PEPPOL Transport Infrastructure Agreements

PEPPOL AP Provider Agreement

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For the purpose of providing PEPPOL AP services in

Singapore

this agreement is entered into

Between

Info-communication Media Development Authority (IMDA)

_____

(Hereinafter named PEPPOL Authority)

And

_____

(Hereinafter named PEPPOL AP 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

1. General

1.1. In consideration of the appointment of the PEPPOL AP Provider by the PEPPOL Authority and the PEPPOL AP services to be provided by the PEPPOL AP Provider, the *PEPPOL Authority*

and the *PEPPOL AP 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 AP Provider* shall provide the required PEPPOL AP services;
- the *PEPPOL Authority* shall supervise that the services provided by the *PEPPOL AP 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 take 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 clauses 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 AP 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 AP 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, built upon national and/or regional systems and infrastructures, that provides 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.

2.2. The purpose of the Agreement is to define the general principles for the operation of the

PEPPOL Transport Infrastructure.

2.3. The agreement also constitutes the contractual framework for the access and information exchange between the *PEPPOL AP* and the *PEPPOL SML* and any *PEPPOL SMP*.

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. The Parties' relationship with the *PEPPOL Participants* is not regulated in the Agreement, except as expressly provided in Section 10 regarding Confidentiality and in Section 6 regarding General Undertakings.

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 AP 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 AP* 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 AP Providers* with whom they have a PEPPOL AP Provider Agreement.

4.4. The *PEPPOL AP Provider* is responsible for providing PEPPOL AP services in accordance with the minimum requirements prescribed by the relevant Technical Standards, as defined in Annex 4, and service specifications, as defined in Annex 3. This includes a mandatory requirement to provide send and/or receive capabilities for PEPPOL BIS relevant to the services they offer to customers, as well as ensuring that the *PEPPOL Participants* they service have send and/or receive capabilities for the relevant PEPPOL BIS. Furthermore the PEPPOL AP services shall comply with any additional requirements set forth in annex 5.

4.5. The *PEPPOL AP Provider* is also responsible for submitting correct and updated metadata regarding its Access Point to the relevant *PEPPOL SMP*.

4.6. The *PEPPOL AP Provider* shall provide support for the *PEPPOL Business Documents* required by the *PEPPOL Participants* they services according to the registrations for these *PEPPOL Participants* in the *PEPPOL SMP*.

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. 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.

5.4. 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 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 through 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 are provided and maintained in a reliable, professional and state of the art manner.

6.4. The *PEPPOL AP 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 AP 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 *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. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) when sent by confirmed electronic mail to the address set out in Annex 1 if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, and (b) two (2) business days following the date of dispatch, if delivered by registered mail.

6.8. The *PEPPOL AP 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.

6.9. By mean of separate agreements, the *PEPPOL AP Provider* ensures that it is entitled to receive and transfer Business Documents on behalf of or for the benefit of the *PEPPOL Participants* that it services.

6.10. The *PEPPOL AP Provider* shall enclose in each and every agreement between itself and of the *PEPPOL Participants* that it services, a complete reference to this Agreement and to the *PEPPOL Authority*, including the full address of the Contact Point.

6.11. The *PEPPOL AP Provider* shall process PEPPOL Business Documents and ensure that all related tasks are accomplished in accordance with the Agreement, including its Annexes, and the agreements it has made with the *PEPPOL Participants* that it services.

7. Charges

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

7.4. The *PEPPOL AP Provider* shall not charge the *PEPPOL Authority* for any service whatsoever unless specifically agreed upon in a separate agreement.

7.5. There shall be no charge for exchanging PEPPOL business documents between *PEPPOL APs*.

7.6. The *PEPPOL AP 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 in which 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 subcontracted.

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

10. Data Ownership

10.1. The content of *PEPPOL Business Documents* and their associated metadata which is stored by the *PEPPOL AP Provider* is owned by the *PEPPOL Participant*.

10.2. The *PEPPOL AP Provider* is not allowed to collect or distribute information about *PEPPOL Business Documents* and their associated metadata other than 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 in relation to the execution of their responsibilities and Services. The content of PEPPOL Business Documents is always considered 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, it shall be regarded as a material breach not capable of being remedied. .

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 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 obligation of confidentiality shall survive termination of the Agreement.

12. Retention of Data

12.1. Data stored by the *PEPPOL AP* 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 SMP* or *PEPPOL Participant*). After that the data shall be deleted unless renewed or confirmed by the data subject.

12.2. The *PEPPOL AP Provider* shall not collect or save any of its customer's data, information, business documents or its content for any other purpose than what is necessary in order to carry out the performance of its obligations in accordance with this Agreement. If the use of any of such information is needed to provide further services to the customer (e.g. transformation, archiving), the *PEPPOL AP Provider* shall specifically inform about this in the agreement between itself and the *PEPPOL Participants* that it services.

12.3. The PEPPOL AP Provider shall comply with its obligations under all applicable data protection laws in the performance of its obligations under this Agreement, including but not limited to the Personal Data Protection Act.

13. Logging

13.1. The *PEPPOL AP Provider* shall log all business documents handled by the *PEPPOL AP*. Such log shall be kept for at least 3 months or for the period prescribed by law.

13.2. The *PEPPOL AP Provider* shall on request from the implicated users (*PEPPOL SML*, *PEPPOL SMP,* other *PEPPOL APs* 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. In the event that the *PEPPOL AP Provider* does not fulfil its responsibilities and obligations as defined in this Agreement or in any of its Annexes, it shall be constituted as a material breach not capable of being remedied.

14.2. If the misconduct defined in 14.1 continues over time, the *PEPPOL Authority* may suspend the *PEPPOL AP Provider* for up to 30 days. In this case the *PEPPOL Authority* shall:
- inform the *PEPPOL AP Provider* that he may be suspended by sending a Warning Note,
- give the *PEPPOL AP 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 AP 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 AP 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 AP Provider* thus cannot send or receive messages to/from other *PEPPOL APs* or engage in *PEPPOL SMP* transactions.

14.5. The *PEPPOL Authority* shall notify other relevant parties immediately and/or publish the information.

15. Termination of Services

15.1. Should the *PEPPOL AP 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 SMP*.

15.2. Further, all registrations in *PEPPOL SMPs* referencing the *PEPPOL AP* 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.

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.

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 maximum aggregate liability of each Party to the other in

respect of each claim under this Agreement (including claims for breach of representations, warranties and undertakings) shall not exceed S$10,000.

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 AP Provider is not entitled to transfer the Agreement or the rights, liabilities or obligations under the Agreement without a 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 22 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 (d) or any member of it or its sub-contractors' personnel, conducts business or otherwise by act or omission in the reasonable opinion of the first-named Party acts in wilful or criminal misconduct, which may reflect negatively on the first-named 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 Singapore.

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. In the event of any dispute arising out of or in connection with the Agreement (the "**Dispute**"), the Party claiming such Dispute shall give written notice to the other Party. Any Dispute shall be first resolved amicably by negotiations between the Parties.

21.2. If the Parties has not reached an agreement within 45 days following the written notice from one Party to the other regarding the Dispute, the Dispute shall escalate 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).

21.3. If there has been no settlement of the Dispute within 90 days following the written notice from one Party to the other regarding the Dispute, the Dispute may be referred to the courts of

Singapore. Said court shall then have sole jurisdiction.

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

21.5. Where the PEPPOL Coordinating Authority finds that the dispute arises substantially out of the actions or omissions of one Party, the other Party shall be able to recover from the former its portion of the expenses payable to the PEPPOL Coordinating Authority.

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 AP Provider*
Name		
Position		
Signature		