rules on Certification Policies and Practices (hereinafter **CP** and **CPS**), which are public and may be downloaded from www.acabogacia.org.

II. By virtue of the Agreement entered into between the CA, as the Certification Authority, and The LSS, the latter acts as the Registration Authority (hereinafter RA). The LSS is charged with, among other functions, identifying and validating the SUBSCRIBER (as applicant for an electronic signature certificate), managing the generation of the Digital Certificate and delivering it once issued in his name. Likewise, for the sole purposes of signing this Contract, The LSS acts on behalf of the CA.

III. The SUBSCRIBER wishes to obtain the Digital Certificate referred to herein, and likewise states that the information provided for said purpose is accurate.

IV. At the time the Digital Certificate is requested, and pursuant to applicable legislation, the SUBSCRIBER affirms having been informed of the price of the Digital Certificate, if any, of the exact conditions and limitations for its use, and of the way in which the CA limits its potential pecuniary liability, as well as of the sufficient accreditation of the CA and of the procedure for settling pertinent litigation.

IT IS HEREBY AGREED AS FOLLOWS:

1. PURPOSE

The purpose of this Contract is:

1.1 The issuance and license of use of a Digital Certificate, generated through the CA certification system and which allows a professional to be identified and associated.

1. 2 The provision by CA and the use by the SUBSCRIBER of the Digital Certification Service.

1.3 The identification of the SUBSCRIBER pursuant to the norms established in the Certification Policy (CP) and in the Certification Practices (CPS) in effect and published on the CA website (www.acabogacia.org).

1.4 The delivery by the RA and the acceptance by the SUBSCRIBER of a Digital Certificate issued by CA in the Subscriber's name on a storage device, which remains the property of the CA, for the purpose of accessing certification services.

2. REGULATION

The terms and conditions of this Contract, along with the CP and the CPS for the issuance of Digital Certificates, included by reference as the general Contract conditions, constitute the legal framework that shall regulate the relationship between the parties, both internally and against third parties.

3. CONTRACT DURATION

This Contract shall have a three year duration, equivalent to that of the Digital Certificate, pursuant to the terms established in the CP and CPS.

4. OBLIGATIONS OF THE PARTIES

4.1 Obligations of the CA:

(a) Inform the SUBSCRIBER of the revocation or suspension of the Digital Certificate as appropriate.
(b) Keep the database of valid, suspended and revoked Digital Certificates up to date.
(c) Process requests for Digital Certificate suspension/revocation.
(d) Ensure that all information included or incorporated by reference in the Digital Certificate is exact, unless it is expressly noted otherwise in the Digital Certificate, the CP or the CPS that it has not been verified or confirmed.
(e) All those derived from the contents of the CPS and the Certification Policies specific to each type of Digital Certificate.

4.2. Obligations of the RA:

(a) Properly identify and authenticate the SUBSCRIBER and the organisation he/she represents, in accordance with the procedures specified in the CPs and the Certification Policies, using any of the means allowed by law.
(b) Process and inform the CA of the formalisation of Contracts for the issuance of Digital Certificates with the Subscriber.
(c) Process requests for the suspension/revocation of Digital Certificates.
(d) Securely store the documentation provided as part of the Certificate issuance and Digital Certificate suspension/revocation process.

4.3 Obligations of the SUBSCRIBER:

(a) Diligently safeguard the Digital Certificate, taking all reasonable precautions to avoid its loss, compromise, modification or unauthorised use.
(b) Request the suspension/revocation of the Digital Certificate when any of the conditions for the suspension or revocation of Digital Certificates specified in the CPS are met.
(c) Not reveal the private key.
(d) Use the Digital Certificate in keeping with the Law and within the limits set by the CPS and the Digital Certificate itself.
(e) Any obligations derived from the contents of the CP specific for each Digital Certificate type and the CPS.

5. CERTIFICATE ACCEPTANCE

By signing this Contract, the SUBSCRIBER expressly accepts the Digital Certificate, confirming and accepting the accuracy of its content, with all the subsequent obligations derived therefrom to the RA, the CA or to any other third party that, on good faith, accepts the contents of the Digital Certificate.

6. LIABILITY

6.1. Liability of the CA and the RA:

The CA and RA shall not be liable for any damages derived from or related to the non-execution or defective execution of the obligations of the SUBSCRIBER, nor for the improper use of the Digital Certificates and key, nor for any indirect damage that may result from the use of the Digital Certificate or of the information supplied by the CA and/or RA. In particular, lost profits, the loss of income or a loss of data shall be considered as indirect damages, and shall not be entitled to any type of compensatory right.

The CA and the RA shall not be liable for any possible inaccuracies in the Digital Certificate resulting from information provided by the SUBSCRIBER, provided they acted with due diligence at all times.

The CA and the RA shall in no way be liable for the non-execution or delayed execution of any of the obligations pursuant to the CPS if said non-execution or delay is the result or consequence of force majeure or act of God or, in general, of any circumstance over which the CA or RA cannot reasonably exert any control, to include: natural disasters, war, a state of siege, riots, transportation strikes, interruptions in electricity and/or telephone services, computer viruses, failures of telecommunications

services (Internet, etc.), security breaches of the certification system or any harm derived from an unforeseen advance in technology.

The CA and the RA shall not be liable for the contents of any digitally signed documents.

The RA shall abide by its obligations pursuant to the CPS and, in particular, shall assume liability for the proper identification and validation of the SUBSCRIBER.

Regardless of the reason for any liability claim that may be filed against the CA and/or RA, the compensation shall not exceed the amount of 60,000 euros, save for willful misconduct or negligence. The SUBSCRIBER may, nevertheless, subscribe insurance to cover the risk of these transactions under the provisions specified in the CPS.

6.2. Liability of the SUBSCRIBER:

The SUBSCRIBER agrees to indemnify the CA and/or RA for any damages or claims that may be caused by any fraudulent or negligent act or omission on its part, and also to assume any legal expenses that the CA and/or RA may incur as a result, including legal expenses and outlays on a solicitor-and-client basis.

The SUBSCRIBER shall ensure that all the information contained in the Digital Certificate is accurate and immediately notify the RA and/or CA of the presence of any incorrect or inexact information or if the information on the Digital Certificate is subsequently found not to be true and accurate in all respects.

The SUBSCRIBER shall immediately notify the RA and/or CA of any situation that could affect the validity of the Digital Certificate.

7. MODIFICATIONS

The CA may modify this Contract, as well as the CPS and CP, or any of the clauses of the provisions contained therein, by providing the SUBSCRIBERS with no less than THIRTY (30) days notice when said change directly affects their rights and obligations. The reason for said decision must be explained to the SUBSCRIBER.

The SUBSCRIBER may opt to terminate the Contract or to accept the new terms. The SUBSCRIBER shall have a maximum of 15 days from the date of said notification to inform the CA that the SUBSCRIBER wishes to terminate the Contract.

If the CA does not receive written notification of termination from the SUBSCRIBER within this period, the SUBSCRIBER shall be deemed to have accepted the new terms.

8. INTELLECTUAL PROPERTY RIGHTS

The CA shall be the only party entitled to intellectual property rights on the Digital Certificates it issues.

The CA grants a non-exclusive licence to the SUBSCRIBER to reproduce and distribute Digital Certificates at no cost, as long as the reproduction is in full and does not change any element of the Digital Certificate, and is necessary for the purpose of digital signatures and/or encryption systems.

9. PROTECTION OF PERSONAL INFORMATION

Pursuant to the provisions of the regulation on the processing of personal data, the SUBSCRIBER is informed of the existence of two automated personal data files created by and under the exclusive and independent responsibility of the Certification Authority and The LSS for the intended uses described in the CPS or for any other involving the certification services. The SUBSCRIBER expressly consents to the processing of personal data included in both files and provided by the SUBSCRIBER. He/she likewise expressly consents to the communication of both the personal information provided and the contents of the file to the Certification Authority to the extent necessary to carry out the actions specified in the CPS and CP.

Those responsible for the files agree to use all resources at their disposal to avoid the alteration, loss or unauthorised processing or access of the personal information contained therein. Any other use of the personal information contained in the files shall require prior authorisation from the SUBSCRIBER.

The proper identification of the SUBSCRIBER being absolutely essential to the rendering of the electronic signature Certification service, the SUBSCRIBER is required to accurately provide all the information requested at the top of this Contract, as well as that specified by the CPS and CP, the effectiveness of this Contract being conditional upon the validity and sufficiency of the personal data provided.

The SUBSCRIBER is also informed of his/her right to access, correct, cancel or oppose the processing of their personal information under the terms of the Data Protection Act 1998. As the interested party and/or owner of the file(s) on which the rights are to be exercised, the SUBSCRIBER must contact one or both of the following:

1. The CA, at Consejo General De La Abogacía Española, 13 Paseo de Recoletos, Madrid, or by writing to **info@abogacia.es**, specifying "PERSONAL DATA" on the subject line.

2. The LSS, at The Law Society of Scotland, Atria One,144 Morrison Street, Edinburgh EH3 8EX, or by writing to **smartcard@lawscot.org.uk** specifying "PERSONAL DATA" on the subject line.

The SUBSCRIBER expressly consents that all telephone conversations held with the suspension/revocation telephone service may be recorded by the CA or by the organisation contracted for the provision of said service, and may be included in the aforementioned files for evidentiary purposes.

10. CONTRACT TERMINATION

10.1 The breach of any of the stipulations contained herein, in the CP and/or the CPS by any of the parties shall be cause for the termination of this Contract, in which case the non-breaching party shall be entitled to terminate the Contract effective immediately.

Non-compliance by the SUBSCRIBER shall entitle the CA to revoke the Digital Certificate.

10.2 The CA shall have the right to revoke and not renew the Digital Certificate prior to the established validity period. When the revocation is not justified, the CA may indemnify those SUBSCRIBERS who so request it in writing within three months following the revocation date. This indemnity shall not exceed the amount paid by the SUBSCRIBER to obtain the Digital Certificate in question.

10.3 The termination of this Contract shall in no case entitle the subscriber to a refund of the amount paid for obtaining the Digital Certificate.

10.4 If the exercise of the rights to oppose or delete the data as set out in clause nine of this Contract should hamper the provision of the services pursuant to this Contract, the CA shall be entitled to terminate this Contract.

11. LAW AND JURISDICTION

11.1 This Contract, the CPS and CP specified for each Digital Certificate type shall be bound by the Law of Scotland, and their content interpreted as subject to such.

11.2 For the resolution of any conflict that may arise involving this Contract, the CPS or CP, the parties renounce any other jurisdiction to which they may have recourse and submit to the exclusive jurisdiction of the Courts of Scotland.

IN WITNESS WHEREOF these presents consisting of this and the 3 preceding pages are executed as follows:

By the SUBSCRIBER

……... ……
Subscriber Date

By a duly authorised signatory on behalf of the LAW SOCIETY OF SCOTLAND (acting in its own behalf as RA):

……... ……
Authorised Signatory Date

By a duly authorised signatory on behalf of the LAW SOCIETY OF SCOTLAND (acting as duly authorised representative of CONSEJO GENERAL DE LA ABOGACÍA ESPAÑOLA solely for the purposes of the CA executing this Contract):

……... ……
Authorised Signatory Date