

MOZILLA COMMON CA DATABASE AGREEMENT v2

This **MOZILLA COMMON CA DATABASE AGREEMENT** (“**Agreement**”) is entered into as of _____ (“**Effective Date**”) by and between Mozilla Corporation, located at 331 E. Evelyn Ave., Mountain View, CA 94041, United States of America and the company identified in the signature line of this Agreement (“**Company**”) (each a “**Party**” and collectively referred to as the “**Parties**”).

Background and Statement of Purpose

The maintenance of net security protocols requires that certification authorities provide up-to-date information to root store operators. Currently, certification authorities must separately submit data to multiple, individual root store operators, resulting in inefficiency and duplication of effort.

Mozilla maintains a CRM instance for communicating with certification authorities and managing certification authority data (the “**Common CA Database**”). The Parties desire for Company to have access to the Common CA Database on the terms described herein to promote efficiency and improve internet security by providing a single point of contact for certification authorities to communicate with multiple root store operators.

Mozilla’s goal in sharing the Common CA Database is to improve the quality of certification authority data and to help keep end users safe. It is expressly not a goal of Mozilla to make money from sharing the Common CA Database. Any payment obligation under this Agreement is intended as a cost-sharing measure.

Root store operators should not utilize the Common CA Database to communicate competitively-sensitive information.

In consideration of the mutual promises contained herein, the Parties agree as follows.

1. ACCESS TO COMMON CA DATABASE

1.1 During the Term, and subject to this Agreement and the CRM Usage Terms (defined below), Mozilla will provide Company with access to the Common CA Database as a user.

1.2 Mozilla will select the customer relationship management provider supplying the Common CA Database (the “**CRM Provider**”) in its sole discretion, and may change such provider from time to time. “**CRM Terms**” shall mean all terms and conditions imposed by the CRM Provider governing the Common CA Database, including without limitation any such terms and conditions included in any online or written agreement, documentation or any order form, as updated from time to time. Mozilla’s current CRM providers are salesforce.com inc. (Master Subscription Agreement available at http://www.salesforce.com/assets/pdf/misc/salesforce_MSA.pdf) and Salesforce.org (Master Subscription Agreement available at <http://www.salesforce.org/master-subscription-agreement/>).

1.3 The Common CA Database may be managed by Mozilla Corporation and/or its parent Mozilla Foundation. As used in this Agreement, “**Mozilla**” shall mean “Mozilla Corporation and/or Mozilla Foundation.” All obligations of Mozilla Corporation under this Agreement may be performed by Mozilla Corporation and/or Mozilla Foundation. The Parties acknowledge and agree that Mozilla Foundation is a third party beneficiary of this Agreement, and may enforce its terms.

1.4 Company shall provide to Mozilla the name and email address of its employee(s) that will have access to the Common CA Database (“**Log-in Information**”). Company acknowledges that such Log-in Information may be retained by Mozilla and disclosed to the CRM Provider for purposes of providing Company with access to the Common CA Database. Company shall be solely responsible for obtaining any necessary consents for such retention and disclosure. Mozilla shall implement and maintain reasonable administrative, technical and physical safeguards sufficient to ensure the

security and confidentiality of the Log-in Information in the possession or control of Mozilla. Mozilla shall not use or disclose the Log-In Information other than as provided in this Section 1.4.

2. CUSTOMIZATIONS

2.1 At Mozilla's sole discretion, after consultation with Company and other root store participants, certain customizations may be made to the Common CA Database for the use of all root store participants. Costs for such customizations ("**Shared UI Customization Costs**") shall be shared equally by all root store participants.

2.2 In addition, Company may develop customizations for its own use and submit them to Mozilla for inclusion in the Common CA Database. All such customizations are subject to Mozilla's approval, which may be withheld for any or no reason. If Mozilla determines not to include the customization in the Common CA Database, Mozilla will notify Company of the reason(s) for non-inclusion, and Company may submit an updated version of the customization, subject to the same approval procedures. Company shall be solely responsible for the costs of developing any such customizations and shall reimburse Mozilla for all reasonable costs of including Company's customization in the Common CA Database ("**Company Customization Costs**").

2.3 Mozilla will make commercially reasonable efforts to maintain a publicly-available repository of the customizations that have been made to the Common CA Database. Any costs of such repository shall be considered Maintenance Costs.

3. PAYMENT

3.1 **Payment.** During the Term, Company shall pay to Mozilla the following (collectively, the "**Fees**"):

- (a) Company's pro rata share of all subscription fees and other costs charged to Mozilla by the CRM Provider to maintain the Common CA Database, including without limitation all subscription fees for certification authorities and root store operators to access the Common CA Database ("**Access Costs**"). Company acknowledges that Access Costs are determined by the CRM Provider and are subject to change.
- (b) Company's pro rata share of Shared UI Customization Costs
- (c) Company's pro rata share of any costs for maintenance of the Common CA Database ("**Maintenance Costs**")
- (d) Company Customization Costs

Mozilla shall provide Company with reasonable documentation of all Fees upon request. Fees during the Initial Term or any Renewal Term shall not exceed the amount of the Deposit (defined below) for such Initial Term or Renewal Term.

3.2 **Deposit.** Within ten (10) business days of the Effective Date, Company will deposit with Mozilla the amount of Thirty-five Thousand Dollars (\$35,000). On or before the first day of each Renewal Term, Company shall deposit with Mozilla sufficient funds to return the Deposit to Thirty-five Thousand Dollars (\$35,000), or such other amount as Mozilla communicates to Company in writing (email is sufficient) at least 60 days in advance of such Renewal Term. (The amount of the initial deposit and the deposit for any Renewal Term shall be referred to as the "**Deposit**"). Mozilla shall be entitled to deduct any and all Fees from the Deposit. The Deposit shall not bear interest and need not be segregated by Mozilla or maintained by Mozilla in a separate account.

3.3 Taxes. Company is responsible for paying all taxes associated with Company's access to the Common CA Database, excluding taxes based upon Mozilla's net income.

4. COMPANY OBLIGATIONS

4.1 Company agrees to comply with (a) the CRM Usage Terms (defined below); (b) Mozilla policies regarding the Common CA Database (currently available at <http://ccadb.org/rootstores/>); (c) any usage limits communicated to Company in writing; and (d) applicable law. Company will not engage in any act or omission with respect to its use of the Common CA Database that would cause Mozilla to be in breach of the CRM Terms, Mozilla's privacy policies, or applicable law. Company shall reimburse Mozilla for any additional usage fees imposed as a result of Company's access to the Common CA Database. "**CRM Usage Terms**" means Sections 4.3, 4.4 and 4.6 of the Salesforce Master Subscription Agreement available at http://www.salesforce.com/assets/pdf/misc/salesforce_MSA.pdf and any successor and substantially similar sections in the CRM Terms (e.g. the current CRM Provider rennumbers the sections in subsequent CRM Terms) including successor CRM Provider CRM Terms.

4.2 **Publication of Root Store Information.** If Company maintains a root store, during the Term, Company agrees to publish information about its root store policies and members so that the information is available to the general public.

4.3 Management of Common CA Database.

(a) Mozilla reserves the right to manage the Common CA Database in a manner designed to facilitate its integrity and functionality and prevent abuse. In its sole discretion, Mozilla may immediately suspend Company's access to the Common CA Database, restrict such access (e.g., provide read-only access), remove Company content or data, or take other corrective action if: (i) any amount owed by Company under this Agreement is thirty (30) or more days overdue; (ii) Company violates this Agreement, the CRM Usage Terms, Mozilla's Common CA Database policies, or applicable law, or uses the Common CA Database in any manner that threatens the security, integrity or availability of the Common CA Database; (iii) the CRM Provider suspends Mozilla's access to the Common CA Database or requests that Mozilla suspend or terminate Company's access; or (iv) any Company content or data is subject to a third party claim, including without limitation for infringement, defamation, violation of publicity or privacy rights, or other violation of law.

(b) Mozilla will make commercially reasonable efforts under the circumstances to provide Company with notice and an opportunity to remedy any issue prior to any suspension or other corrective action. Mozilla will endeavor to provide at least ten (10) days' notice where practicable; however, Company acknowledges that Mozilla retains discretion to take action with shorter or no notice. If Mozilla suspends or terminates Company's access to the Common CA Database, Mozilla will provide Company with reasonable assistance, where practicable, to allow Company to migrate Company data from the Common CA Database.

(c) Any corrective action shall not affect Company's payment obligations, and shall not result in any liability to Mozilla. If Company's access to the Common CA Database is suspended or terminated based on Mozilla's fault, Company's sole remedy shall be a refund of Access Costs for the period during which Company does not have access to the Common CA Database.

4.4 Community Access to Data and Feedback.

Mozilla and Company acknowledge and agree that (a) any data or other content uploaded to the Common CA Database and (b) any suggestion, enhancement request,

recommendation, correction or other feedback provided to Mozilla relating to the Common CA Database does not include any confidential or proprietary information, and may be used, copied, stored, disclosed or otherwise exploited by any other participant in the Common CA Database, without restriction or any form of compensation to the disclosing Party.

5. DISCLAIMER/NO SUPPORT

Company acknowledges that the Common CA Database is operated by a third party CRM Provider. Mozilla is not responsible for, and Company acknowledges and agrees that Mozilla shall have no liability for: (a) the availability, uptime or operation of the Common CA Database; (b) any act or omission of the CRM Provider or any participant in the Common CA Database other than Mozilla; (c) the security, integrity, destruction, loss or confidentiality of any data Company uploads to the Common CA Database; and (d) support for the Common CA Database. Upon request, Mozilla will make commercially reasonable efforts to make support requests to the CRM Provider on Company's behalf. Company is solely responsible for any fees charged by the CRM Provider for such support.

6. DATA BACK-UPS

Mozilla endeavors to back up the data on the Common CA Database utilizing tools provided by the CRM Provider. Company should utilize tools provided by the CRM Provider (such as the CRM Provider's Report Export feature) to back up Company's data on a regular basis. If Company data cannot be recovered via such tools, Mozilla may be able (but has no obligation) to provide further assistance, such as by creating an instance of the Common CA Database from Mozilla's back-ups, from which Company may export Company's data. In addition, the CRM Provider may provide certain options for recovering data. Upon request, Mozilla will provide Company with reasonable assistance in obtaining such back-ups from the CRM Provider. Company shall be solely responsible for any fees charged by the CRM Provider for such services. Mozilla backs up the data on the Common CA Database in its own discretion, and shall have no obligation to back up data or to ensure that such data is backed up by the CRM Provider or otherwise. Mozilla shall have no liability for any loss or destruction of Company's data.

7. RESERVATION OF RIGHTS

As between the Parties, (a) Mozilla and its licensors own and retain all right, title and interest (including all intellectual property rights) in and to all data or other content uploaded by Mozilla to the Common CA Database, and (b) Company and its licensors own and retain all right, title and interest (including all intellectual property rights) in and to all data or other content uploaded by Company to the Common CA Database. No rights or licenses are granted by either Party hereunder other than as expressly set forth in this Agreement.

8. REPRESENTATIONS AND WARRANTIES

8.1 Each Party represents and warrants that it has the full corporate power and right to enter into this Agreement, including, without limitation, the right to grant Company access to the Common CA Database as a user, as provided in Section 1.1 of this Agreement.

8.2 **To the extent permitted by applicable law, neither Party makes any other warranties of any kind, whether express or implied, including any implied warranties of merchantability, fitness for a particular use or noninfringement.** The Common CA Database is provided "As-is," without warranty of any kind. Nothing in this agreement will be deemed to be a warranty that the Common CA Database will operate without interruption or error-free.

9. INDEMNITY

9.1 Company shall indemnify, defend and hold Mozilla harmless from and against all damages, losses, and expenses of any kind (including reasonable legal fees and costs) arising from: (a) Company's breach of the CRM Usage Terms; (b) any allegation that Company data or other content infringes or misappropriates any third party intellectual property right; or (c) Company's negligent or willful act or violation of law.

9.2 Mozilla shall indemnify, defend and hold Company harmless from and against all damages, losses, and expenses of any kind (including reasonable legal fees and costs) arising from Mozilla's breach of Section 8.1.

10. TERM AND TERMINATION

10.1 Term. This Agreement will commence on the Effective Date and will continue in effect until August 4, 2018 (the "**Initial Term**"). Upon the expiration of the Initial Term, the Agreement will automatically renew for additional one-year terms (each a "**Renewal Term**"). The Initial Term and any Renewal Term(s) shall be referred to as the "**Term**."

10.2 Termination for Convenience. Either Party may terminate this Agreement on sixty (60) days' written notice with or without cause.

10.3 Termination for Cause. Either Party may terminate this Agreement immediately upon written notice if the other Party refuses to or is unable to perform under this Agreement or is in breach of any material provision of this Agreement and does not cure such breach within thirty (30) days of written notice of breach.

10.4 Effect of Termination. Upon termination, all rights granted hereunder shall terminate, and each Party shall be released from all obligations to the other occurring or arising after the date of such termination, except that (a) Section 3 shall survive until all Fees incurred on or before the termination date have been paid in full; and (b) Sections 4.4, 5, and 7-12 herein shall survive any expiration or termination of this Agreement. Either Party's termination of this Agreement shall be without prejudice to any other remedies that it may have at law or in equity, and shall not relieve either Party of breaches occurring prior to the termination date. Neither Party shall be liable to the other for damages of any kind solely as a result of terminating this Agreement in accordance with its terms. Upon termination, Mozilla shall deduct any unpaid Fees incurred on or before the termination date from the Deposit, and return any unused portion of the Deposit to Company within sixty (60) days of the termination date. Company shall not be entitled to the refund of any Fees incurred on or before the termination date.

11. LIMITATION OF LIABILITY

To the extent permitted by applicable law, (a) neither Mozilla, Company nor any of their respective licensors will be liable for any indirect, special, incidental, punitive or consequential damages or lost profits in connection with this Agreement, regardless of whether the action is in contract or tort and regardless of the theory of liability, even if a Party has been advised of the possibility of such damages; and (b) except with respect to each party's indemnification obligations hereunder, Mozilla's and Company's total liability arising out of this agreement will not exceed the greater of (i) \$500 or (ii) the total amounts paid or payable by Company to Mozilla in the twelve months immediately preceding the initial notice of any claim.

Each Party's total aggregate liability arising out of or relating to indemnification obligations under this agreement is limited to one hundred and fifty percent (150%) of the total amounts paid or payable by Company to Mozilla in the twelve months immediately preceding the initial notice of any claim.

NOTHING IN THIS AGREEMENT EXCLUDES OR LIMITS EITHER PARTY'S LIABILITY FOR:

(a) DEATH OR PERSONAL INJURY RESULTING FROM ITS NEGLIGENCE OR THE NEGLIGENCE OF ITS EMPLOYEES OR AGENTS;

(b) FRAUD OR FRAUDULENT MISREPRESENTATION; OR

(c) MATTERS FOR WHICH LIABILITY CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

12. MISCELLANEOUS

This Agreement sets forth the entire understanding of the Parties and supersedes all prior agreements and understandings relating hereto. No modifications or additions to or deletions from this Agreement shall be binding unless accepted in writing by an authorized representative of both Parties. This Agreement will be governed by the laws of the state of California, U.S.A., excluding its conflict of law provisions. Any suit hereunder may be brought in the federal or state courts of the County of Santa Clara, California, and both Parties hereby agree to submit to the jurisdiction thereof. If any part of this Agreement is held invalid or unenforceable, that part will be construed to reflect the Parties' original intent, and the remaining portions will remain in full force and effect. A waiver by either Party of any term or condition of this Agreement or any breach thereof, in any one instance, will not waive such term or condition or any subsequent breach thereof. Neither Party may assign or transfer this Agreement. This Agreement will not create or be deemed to create any agency, partnership or joint venture between the Parties. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which will constitute one and the same document upon execution by both Parties. The Parties will be entitled to rely upon an email of a signed copy of this Agreement as if it were an original signed counterpart. Any notice required or permitted by this Agreement will be in writing and may be delivered by registered mail or email. All notices for Mozilla should be delivered via email to legal-notices@mozilla.com in addition to delivery by any other method.

An authorized representative of each Party has read, understood, and agreed to the terms and conditions of this Agreement.

Accepted by:

MOZILLA CORPORATION

COMPANY: _____

Signature _____

Signature _____

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____
