

PEPPOL Transport Infrastructure Agreements

Authority Agreement

For the purpose of providing governance for the PEPPOL transport infrastructure this agreement is entered into

Between

OpenPEPPOL AISBL

(Hereinafter named the *PEPPOL Coordinating Authority*)

And

(Hereinafter named the *PEPPOL Authority*)

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 Coordinating Authority* and the *PEPPOL Authority* 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 Parties shall provide governance for the 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. Any conflict between annexes shall be resolved by applying the procedures set out in Annex 6.
- 1.3. Changes to the Agreement and its Annexes are subject to the procedures set out in Annex 6. The *PEPPOL Authority* will be involved in any process to change the Agreement and proposals for revised Agreement will be notified to the *PEPPOL Authority* 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 Annexes 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 Coordinating Authority* will notify the *PEPPOL Authority* at the address provided in Annex 1.

2. Scope and purpose of the agreement

- 2.1. The PEPPOL Transport Infrastructure requires that a number of actors work together in a trusted environment. The basis of this infrastructure is a recognition that national and/or regional infrastructures do exist, and will continue to exist in the foreseeable future. The aim of the PEPPOL Transport Infrastructure is to provide a means by which users connected to one infrastructure are able to exchange business documents with users connected to another infrastructure and thus facilitate an interoperable environment build upon national systems and infrastructures supporting the full cycle of electronic procurement activities.
- 2.2. To achieve this, two level of governance are required where the *PEPPOL Coordinating Authority* will have authority over all central components of the PEPPOL Transport Infrastructure. The

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PEPPOL Coordinating Authority will delegate the authority over the implementation and use of the PEPPOL Transport Infrastructure within a defined domain to a *PEPPOL Authority*.

- 2.3. The purpose of the Agreement is to define the general principles of the cooperation between the Parties.
- 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.
- 2.6. For domains in which no *PEPPOL Authority* has been established, the minimum requirements and criteria set forth by the *PEPPOL Coordinating Authority* shall be applied, and the *PEPPOL Coordinating Authority* will assume the role as the *PEPPOL Authority* in any contractual arrangements.

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 Authority* must have a valid membership in OpenPEPPOL AISBL
- 4.2. The *PEPPOL Coordinating Authority* will have authority over all central components of the PEPPOL Transport Infrastructure. The central components of the PEPPOL Transport Infrastructure are:
 - (1) the PEPPOL Technical Standards as defined in Annex 4,
 - (2) the PEPPOL service specifications as defined in Annex 3,
 - (3) the PEPPOL SML, and
 - (4) the PEPPOL Transport Infrastructure Agreements and its annexes.Through these a set of minimum criteria for providing services in the PEPPOL Transport Infrastructure is defined in order to ensure consistency across the full infrastructure.
- 4.3. The *PEPPOL Coordinating Authority* delegates to the *PEPPOL Authority* the authority over the implementation and use of the PEPPOL Transport Infrastructure within its domain as defined in

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Annex 5. To the extent that the *PEPPOL Coordinating Authority* is also the *PEPPOL Certification Authority*, it delegates to the *PEPPOL Authority* the authority to require that digital certificates be issued, suspended and revoked for *PEPPOL SMP Providers* and *PEPPOL AP Providers* with whom it has a contract.

- 4.4. The *PEPPOL Authority* shall ensure that *PEPPOL SMP* services and *PEPPOL AP* services, as defined in Annex 3, are provided within its domain of responsibility by entering into separate *PEPPOL SMP Provider Agreements* and *PEPPOL AP Provider Agreements*. The *PEPPOL Authority* may itself provide *PEPPOL SMP* services and/or *PEPPOL AP* services subject to the regulation of the relevant *PEPPOL SMP Provider Agreements* and *PEPPOL AP Provider Agreements*.
- 4.5. *PEPPOL AP Providers* and/or *PEPPOL SMP Providers*, which have entered into agreement with any *PEPPOL Authority*, are entitled to offer their services conformant to the *PEPPOL Technical Standards* as defined in Annex 4 and the *PEPPOL service specifications* as defined in Annex 3 to *PEPPOL Participants* in any domain.

5. Domain Specific Requirements

- 5.1. 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*.
- 5.2. 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*.
- 5.3. On request from the *PEPPOL Coordinating Authority*, the *PEPPOL Authority* shall provide copies of *PEPPOL SMP Provider Agreements* and *PEPPOL AP Provider Agreements* and similar documents describing the minimum technical capabilities of the services that are provided within its domain and describe the consequences of any additions defined in annex 5.
- 5.4. 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

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the applicable domain.

- 5.5. A *PEPPOL Authority* may run their own accreditation schemes to ensure conformance to their additional restrictions and criteria.

6. General Undertakings

- 6.1. In addition to each Party's responsibilities as defined 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 and in the Transport Infrastructure Agreement.
- 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 are provided and maintained in a reliable, professional and state of the art manner.
- 6.4. The Parties shall protect their 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 Parties agree 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 *PEPPOL Participants* 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 contact persons 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.

7. Charges

- 7.1. The Parties shall bear their own development and operation costs in conjunction to their own data

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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.
- 7.3. Charges may be applied by the *PEPPOL Certification Authority* for issuing *PEPPOL Certificates*.

8. Marketing

- 8.1. The Parties shall agree separately on possible joint marketing concerning the PEPPOL Transport Infrastructure.
- 8.2. 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. However, the *Regional Authority* shall not subcontract its services related to its supervising role to any *PEPPOL AP Providers* or *PEPPOL SMP Providers*.
- 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 subcontracted.
- 9.4. The Party that subcontracts any part of the services for which it is responsible under the Agreement, shall notify the other Party of such arrangements.

10. Confidentiality

- 10.1. The parties understand and respect the different terms and conditions each party may have in regard to national legislation and/or internal rules and procedures concerning confidentiality.
- 10.2. With respect to what is stipulated above, 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 in accordance with their respective national legislation and/or internal rules and procedures.
- 10.3. Information, which is subject to confidentiality, may not be disclosed to other persons, employees

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or others, than those to whom it is necessary to share such information and who are bound by confidentiality either by national legislation or by agreement.

- 10.4. The Parties may, however, disclose information related to the existence of service contracts within their domain of responsibility, including service contracts with a *PEPPOL AP Provider* and/or a *PEPPOL SMP Provider*.
- 10.5. 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 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.
- 10.6. Any obligation of confidentiality shall survive termination of the Agreement.

11. Liability

- 11.1. If a Party requires another Party to use the services of a particular intermediary, 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.
- 11.2. The *PEPPOL Coordinating Authority* shall not be liable to the *PEPPOL Authority* or any other party for any damage suffered in relation to this Agreement or the PEPPOL Transport Infrastructure in so far as its acts or omissions is in accordance with the instructions given by the General Assembly of OpenPEPPOL, nor for any damage suffered due to the content of standards, specifications or other documents appointed by the *PEPPOL Coordinating Authority* under this agreement.
- 11.3. 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 to third parties due to breach of confidentiality under this Agreement by the other Party shall not be considered indirect damages.
- 11.4. The exclusions and limitations of liability stated above shall not apply in the case of damage caused by a wilful act or gross negligence.

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12. Force Majeure

- 12.1. 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.

13. Assignments and Amendments

- 13.1. Any amendments to this Agreement shall be in writing and shall have no effect unless signed by the duly authorised representatives of the Parties.
- 13.2. Unless expressly stated elsewhere in the Agreement, neither Party is entitled to transfer the Agreement or the rights, liabilities or obligations under the Agreement without a prior, written consent from the other Party.

14. Terms and Termination of the Agreement

- 14.1. The Agreement shall enter into force on the Effective Date as set out in Section 16 provided that it has been signed by duly authorised representative of both parties.
- 14.2. The Agreement is valid until terminated by one of the Parties giving the other Party six months written notice.
- 14.3. 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.

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- 14.4. The Parties are obliged to inform third parties that are affected by the termination of the Agreement by 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.

15. Governing Law

- 15.1. Without prejudice to any mandatory national law which may apply to the Parties, the Agreement is governed by the law of Belgium.
- 15.2. 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.

16. Dispute Resolution

- 16.1. Any disagreement arising between the Parties concerning any matter arising out of or in connection with this Agreement shall be amicably settled through negotiations.

17. Signature

- 17.1. 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 Coordinating Authority	For the PEPPOL Authority
Name		
Position		
Signature		