



# **Digital Signing Certificate Subscriber Agreement**

Property Exchange Australia Limited  
ACN 140 677 792

and

Subscriber Organisation named in the Signing Schedule  
("Subscriber")



## 1 Introduction

- 1.1 These terms and conditions (“**Subscriber Agreement**”) form an agreement made between Property Exchange Australia Limited ABN 92 140 677 792 (“**PEXA**”) and the Subscriber Organisation named in the Signing Schedule.

Where there is an ambiguity, discrepancy, inconsistency or conflict of obligations between any provisions of this Subscriber Agreement and any provisions of the Participation Rules, the provisions of the Participation Rules will prevail to the extent of the ambiguity, discrepancy, inconsistency, or conflict of obligations.

- 1.2 Department of Finance has accredited PEXA to issue Digital Certificates to Certificate Recipients for the purpose of digitally signing documents on the PEXA System.
- 1.3 The Subscriber Organisation wishes to obtain Digital Certificates for the Certificate Recipients who will be acting on behalf of the Subscriber Organisation.

## 2 Term

- 2.1 The rights and obligations under this Subscriber Agreement begin on the date a completed and executed copy of this Subscriber Agreement is submitted to PEXA and continue until all Digital Certificates issued under this Subscriber Agreement have expired or been revoked (“**Term**”).

## 3 Definitions and Interpretation

### 3.1 Definitions

A capitalised term used, but not defined, in this Subscriber Agreement has the meaning given in Appendix B of the PEXA Certificate Practice Statement.

The following definitions apply in this Subscriber Agreement:

**Certificate Recipient** means each person who is issued a Digital Certificate under this Subscriber Agreement and includes each person so named in the Signing Schedule, each Subscriber Manager and each Subscriber Administrator.

**Digital Certificate** means Gatekeeper Special Category digital certificates that are valid within PEXA’s Community of Interest.

**Intellectual Property Rights** includes any:

- (a) copyright;
- (b) design, patent, trademark, semiconductor, or circuit layout (whether registered, unregistered or applied for);
- (c) trade, business, company or domain name;
- (d) know how, inventions, processes, confidential information (whether in writing or recorded in any form); and any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields.



**Participation Rules** means the participation rules determined by the Registrar pursuant to section 23 of the ECNL in the Active Jurisdiction (as amended from time to time).

**PEXA Certificate Policy** means the document described as the PEXA Digital Signing Certificate Policy published by PEXA under which Digital Certificates are issued to Certificate Recipients. This document is available at <https://www.pexa.com.au/dscp>

**PEXA Certificate Practice Statement** means the document published by PEXA under which it operates and manages its certificate authority function. See <https://www.pexa.com.au/cps>

**PEXA Participation Agreement** means the Participation Agreement between PEXA and each Subscriber under which the Subscriber becomes a PEXA Participant in the PEXA Platform.

**PEXA Workspace** means a shared electronic workspace generated by PEXA.

**Signing Schedule** means the signing schedule set out on the front page of this Subscriber Agreement.

**Subscriber Administrator** has the meaning given to it in the PEXA Certificate Practice Statement.

**Subscriber Manager** has the meaning given to it in the PEXA Certificate Practice Statement and for the purposes of this Agreement, includes the person so named in the Signing Schedule.

**Subscriber Organisation** means the entity so named in the Signing Schedule.

**Subscriber Signer** has the meaning given to it in the PEXA Certificate Practice Statement.

### 3.2 Rules for interpreting this Subscriber Agreement

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply:

- (a) A reference to
  - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document (including this document) or agreement, or a provision of a document (including this Subscriber Agreement) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a Party to this Subscriber Agreement or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that Party;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
  - (v) anything (including a right, obligation or concept) includes each part of it; and
  - (vi) notice is to notice in writing (including any visible means of reproduction of words in a tangible or permanently viable form).
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.



- (d) If a word is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to “**information**” is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (g) The word “**agreement**” includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (h) The words “**subsidiary, holding company**” and “**related body corporate**” have the same meanings as in the Corporations Act.
- (i) A reference to “**dollars**” or “**\$**” is to an amount in Australian currency.

### 3.3 Non Business Days

If the day on or by which a person will do something under this Subscriber Agreement is not a Business Day the person must do it on or by the next Business Day.

## 4 Effective Date

This agreement becomes effective at the time a completed and executed copy of this Subscriber Agreement is submitted to PEXA.

## 5 PEXA Certificate Policy

The terms of the PEXA Certificate Policy are incorporated into this Subscriber Agreement.

## 6 Issuing Digital Certificates

### 6.1 Issuing Digital Certificates under this Subscriber Agreement

By executing this Subscriber Agreement the Subscriber Organisation:

- (a) requests PEXA to issue a Digital Certificate to the Subscriber Manager named in the Signing Schedule and each Certificate Recipient named in the Signing Schedule; and
- (b) acknowledges and agrees that a Subscriber Manager is authorised to generate and send requests to PEXA to issue Digital Certificates to a Subscriber Administrator, a Subscriber Manager or a Subscriber Signer in accordance with clause 6.2 of this Agreement.

### 6.2 Issuing subsequent Digital Certificates

- (a) The Subscriber Organisation may request the issue of Digital Certificates to Certificate Recipients by signing and submitting a request to PEXA in the required form. Instructions issued by the Subscriber Organisation under this clause (a) must be executed by the person or persons with the authority to bind the Subscriber Organisation and whose identity has been verified by PEXA.



- (b) A Subscriber Manager or a Subscriber Administrator may request the issue of Digital Certificates to Certificate Recipients by issuing a digitally signed instruction to PEXA. Upon receipt of a digitally signed instruction from a Subscriber Manager or a Subscriber Administrator, PEXA may, subject to paragraph (c), issue Digital Certificates to individuals nominated in that signed instruction;
- (c) Only a Subscriber Manager can instruct PEXA to issue a Digital Certificate to another Subscriber Manager, a Subscriber Administrator can instruct PEXA to issue a Digital Certificate to another Subscriber Administrator but cannot instruct PEXA to issue a Digital Certificate to a Subscriber Manager.

### 6.3 Suspending and revoking Digital Certificates

- (a) Upon receipt of an instruction from a Subscriber Manager or a Subscriber Administrator, PEXA will suspend or revoke a Digital Certificate.
- (b) Instructions to unsuspend a Digital Certificate which had been suspended in accordance with this Subscriber Agreement must be:
  - (i) digitally signed by a Subscriber Manager or a Subscriber Administrator; or
  - (ii) executed by the person or persons who have the authority to bind the Subscriber Organisation and whose identity has been verified by PEXA.

## 7 Subscriber Organisation Obligations

### 7.1 The Subscriber Organisation must:

- (a) take reasonable steps, and ensure each Certificate Recipient takes reasonable steps to prevent the Compromise, loss, disclosure, modification, or unauthorised use of their Digital Certificate or corresponding Private Key;
- (b) provide measures to Certificate Recipients to avoid Compromise of the Private Key associated with Digital Certificates;
- (c) ensure that all information provided to PEXA in relation to issue and use of Digital Certificates is true and complete;
- (d) immediately notify PEXA if:
  - (iii) it becomes aware that a Digital Certificate or corresponding Private Key has been Compromised, or there is a substantial risk of compromise;
  - (iv) any Certificate Recipient ceases to be an employee or agent of the Subscriber Organisation;
  - (v) any Certificate Recipient ceases to be authorised to hold Digital Certificates on behalf of the Subscriber Organisation;
  - (vi) the Subscriber Organisation ceases to belong to the PEXA Community of Interest; or
  - (vii) there is any other change to the information provided to PEXA in relation to the issue and use of Digital Certificates;
- (e) ensure that Digital Certificates are only used for the purposes for which they were issued and only for purposes for which Certificate Recipients have the actual authority of the Subscriber Organisation; and



- (f) if requested by PEXA, provide complete and accurate information or anything else relating to issue or use of Digital Certificates under this Subscriber Agreement.

7.2 The Subscriber Organisation acknowledges and agrees that:

- (a) It will, at all times during the Term, maintain at least one Subscriber Manager.
- (b) PEXA will treat the instructions of any Subscriber Manager or any Subscriber Administrator as the instructions of the Subscriber Organisation in accordance with this Subscriber Agreement and the PEXA Certificate Policy.
- (c) it is responsible at all times for managing the correct designation of Subscriber Managers, Subscriber Administrators and Subscriber Signers within the PEXA System.

## 8 Subscriber Organisation Warranties

The Subscriber Organisation warrants that each Certificate Recipient is authorised to act on the Subscriber Organisation's behalf:

- (a) to digitally sign documents on the PEXA Platform and, where authorised by the Subscriber Organisation, to provide digitally signed instructions to PEXA;
- (b) in the case of a Subscriber Manager or a Subscriber Administrator, to request the issue of Digital Certificates to nominated individuals in accordance with this Subscriber Agreement; and
- (c) to ensure the information provided to PEXA in the relation to the issue of Digital Certificates is accurate and complete.

## 9 Verification of Identity

- (a) The Subscriber Organisation warrants that it has verified the identity of:
  - (i) the Subscriber Manager and each Certificate Recipient so named in the Signing Schedule prior to entering into this Agreement; and
  - (ii) each Certificate Recipient prior to a request being made for a Digital Certificate to be issued to an agent or employee of the Subscriber Organisation,in accordance with the verification of identity requirements contained in the Participation Rules.
- (b) The Subscriber Organisation must maintain records of all verification of identity procedures and keep documents related to verification of identity activities.
- (c) The Subscriber Organisation agrees to:
  - (i) permit PEXA to audit or inspect any issue, matter or thing relating to the Subscriber Organisation's verification of identity procedures and cooperate with such audit or inspection; and
  - (ii) provide any documents or information requested by PEXA as soon as reasonably practicable after that request is made.



## 10 Validating Digital Signatures

- 10.1 Each time a PEXA Document is digitally signed in a PEXA Workspace using a Digital Certificate, PEXA will verify that the Digital Certificate used to create the Digital Signature:
- (a) was created with the Private Key corresponding to the Public Key defined in the Digital Certificate of the person who digitally signed the document; and
  - (b) is current, has not been revoked or suspended.
- 10.2 The Subscriber Organisation acknowledges and agrees that:
- (a) it is not entitled to rely on a document until PEXA has confirmed that the Digital Signature has been successfully applied to that document; and
  - (b) PEXA is not responsible for any delay in the application of the Digital Signature in accordance with clause 10.1 for reasons which are beyond its reasonable control.

## 11 Revoking and Suspending Digital Certificates

- (a) The Subscriber Organisation must, in accordance with its obligations under clause 7.8 of the Participation Rules, immediately revoke a Certificate Recipient's signing rights if it is aware, or ought reasonably be aware, that a Digital Certificate has been Compromised or that a Conveyancing Transaction has been Jeopardised.
- (b) If the Subscriber Organisation is not able to access the PEXA System to revoke a Certificate Recipient's signing rights, either because the PEXA System is not available or because the Subscriber Organisation's system is not available, the Subscriber Organisation must immediately contact PEXA by telephone in order to arrange for the revocation of the relevant signing rights and corresponding Digital Certificate.
- (c) PEXA is entitled to terminate this Subscriber Agreement and any Digital Certificate issued in accordance with this Subscriber Agreement with immediate effect if the Participation Agreement between PEXA and the Subscriber Organisation is terminated for any reason.
- (d) PEXA is entitled to cancel or suspend any Digital Certificate issued under this Subscriber Agreement if it is satisfied on reasonable grounds that a Digital Certificate has been Compromised or a Conveyancing Transaction has been Jeopardised.
- (e) If PEXA cancels or suspends a Digital Certificate for any reason under clause 11(d), PEXA will immediately notify the Subscriber Organisation.



## 12 Liability

### 12.1 PEXA liability - issue and validation of Digital Certificates

- (a) Subject to the liability cap clause 12.5, PEXA will be liable to the Subscriber Organisation for loss arising from PEXA's fault, defect or error in relation to the issue and validation of Digital Certificates.
- (b) PEXA's liability to the Subscriber Organisation for any loss is reduced to the extent that:
  - (i) the Subscriber Organisation's loss is caused or contributed to by the Subscriber Organisation; and
  - (ii) the Subscriber Organisation did not take reasonable steps mitigate any potential loss.
- (c) The Subscriber Organisation must:
  - (i) notify PEXA of an actual or suspected claim as soon as it is practical to do so;
  - (ii) if requested by PEXA and at PEXA's expense, do all things necessary to assign to PEXA the absolute right to conduct the defence of the claim or enter into settlement discussions with the claimant; and
  - (iii) if requested by PEXA and at PEXA's expense, provide PEXA with such assistance as it requires in conducting the defence of the claim or any settlement discussions.
- (d) PEXA's liability in clause 12.1(a) is conditional on the Subscriber Organisation complying with its obligations under paragraph 12.1(c).

### 12.2 PEXA Liability - hard tokens

- (a) The Australian Consumer Law (as embodied in Schedule 2 to the Competition and Consumer Act 2010 (Cth)) (ACL) requires that certain guarantees must be given by PEXA to the consumer in relation to the supply by PEXA of goods or services to the consumer (Consumer Guarantees). Nothing in this Agreement is intended to exclude, restrict or modify the application of Consumer Guarantees, the exercise of a right conferred by a Consumer Guarantee or the liability of PEXA for a failure to comply with a Consumer Guarantee.
- (b) If PEXA fails to comply with a Consumer Guarantee, its liability to the Subscriber Organisation is limited to, in the case of hard tokens supplied to the Subscriber Organisation, the replacement of the token or the supply of an equivalent token (or the payment of the cost to the Subscriber Organisation of the replacement or supply), or the repair of the token (or the payment of the cost to the Subscriber Organisation of the repair).
- (c) Except as specifically provided in clause 12.1(b), and except for any liability that cannot by law be excluded, including under the Consumer Guarantees, PEXA excludes all liability, for any loss or damage arising out of the supply or use of any hard token and associated software and instructions by or on behalf of PEXA to the Subscriber Organisation.

### 12.3 Subscriber Organisation liability

The Subscriber Organisation:

- (a) is responsible and therefore liable for any acts of Certificate Recipients in relation to the use of Digital Certificates issued under this Subscriber Agreement;





- (b) is responsible for the contents of any document signed using the Digital Certificate;
- (c) is responsible for any loss, damage and expense of any kind, arising out of or in connection with:
  - (i) the use of a Digital Certificate;
  - (ii) the Subscriber Organisation's or a Certificate Recipient's negligence or wilful misconduct;
  - (iii) the Subscriber Organisation's failure to notify PEXA or take any other steps in accordance with the requirements of this Subscriber Agreement; or
  - (iv) any failure by the Subscriber Organisation or a Certificate Recipient to protect the Digital Certificate and the corresponding Private Key or to otherwise take the precautions reasonably necessary to prevent the Compromise, loss, disclosure, modification, or unauthorised use of the Digital Certificate and the corresponding Private Key, except to the extent that the Digital Certificate and the corresponding Private Key has been Compromised by PEXA's wilfully wrongful, fraudulent or negligent conduct.

#### 12.4 Certificate Recipient liability

The Subscriber Organisation is responsible and liable for the use of Digital Certificates by Certificate Recipients.

#### 12.5 Limitation of liability

To the extent permitted by law:

- (a) PEXA's liability for any breach of its obligations under any provision of this Subscriber Agreement will be limited to \$50,000 per Digital Certificate; and
- (b) neither party will be liable, whether in contract, tort (including negligence or breach of statutory duty) or otherwise, and whatever the cause, to the other party for any indirect loss, damage, cost or expense suffered or incurred by that other party and arising out of this Subscriber Agreement, even if the claiming party has advised the other party of their possibility, including with respect to any potential for loss of business profits, revenue, opportunity, goodwill or anticipatory profits or business interruption, that may be incurred by the party.

## 13 Fees and Term

### 13.1 Fees

- (a) The Subscriber Organisation must pay to PEXA the fees for Digital Certificates as set by PEXA and as amended from time to time. Prices for Digital Certificates are available at the following link:  
<https://www.pexa.com.au/pexa-dsc>
- (b) If a Digital Certificate has been revoked in accordance with this Subscriber Agreement or has expired and requires replacement, the Subscriber Organisation must request a new Digital Certificate in accordance with this Subscriber Agreement and fees for the replacement Digital Certificate will apply.
- (c) Fees for Digital Certificates are non-refundable.



### 13.2 Term

Digital Certificates:

- (a) are valid for three years and six weeks from the date they are issued; and
- (b) must be renewed before the end of the validity period. The fees for the renewal of Digital Certificates are available at the following link: <https://www.pexa.com.au/pexa-dsc>

## 14 Authorisation to use Intellectual Property

By subscribing for Digital Certificates, the Subscriber Organisation:

- (a) authorises PEXA to use any intellectual property in the Subscriber Organisation's name for the purpose of creating Public Keys, Private Keys and Digital Certificates;
- (b) warrants that it is entitled to use that intellectual property for the purposes for which Public Keys, Private Keys and Digital Certificates are issued and may be used, without infringing the Intellectual Property Rights of any other person; and
- (c) indemnifies PEXA against any loss, damage, costs or expenses arising in relation to any infringement or alleged infringement of the Intellectual Property Rights of any person.

## 15 Sub-contracting

- (a) Nothing in this Subscriber Agreement precludes PEXA from subcontracting the performance of its obligations to a third party.
- (b) PEXA will remain primarily liable for the performance of all its obligations under this Subscriber Agreement and will in addition be liable for the acts, defaults and neglects of any subcontractor or any employee or agent of the subcontractor appointed by PEXA as if they were the acts, defaults or neglects of PEXA or the employees or agents of PEXA.

## 16 Notices

- (a) Subject to clause 16(b), all notices or other communications shall be sent by electronic mail sent to the relevant parties' email address set out below:

**PEXA**

support@pexa.com.au

**Subscriber Organisation**

The email address set out in the Signing Schedule or as notified to PEXA in writing from time to time.

- (b) Where required under this Subscriber Agreement to notify PEXA by telephone, the Subscriber Organisation must telephone the PEXA Support Desk on the following telephone number:

PEXA Support Desk

1300 084 515



## 17 Variations

### 17.1 PEXA's rights of variation

- (a) PEXA may add to, vary, modify or delete ("Change") any term or terms of this Subscriber Agreement (including, for the avoidance of doubt, the Charges):
  - (i) with immediate effect where the Change is necessary, in PEXA's reasonable opinion, to comply with the ECNL, the Operating Requirements, or any other Law, or in any other situation relevant to the digital signing of documents in the PEXA platform; or
  - (ii) in any other situation, by providing at least two weeks' prior notice to the Subscriber Organisation.
- (b) The Subscriber Organisation's continued use of Digital Certificates will constitute the Subscriber Organisation's acceptance of any such Change.

### 17.2 Effect of updating Model Participation Rules

Amendments to the Model Participation Rules will, immediately upon their creation, be deemed to form part of this Subscriber Agreement without the need for PEXA to provide notice of the amendment under clause 17.1.

### 17.3 Governing law

- (a) This Subscriber Agreement is governed by the laws of the State of Victoria.
- (b) Each Party submits to the non-exclusive jurisdiction of the courts of the State of Victoria and any court that may hear appeals from any of those courts, for any proceedings in connection with this Subscriber Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.