

PEPPOL Transport Infrastructure Agreements

PEPPOL SMP Provider Agreement

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PEPPOL Transport Infrastructure Agreements

PEPPOL SMP Provider Agreement

For the purpose of providing PEPPOL SMP services

this agreement is entered into

between

Ministry of Business Innovation and Employment (MBIE)

Legal Identifier: 9429000106078 (Register of New Zealand Business Numbers)

(Hereinafter named PEPPOL Authority)

and

(Hereinafter named SMP Provider)

The following annexes form an integral part of this agreement:

ANNEX 1 – Contact points

ANNEX 2 – Definitions

ANNEX 3 – Service and Service Levels

ANNEX 4 – Technical Standards

ANNEX 5 – Domain and its specific services and service levels

ANNEX 6 – Change Procedures

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1. General

- 1.1. The *PEPPOL Authority* and the *PEPPOL SMP Provider*, hereinafter individually referred to as “Party” and together referred to as “the Parties”, have entered into this agreement (“the Agreement”) to specify the legal terms and conditions under which:
- the *PEPPOL SMP Provider* shall provide the required *PEPPOL SMP* services;
 - the *PEPPOL Authority* shall supervise that the services provided by the *PEPPOL SMP Provider* are provided and maintained in a reliable, professional and state of the art manner, in compliance with all applicable laws and all relevant technical specifications, to ensure consistency across the full PEPPOL Transport Infrastructure.
- 1.2. All Annexes are to be considered an integral part of the Agreement although they may be maintained and changed separately. In case of conflict the specific provisions of the annex takes precedence over the generic text of the agreement provided that it is clearly and unequivocally specified in the Annex which section or sections of the Agreement that have been changed, replaced or supplemented.
- 1.3. Changes to Annexes 2, 3, 4, 5 (except for clause 2.2.1 and 2.3.1) and 6 are governed by the *PEPPOL Coordinating Authority* and subject to the procedures set out in Annex 6 "Change procedures". The *PEPPOL Authority* will be involved in any process to change the Annexes and proposals for revision will be notified to the *PEPPOL SMP Provider* at least 6 months before they enter into force.
- 1.4. All Annexes are published and maintained on the PEPPOL Web Site (www.peppol.eu). Each reference to any of the listed Annex contained in the Agreement is to be considered as referencing the most recent version of such Annex.
- 1.5. Each time a new version of an Annex or any document referenced in an Annex is made available, the *PEPPOL Authority* will notify the *PEPPOL SMP Provider* at the address provided in Annex 1.

2. Scope and purpose of the agreement

- 2.1. The PEPPOL Transport Infrastructure is an interoperable environment; build upon national systems and infrastructures that provide a mean by which *PEPPOL Participants* are able to exchange business documents between each other, automatically and without manual intervention, thus facilitating an interoperable environment supporting the full cycle of electronic procurement activities.

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- 2.2. The purpose of the Agreement is to define the general principles of the cooperation between the Parties.
- 2.3. The agreement also constitutes the contractual framework for
- the access of *PEPPOL SMP Provider* to the *PEPPOL SML* and covers the interface and information exchanged between the *PEPPOL SMP* and the *PEPPOL SML*;
 - the access of any *PEPPOL AP* to the *PEPPOL SMP* and covers the interface and information exchanged between the *PEPPOL SMP* and the *PEPPOL SML*.
- 2.4. The Agreement shall not be interpreted as an exclusive cooperation between the Parties. Each Party is free to conduct identical or similar business on its own and/or in cooperation with other parties.
- 2.5. Neither Party may conclude agreements on behalf of the other Party or in any other way represent the other Party on the basis of the Agreement. Neither Party acts as the other Party's subcontractor in the operations referred to in the Agreement.

3. Definitions

- 3.1. For the purpose of the Agreement the terms listed in Annex 2 shall have the meaning as defined in that Annex.

4. Roles and responsibilities of the parties

- 4.1. The *PEPPOL SMP Provider* must have a valid membership in OpenPEPPOL AISBL.
- 4.2. The *PEPPOL Authority* has authority over the implementation and use of the PEPPOL Transport Infrastructure within its domain as defined in Annex 5. To achieve this, the *PEPPOL Authority* has the responsibility to ensure that all *PEPPOL SMP* services established within its domain complies with the relevant Technical Standards, as defined in Annex 4, and service specifications, as defined in Annex 3. Through this set of minimum criteria consistency across the full infrastructure is ensured.
- 4.3. The PEPPOL Transport Infrastructure relies on digital certificates for the establishment of trust between communicating parties. The *PEPPOL Authority* has been delegated, from the *PEPPOL Certification Authority* the authority to require that digital certificates be issued, suspended and revoked for *PEPPOL SMP Providers* with whom they have a PEPPOL SMP Provider Agreement.
- 4.4. The *PEPPOL SMP Provider* is responsible for providing *PEPPOL SMP* services in accordance with the minimum requirements prescribed by the relevant Technical Standards, as defined in

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Annex 4, and service specifications, as defined in Annex 3. This includes a mandatory requirement to ensure that the *PEPPOL Participants* they service have registered receive capabilities for the relevant PEPPOL BIS. Furthermore the *PEPPOL SMP* services shall comply with any additional requirements set forth in annex 5.

- 4.5. The *PEPPOL SMP Provider* shall use its best endeavours to ensure that the metadata provided by his *PEPPOL SMP* is correct and updated and gives a correct description of the services accessible.

5. Domain Specific Requirements

- 5.1. *PEPPOL SMP Providers* and *PEPPOL AP Providers* must comply with, and ensure its officers, employees, agents and subcontractors comply with all laws and policies of the *PEPPOL Authority* country relevant to the services, and all laws from time to time in force in any jurisdiction in which any part of the Agreement is performed.
- 5.2. If a *PEPPOL SMP Provider* or *PEPPOL AP Provider* becomes aware of any actual or suspected breach of its obligations, it must immediately report it to the *PEPPOL Authority* within five (5) business days and comply with any reasonable directions by the *PEPPOL Authority* in relation to any investigation or further reporting of the actual or suspected breach.
- 5.3. The *PEPPOL Authority* may enforce additional restrictions and criteria, beyond those enforced by the PEPPOL Coordinating Authority in the PEPPOL Transport Infrastructure Agreement, on *PEPPOL AP Providers* and *PEPPOL SMP Providers* they contract with. Such additional restrictions and criteria shall be documented in annex 5 and be made publicly available in English language. The additional restrictions and criteria should not hamper the interoperability with *PEPPOL Participants* using other *PEPPOL AP Providers* and *PEPPOL SMP Providers*.
- 5.4. The *PEPPOL Authority* cannot enforce or supervise its additional restrictions and criteria on *PEPPOL AP Providers* and *PEPPOL SMP Providers* contracting with other *PEPPOL Authorities*.
- 5.5. A *PEPPOL Authority* that has additional restrictions and criteria may offer *PEPPOL AP Providers* and *PEPPOL SMP Providers* the possibility to sign only the applicable annex 5 if they have signed a PEPPOL SMP Provider Agreements and PEPPOL AP Provider Agreements with another *PEPPOL Authority*. By signing annex 5 the *PEPPOL AP Providers* and/or *PEPPOL SMP Provider* accepts that the stated additional restrictions and criteria will apply to their services offered within the applicable domain.
- 5.6. A *PEPPOL Authority* may run their own accreditation schemes to ensure conformance to their additional restrictions and criteria.

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6. General Undertakings

- 6.1. In addition to each Party's responsibilities in this Section 6 or otherwise in the Agreement the core responsibilities of the Parties is to provide the services relevant to their role in the PEPPOL Transport Infrastructure as defined in Annex 3, Annex 4, Annex 5 and Annex 6.
- 6.2. As far as it is possible without violating confidentiality commitments to third parties or data protection laws or regulations, the Parties shall make available to each other and to other *PEPPOL Participants* relevant information held by the Party and which is needed by others for maintaining the services.
- 6.3. Each Party shall ensure that its services is provided and maintained in a reliable, professional and state of the art manner.
- 6.4. The *PEPPOL SMP Provider* shall protect its own data systems against illicit use, malicious code, viruses, computer intrusions, infringements and illegal tampering of data and other comparable actions by third parties. The *PEPPOL SMP Provider* agrees to use commercially reasonable efforts to avoid the transmission of any viruses, time bombs, worms or similar items or any computer programming routines that may interfere with other Party's computer systems.
- 6.5. The Parties shall notify each other and implicated users without delay if they observe disturbances or errors within their domain of responsibility, which may endanger the fulfilling of agreed tasks.
- 6.6. If any of the Parties regardless of circumstances is unable to fulfil its obligations according to the Agreement, the Party should without delay inform the other Party.
- 6.7. Each Party shall in Annex 1 designate a contact person for the exchange of information and for taking care of other matters related to the Agreement. Any change in contact points must be provided in writing.
- 6.8. The *PEPPOL SMP Provider* shall ensure that it has sufficient resources for the necessary development of the services they provide and for the maintenance of its own data systems.

7. Charges

- 7.1. The Parties shall bear their own development and operation costs in conjunction to their own data system and procedures as required to fulfil the obligations according to the Agreement.
- 7.2. All services provided by the *PEPPOL SML* are provided free of charge.

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- 7.3. Charges may be applied by the *PEPPOL Certification Authority* for issuing *PEPPOL Certificates*.
- 7.4. The *PEPPOL SMP Provider* shall not charge the *PEPPOL Authority* for any service whatsoever unless specifically agreed upon in a separate agreement.
- 7.5. The *PEPPOL SMP Provider* cannot charge a *PEPPOL AP Provider* for retrieving data from the *PEPPOL SMP*.
- 7.6. The *PEPPOL SMP Provider* cannot charge the *PEPPOL AP Provider* for services related to connection, setup, testing, conversions, development or implementation.
- 7.7. No charges shall be applied for registration, editing or deleting information in the *PEPPOL SML*.
- 7.8. The *PEPPOL SMP Provider* shall freely and independently determine its pricing towards the *PEPPOL Participants* to whom it provides its services and shall independently collect any charges from these.

8. Marketing

- 8.1. Each Party has the sole right to promote and market its own service. Each Party may use the other Party as reference in their external communications only after the Service has been tested and the Parties have jointly established that the Service functions properly.
- 8.2. The Parties shall agree separately on possible joint marketing concerning the Service.
- 8.3. The Parties shall agree on layout and content of all potential press releases and other messages concerning the Agreement, regardless the geographical location or the media it will be published.
- 8.4. Neither Party has the right to use the other Party's trademarks nor trade names in any way other than expressly stated in this Agreement or otherwise agreed with the other Party in writing.

9. Subcontracting

- 9.1. The Parties may subcontract any of the services for which they are responsible under this Agreement.
- 9.2. Such subcontracting does not relieve the Party from the responsibility pursuant to this Agreement including the responsibility for the appropriate service level according to Annex 3.
- 9.3. The Party subcontracting its responsibilities shall ensure that the subcontractors enter into subcontractor agreements corresponding to this Agreement, save for any provisions that are not relevant with regard to the individual subcontractor due to the kind of services being

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subcontracted.

- 9.4. Should the *PEPPOL SMP Provider* subcontract any part of the services for which it is responsible under the Agreement, the *PEPPOL SMP Provider* shall notify the *PEPPOL Authority* of such arrangements.

10. Data Ownership

- 10.1. The registration in any *PEPPOL SMP* is owned by the *PEPPOL Participant*. A third party, typically the *PEPPOL AP Provider*, may maintain the registration on behalf of the *PEPPOL Participant*.
- 10.2. The *PEPPOL SMP Provider* must ensure that the *PEPPOL Participant* has given his acceptance to publish his metadata. If the registration is done by a *PEPPOL AP Provider* or any other third party, the *PEPPOL SMP Provider* must ensure that he transfers this responsibility to that third party.
- 10.3. The *PEPPOL SMP Provider* is allowed to distribute information about a *PEPPOL Participant* only to the extent required for operation of the infrastructure.

11. Confidentiality

- 11.1. The parties undertake to preserve confidentiality of any data, documents or other material that they have received from the other Party or otherwise in relation to the execution of their responsibilities and services under this Agreement and which are identified as confidential.
- 11.2. The Parties may, however, disclose information related to the existence of service contracts within their domain of responsibility.
- 11.3. If it is necessary for a Party to give its employees or advisors information that is subject to confidentiality, the information may not be disclosed to other persons than those for whom it is necessary to receive such information and who are bound by a confidentiality undertaking either by agreement or by law.
- 11.4. Should a Party, or anyone for whom a Party is responsible, such as employees, consultants and subcontractors, be in breach of any of the clauses above regarding confidentiality, the other Party is entitled to damages covering its loss due to the other Party's breach of confidentiality.
- 11.5. The obligation of confidentiality does not, however, apply to material and information (a) which is generally available or otherwise public, or (b) which the Party has received from a third party without an obligation of confidentiality, or (c) which was in the possession of the recipient Party

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without an obligation of confidentiality applying to it before receiving it from the other Party, or (d) which a Party has independently developed without using material or information received by him from the other Party or (e) to the extent the release of such material or information is required under a governmental subpoena or similar governmental demand.

11.6. The Parties shall protect the personal data they receive, collect and process according to the provisions set in the Directive 95/46, Directive 2002/58 and their revised forms and all applicable laws and regulations.

11.7. The obligation of confidentiality shall survive termination of the Agreement.

12. Retention of Data

12.1. Data stored by the *PEPPOL SMP* shall be retained for as long as the data is necessary in order to carry out the performance of its obligations in accordance with this Agreement or is needed for the offering of or follow-up on services by the implicated users (*PEPPOL SML*, *PEPPOL AP* or *PEPPOL Participant*). After that the data shall be deleted unless renewed or confirmed by the data subject.

12.2. The *PEPPOL Participant* or the 3rd party acting on his behalf shall update or delete the data from the *PEPPOL SMP* when the data is no longer valid.

13. Logging

13.1. The *PEPPOL SMP Provider* shall log all registration, editing or deleting of entries in the *PEPPOL SMP*. Such log shall be kept for at least 3 months or for the period prescribed by law.

13.2. The *PEPPOL SMP Provider* shall on request from the implicated users (*PEPPOL SML*, *PEPPOL AP* and/or *PEPPOL Participant*) or from the *PEPPOL Authority* reveal or give access to relevant data from the logs provided that the data is not subject to a duty of confidentiality in which case the prior written consent of the data subject should be retrieved.

14. Suspension and Revocation of Services

14.1. The *PEPPOL Authority* may impose a penalty upon the *PEPPOL SMP Provider* if the *PEPPOL SMP Provider* does not fulfil its responsibilities and obligations as defined in this Agreement or in any of its Annexes – or if indications of fraud, spam or other misconduct are observed from the *PEPPOL SMP Provider*.

14.2. If the misconduct defined in 14.1 continues over time, the *PEPPOL Authority* may suspend the *PEPPOL SMP Provider* for up to 30 days. In this case the *PEPPOL Authority* shall:

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- inform the *PEPPOL SMP Provider* that he may be suspended by sending a Warning Note,
- give the *PEPPOL SMP Provider* a possibility to bring its conduct in accordance with the conditions specified in the Warning Note received and to all responsibilities and obligations as defined in this Agreement or in any of its Annexes,
- specify, in the Warning Note, the amount of time given to the *PEPPOL SMP Provider* to comply with the requirements of the notice and the Agreement.

- 14.3. The *PEPPOL Authority* may extend the suspension, depending on conditions set up by the *PEPPOL Authority* or ultimately exclude the *PEPPOL SMP Provider* from the PEPPOL Transport Infrastructure by revoking their *PEPPOL Certificate*.
- 14.4. During suspension or after revocation the *PEPPOL Certificate* cannot be used in transactions, and the *PEPPOL SMP Provider* thus cannot engage in SMP transactions.
- 14.5. The *PEPPOL Authority* shall notify other relevant parties immediately and/or publish the information.
- 14.6. The *PEPPOL SMP Provider* shall prepare for export of all data related to *PEPPOL Participants* on a format capable of being processed automatically by another *PEPPOL SMP*. Upon notification by the *PEPPOL Authority* that the *PEPPOL SMP Provider* will be suspended or its certificate revoked, a copy of above said data should promptly be provided to the *PEPPOL Authority* for transfer to another *PEPPOL SMP Provider* in order to continue the offering of services to the *PEPPOL Participants*.

15. Termination of Services

- 15.1. Should the *PEPPOL SMP Provider* wish to terminate its service, it must notify the *PEPPOL Authority* at least six months before services are terminated. Such notice shall also be made available to all relevant *PEPPOL Participants* and *PEPPOL APs*.
- 15.2. Further, all registrations in the *PEPPOL SML* referencing the *PEPPOL SMP* must be removed before the service is terminated, and as a last step, the *PEPPOL certificate* must be revoked.

16. Liability

- 16.1. Each Party is liable for the acts, failures or omissions of its employees, consultants and subcontractors, including any violation of the terms of this Agreement by such employees, consultants or subcontractors to the same extent as if said acts, failures or omissions was undertaken by the Party itself.

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- 16.2. If a Party requires another Party to use the services of a particular intermediary to perform a service, the Party who required such use shall indemnify the other Party with regard to the costs of such intermediary and for any damage arising directly from that intermediary's acts, failures or omissions in the provision of said services, except where binding national law restricts such indemnifications for a specific Party. In such cases where indemnification is restricted for a specific Party, that Party shall not be permitted to require the use of the services of an intermediary.
- 16.3. A Party shall not be liable for any indirect or consequential damage, such as loss of income or unobtained profit, caused to the other Party. Damages that a Party is liable to pay paid to third parties due to breach of confidentiality under this Agreement by the other Party shall not be considered indirect damages.
- 16.4. Save for section 16.5 below, the liability of the Parties for damages arising from or in relation to this Agreement is limited to the NZ/AU\$20,000.00 equivalent of € 10.000,00 per each damaging event.
- 16.5. The exclusions and limitations of liability stated above shall not apply in the case of damage caused by a wilful act or gross negligence.

17. Force Majeure

- 17.1. Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from unforeseen circumstances or events or causes beyond that Party's control, including but not limited to, war, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of energy, labour or materials, and in the event of any such circumstances, the defaulting Party shall forthwith notify the other in writing and the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed, provided that if the period of delay or non-performance continues for three (3) months, the party not affected may terminate this agreement by giving 14 days written notice to other party.

18. Assignments and Amendments

- 18.1. Any amendments to this Agreement shall be in writing and shall have no effect unless signed by the duly authorised representatives of the Parties.
- 18.2. Unless expressly stated elsewhere in the Agreement the *PEPPOL SMP Provider* is not entitled to transfer the Agreement or the rights, liabilities or obligations under the Agreement without a

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prior, written consent from the *PEPPOL Authority*.

19. Terms and Termination of the Agreement

- 19.1. The Agreement shall enter into force on the Effective Date as set out in Section 21 provided that it has been signed by duly authorised representative of both parties.
- 19.2. The Agreement is valid until terminated by one of the Parties giving the other Party six months written notice.
- 19.3. Either party may terminate the Agreement in whole or in part immediately by written notice in case the other party: (a) commits a material breach to the provisions of the Agreement, which is not remedied within sixty (60) days from written notice thereof; (b) is declared bankrupt, seeks a composition of creditors, suspends payments or in any other way is deemed to be insolvent; (c) materially fails to comply with the confidentiality or security requirements of the Agreement, or if a Party, or any member of it or its sub-contractors' personnel, conducts business or otherwise by act or omission in the reasonable opinion of the other Party acts in wilful or criminal misconduct, which may reflect negatively on the latter Party.
- 19.4. The Parties are obliged to inform third parties that are affected by the termination of the Agreement of the giving of notice. If notice is given on the Agreement, the Parties undertake to negotiate on the procedures that pertain to the ending of the cooperation according to the Agreement in order to avoid any unnecessary disturbances in the customer relationships of the Parties.

20. Governing Law

- 20.1. Without prejudice to any mandatory national law which may apply to the Parties, the Agreement is governed by the law of the country in which the *PEPPOL Authority* has its head office.
- 20.2. Should any provision of this Agreement become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of this agreement. In such case, the Parties concerned shall be entitled to request that a valid and practicable provision be negotiated which fulfils the purpose of the original provision.

21. Dispute Resolution

- 21.1. Any dispute arising out of or in connection with the Agreement shall be:
- (1) resolved amicably by negotiations between the Parties, or if the Parties has not reached agreement within 45 days following notice from one Party to the other regarding the dispute,

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(2) escalated to the PEPPOL Coordinating Authority, in which case both Parties must agree on whether the decision from *the PEPPOL Coordinating Authority*, or from one or more technical experts appointed by *the PEPPOL Coordinating Authority*, shall be considered binding or only advisory (as a basis for further negotiations), or

(3) when none of the other options provides a satisfactory solution within 90 days following notice from one Party to the other regarding the dispute, the dispute may be referred to the courts of the country in which the *PEPPOL Authority* has its head office. Said court shall then have sole jurisdiction.

21.2. Any expenses incurred by the PEPPOL Coordinating Authority in the process of resolving the dispute shall be covered by the Parties.

22. Signature

22.1. The Agreement has been made in two identical copies, one for each Party. The Effective Date of the Agreement is _____.

Place and date

	For the PEPPOL Authority	For the PEPPOL SMP Provider
Name		
Position		
Signature		