

-1. TO BE FIXED

This is DRAFT-V0.7. Promoted to DRAFT by decision of board m20070918.4.

- Need a mission statement in order to handle the 2.5 Security discussion.
- Need to work out how non-copyright countries can handle a transfer of sufficient rights.
- Refer Privacy section to Privacy Officer, entire needs to be rewritten to incorporate EU DPA issues.

0. Introduction

This agreement is between you, being a registered user ("User") within CAcert's community at large ("Community") and sCAcert Incorporated ("CAcert"), being an operator of services to the Community.

0.1 Terms

1. "CAcert" means CAcert Inc., a non-profit Association of Members incorporated in New South Wales, Australia.
2. "User" means you, a registered user within CAcert's Community, with an account on the website and the facility to request certificates. Users may be individuals ("natural persons") or organisations ("legal persons").
3. "Organisation" is defined under the Organisation Assurance programme, and generally includes corporations and other entities.
4. "Community" means all of the Users that are registered by this agreement and other parties by other agreements, all being under CAcert's Arbitration.
5. "Non-Related Person" ("NRP"), being someone who is not a registered User and has no agreement in place. Such people are offered the NRP-DaL another agreement allowing the USE of certificates.
6. "Non-Related Persons - Disclaimer and Licence" ("NRP-DaL"), another agreement that is offered to persons outside the Community.
7. "Arbitration" is the Community's forum for resolving disputes, or jurisdiction.
8. "Dispute Resolution Policy" ("DRP") is the policy and rules for resolving disputes. Also known as COD 7.
9. "USE" means the act by your software to conduct its tasks, incorporating the certificates according to software procedures.
10. "RELY" means your human act in taking on a risk and liability on the basis of the claim(s) bound within a certificate.
11. "OFFER" means the your act of making available your certificate to another person. Generally, you install and configure your software to act as your agent and facilitate this and other tasks. OFFER does not imply suggestion of reliance.
12. "Issue" means creation of a certificate by CAcert. To create a certificate, CAcert affixes a digital signature from the root onto a public key and other information. This act would generally bind a statement or claim, such as your name, to your key.
13. "Root" means CAcert's top level key, used for signing User certificates. In this document, the term includes any subroots.
14. "CAcert Official Document" ("COD") in a standard format for describing the details of

operation and governance essential to a certificate authority. Changes are managed and controlled. CODs define more technical terms. See 4.2 for listing of relevant CODs.

15. "Certification Practice Statement" ("CPS") is the document that controls details about operational matters within CAcert. Also known as COD 6.

1. Agreement and Licence

1.1 Agreement

You and CAcert both agree to the terms and conditions in this agreement. Your agreement is given by any of

- your signature on a form to request assurance of identity ("CAP" form).
- your request on the website to join the Community and create an account,
- your request for Organisation Assurance,
- your request for issuing of certificates, or
- if you USE, RELY, or OFFER any certificate issued to you.

Your agreement is effective from the date of the first event above that makes this agreement known to you. This Agreement replaces and supercedes prior agreements, including the NRP-DaL.

1.2 Licence

As part of the Community, CAcert offers you these rights:

1. You may USE any certificates issued by CAcert.
2. You may RELY on any certificate issued by CAcert, as explained and limited by CPS => COD 6.
3. You may OFFER certificates issued to you by CAcert to Users for their reliance.
4. You may OFFER certificates issued to you by CAcert to NRPs for their use, within the general principles of the Community.
5. This Licence is free of cost, non-exclusive, and non-transferrable.

1.3 Your Contributions

You agree to a non-exclusive non-restrictive non-revokable, transfer of Licence to CAcert for your contributions. That is, if you post an idea or comment on a CAcert forum, or email it to other Users, the default condition is that your work can be used freely by the Community for CAcert purposes, including placing under CAcert's licences for wider publication.

You retain authorship rights, and the rights to also transfer non-exclusive rights to other parties.

That is, you can still use your ideas and contributions outside the Community. People outside the Community may need to contact you to use the work.

Note that the following will override :

1. CPS => COD 6 for contributions to controlled documents (full ownership of contributions is transferred to CAcert).
2. Source code is subject to another open source licence regime.

1.4 Privacy

You give rights to CAcert to store, verify and process your data in accordance with policies in force, including the Privacy Policy (PP => COD 5). These rights include shipping the data to foreign countries for system administration, support and processing purposes, and storing and processing the data for revocation and dispute resolution purposes. Such shipping will only be done to Users within the Community who are also bound within the same agreement and under Arbitration. These rights include publishing certificates and the data within.

Specific external data that CAcert stores is:

- Name and Date-of-Birth.
- Your primary email address.
- Other optional data that you add to your account, such as assurance information, and additional domain names and email addresses.

CAcert also stores and processes information generated from within the Community on assurance, disputes, education, testing and training.

Privacy is further covered in the Privacy Policy (PP => COD 5).

2. Your Risks, Liabilities and Obligations

As a User, you have risks, liabilities and obligations within this agreement.

2.1 Risks

1. A certificate may prove unreliable.
2. Your account, keys or other security tools may be lost or otherwise compromised.
3. You may find yourself subject to Arbitration (DRP => COD 7).

2.2 Liabilities

1. You are liable for any penalties as awarded against you by the Arbitrator.
2. Remedies are as defined in the DRP => COD 7. An Arbitrator's ruling may include monetary amounts, awarded against you.
3. Your liability is limited to a total maximum of 1000 Euros.
4. "Foreign Courts" may assert jurisdiction. These include your local courts, and are outside our Arbitration. Foreign Courts will generally refer to the Arbitration Act of their country, which will generally refer civil cases to Arbitration. The Arbitration Act will not apply to criminal cases.

2.3 Obligations

You are obliged

1. to provide accurate information as part of Assurance. You give permission for verification of the information using CAcert-approved methods.
2. to make no false representations.
3. to submit all your disputes to Arbitration (DRP => COD 7).

2.4 Principles

As a User of CAcert, you are a member of the Community. You are further obliged to work within the spirit of the Principles of the Community. These are described in Principles of the Community.

2.5 Security

CAcert exists to help you to secure yourself. You are primarily responsible for your own security. Your security obligations include

1. to secure yourself and your computing platform (e.g., PC),
2. to keep your email account in good working order,
3. to secure your CAcert account (e.g., credentials such as username, password),
4. to secure your private keys,
5. to review certificates for accuracy, and
6. when in doubt, notify CAcert,
7. when in doubt, take other reasonable actions, such as revoking certificates, changing account credentials, and/or generating new keys.

Where, above, 'secure' means to protect to a reasonable degree, in proportion with your risks and the risks of others.

3. Law and Jurisdiction

3.1 Governing Law

This agreement is governed under the law of New South Wales, Australia, being the home of the CAcert Inc. Association.

3.2 Arbitration as Forum of Dispute Resolution

You agree, with CAcert and all of the Community, that all disputes arising out of or in connection to our use of CAcert services shall be referred to and finally resolved by Arbitration under the rules within the Dispute Resolution Policy of CAcert (DRP => COD 7). The rules select a single Arbitrator chosen by CAcert from among senior Users in the Community. The ruling of the Arbitrator is binding and final on Users and CAcert alike.

In general, the jurisdiction for resolution of disputes is within CAcert's own forum of Arbitration, as defined and controlled by its own rules (DRP => COD 7).

We use Arbitration for many purposes beyond the strict nature of disputes, such as governance and oversight. A systems administrator may need authorisation to conduct a non-routine action, and Arbitration may provide that authorisation. Thus, you may find yourself party to Arbitration that is simply support actions, and you may file disputes in order to initiate support actions.

3.3 Termination

You may terminate this agreement by resigning from CAcert. You may do this at any time by writing to CAcert's online support forum and filing dispute to resign. All services will be terminated, and your certificates will be revoked. However, some information will continue to be

held for certificate processing purposes.

The provisions on Arbitration survive any termination by you by leaving CAcert. That is, even if you resign from CAcert, you are still bound by the DRP => COD 7, and the Arbitrator may reinstate any provision of this agreement or bind you to a ruling.

Only the Arbitrator may terminate this agreement with you.

3.4 Changes of Agreement

CAcert may from time to time vary the terms of this Agreement. Changes will be done according to the documented CAcert policy for changing policies, and is subject to scrutiny and feedback by the Community. Changes will be notified to you by email to your primary address.

If you do not agree to the changes, you may terminate as above. Continued use of the service shall be deemed to be agreement by you.

3.5 Communication

Notifications to CAcert are to be sent by email to the address support at CAcert.org. You should attach a digital signature, but need not do so in the event of security or similar urgency.

Notifications to you are sent by CAcert to the primary email address registered with your account. You are responsible for keeping your email account in good working order and able to receive emails from CAcert.

Arbitration is generally conducted by email.

4. Miscellaneous

4.1 Other Parties Within the Community

As well as you and other Users in the Community, CAcert forms agreements with third party vendors and others. Thus, such parties will also be in the Community. Such agreements are also controlled by the same policy process as this agreement, and they should mirror and reinforce these terms.

4.2 References and Other Binding Documents

This agreement is referred to as COD 9 and is controlled under CAcert policies.

You are also bound by

1. COD 6: CPS Certification Practice Statement.
2. COD 7: DRP Dispute Resolution Policy.
3. COD 5: PP Privacy Policy.
4. Principles of the Community.

Where these documents are referred to as => COD x, they are controlled documents.

This agreement and controlled documents above are primary, and may not be replaced or waived except by formal policy channels and by Arbitration.

4.3 Informative References

The governing documents are in English. Documents may be translated for convenience. Because we cannot control the legal effect of translations, the English documents are the ruling ones.

You are encouraged to be familiar with the Assurer Handbook, which provides a more readable introduction for much of the information needed. The Handbook is not however an agreement, and is overruled by this agreement and others listed above.

4.4 Not Covered in this Agreement

Intellectual Property. This Licence does not transfer any intellectual property rights ("IPR") to you. CAcert asserts and maintains its IPR over its roots, issued certificates, brands, logos and other assets. Note that the certificates issued to you are CAcert's intellectual property and you do not have rights other than those stated.