

APPENDIX A – MEMORANDUM OF AGREEMENT

Draft Memorandum of Agreement between SPES Group and the Certification Authorities.

THE SPES TRUSTED LIST AGREEMENT.

AN AGREEMENT TO ENABLE THE INTEGRATION OF A CERTIFICATION AUTHORITY INTO THE SPES VERIFICATION TOOL TO PROMOTE INTEROPERABILITY.

This Agreement is made day of 200

Between:

1. SPES] [a Group of Public Administrations consisting of Prato and Bologna, Italy, Sheffield,UK and Saarbrucken,Germany] of Comune di Prato, Sistema Informativo, Piazza del Comune 2, Prato, Italy, ("SPES"); and
2. [*insert name*] of [*insert address*] ("Certification Authority");

Recitals:

- A. SPES has developed a framework to enable greater interoperability and increased acceptability by the current SPES partners and SPES service users of the Certificates issued by the Certification Authorities signing this Agreement, and by those who will join the scheme in the future.
- B. This framework includes the following elements:
 - An Electronic Signature software Verification Tool,
 - a Website with information pages,
 - a Mapping Process between the SPES minimal policy requirements and the Signatoree's Certification Authority's Policies
 - a Certificate Trust List.
- C. The Certification Authority wishes to issue digital certificates and electronic signatures which this SPES Certified Trust List process will enable the SPES partners to technically accept, without having to go through additional processes to ascertain their validity. The digital certificates and electronic signatures issued by other Certification Authorities who have signed an agreement with SPES on the same terms as this Agreement will already be benefiting from this process.
- D. Interoperability will be fostered by the integration of the Certification Authority into the SPES Verification Tool.

Now it is agreed as follows:

1. Interpretation

1.1 In this Agreement the following words and phrases shall have the following meanings unless the context requires otherwise:

“Certificate”	means either a digital certificate or an electronic signature issued by the Certification Authority or by a SPES Certification Authority (as the case may be);
“Certification Authority Information”	Data supplied by a Certification Authority to SPES to meet its obligations under this agreement.. e.g. Root Certificates, CRLs etc”
“Certificate Holder”	means an individual or organisation to whom a Certificate has been issued pursuant to the terms of a Certificate Holder Agreement
CertificateTrust List	<p>A Certificate Trust List (CTL) is a signed PKCS#7 data structure that can contain among other things:</p> <ul style="list-style-type: none"> - the certificates of "trusted CAs" and of any other necessary sub-CA. - references to the CA policies - any other information useful for the final users in order to easily set up largely diffused software packages to recognise the certificates issued by the trusted <p>The format by which the CTL will be built will be defined by SPES.</p>
“Certification Services”	means the verification of an individual's identity, the issuance of a Certificate, public and private keys, the authentication and certification of a Certificate when it is used and the management of the certification service (including the suspension and revocation of Certificates) and of the associated infrastructure;
“Certification Standards”	means the Certification Standards developed and published by SPES as set out in the

	Policy Documents;
"Intellectual Property Rights"	means all patents, copyrights and related rights, database rights design rights, trade marks, service marks, trade names, domain names, and other rights of a like nature (whether registered or unregistered) and all applications for such rights as may exist anywhere in the world;
"SPES Website"	means SPES's website which can be found at http://www.spesproject.org
"Logo"	means the unregistered trade mark devised and owned by SPES details of which are set out in Part 1 of Schedule 3;
"Membership Fee"	means the annual Membership Fee, currently nothing, payable by the Certification Authority as set out on the SPES Website from time to time;
"Policy Documents"	means those documents which are listed in Schedule 1 and published on the SPES Website and such further documents published by SPES from time to time and used as part of the mapping process to ascertain the suitability of Certification Authorities to join the scheme and which may be amended from time to time;
"Processing"	has the meaning set out in the Data Protection Legislation and "Process" and "Processed" shall be construed accordingly;
"Revocation List"	means a list of all of the certificates issued by the Certification Authority which have been suspended or revoked or which have expired and not been renewed;
"Security Policy"	means the Security Policy of the Certification Authority (a copy of which is attached to this Agreement as Appendix A);
SPES Accepted CA	A Certification Authority which has been accepted onto the Certificate Trust List. having passed the SPES CA acceptance process.

SPES Member	The European Cities such as Prato, Saarbruecken, Bologna and Sheffield who are implementing the services.
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1.2 In this Agreement (except where the context requires otherwise):

- 1.2.1 any reference to or use of a England and Wales legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept will, in respect of any jurisdiction other than England and Wales, be deemed to be or include a reference to what most nearly approximates in that jurisdiction to the Italian legal term;
- 1.2.2 any phrase introduced by the terms "including", "include", "in particular" or any similar expression will be construed as illustrative and the words following any of those terms will not limit the sense of the words preceding those terms;
- 1.2.3 words importing a particular gender do not exclude other genders;
- 1.2.4 headings are included for convenience only and will not affect the construction or interpretation of this Agreement;
- 1.2.5 use of the singular includes the plural and vice versa;
- 1.2.6 reference to a party includes reference to its successors and permitted assigns
- 1.2.7 any reference to "persons" includes natural persons, firms, partnerships, bodies corporate, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not incorporated and whether or not having separate legal personality);
- 1.2.8 any reference to a statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under it as from time to time amended, consolidated or re-enacted;
- 1.2.9 any reference to a recital, clause or Schedule is to the relevant recital, clause or Schedule of this Agreement and any reference to a sub-clause or paragraph is to the relevant sub- clause or paragraph of the clause or Schedule in which it appears;
- 1.2.10 The Schedules, Appendices and recitals form part of this Agreement and will have effect as if set out in full in the body of this Agreement.
- 1.2.11 In the case of conflict or ambiguity the order of precedence for this Agreement and the documents attached to or referred to in this Agreement will be as follows:
 - (a) the body of this document

- (b) the Schedules to this document
- (c) the Appendices to this document

1.2.12 "writing" shall include documents in electronic form including e-mail.

1.2.13 The phrase "each and every third party employed by it in the provision of Certification Services" or similar shall include all third party organisations used by the Certification Authority in the provision of the Certification Services including but not limited to the designer, manufacturer and supplier of any smartcard or other device on which a Certificate may be stored or processed, the supplier of identity verification or authentication services and any person who is in any other way involved in the provision of the Certification Services by the Certification Authority.

2. **SPES's Obligations**

2.1 On the signing this Agreement by the Certification Authority, SPES will:

2.1.1 Carry out the necessary evaluation process in order to come to a decision on the eligibility of the applicant Certification Authority.

2.1.2 If not accepted, to provide the reason for this decision.

2.1.3 If satisfactory, accept that Certification Authority as one of its "accepted authorities" to be included in the SPES Trusted List and to include all the necessary information in the SPES Trusted List.

2.1.4 Make available the SPES software Verification Tool to current and future SPES members and to maintain this tool and to adapt the Verification Tool to include the newly accepted Certification Authority in this tool and to include the level of trust that can be applied to it according to the EC Directive.

2.1.5 Collate and publish [on the SPES Website] the following information provided by the Certification Authority and each SPES partner.

- (a) Revocation Lists
- (b) SPES Partner Information

2.1.6 publish a list of all SPES Certification Authorities with appropriate contact details;

2.1.7 Maintain a "Members Only" area on the SPES Website available only to SPES and SPES Certification Authorities.

2.1.8 Ensure collaboration and agreement with the UK Local Authorities Smartcards Standards eOrganisation to ensure that the Policies established to provide guidance in the Policy Mapping exercise used to help decide upon membership applications are maintained.

- 2.1.9 Ensure a timely response to further applications from other Certification Authorities wishing to join.
 - 2.1.10 Include the Certification Authority in its Trusted Certificate List
 - 2.1.11 Immediately notify all concerned if a revocation of a Certification Authority or Sub-Certification Authority occurs.
- 2.2 SPES will ensure that each SPES Certification Authority will enter an agreement in the same terms as this Agreement and will use its reasonable endeavours to procure that each such SPES Certification Authority complies with its obligations under such agreement.

3. **Certification Authority's Obligations**

- 3.1 In consideration of the obligations accepted by SPES pursuant to the terms of this Agreement, the Certification Authority will:
- 3.1.1 Provide to SPES, all the information necessary to carry out the evaluation procedure:
 - 3.1.2 This shall include the Policies adopted by the Certification Authority. These will include the Certificate Practices Statement, Certificate Policy, Registration Policy, Certificate Holder Agreement, Endorser Agreement for Electronic Signatures and the Electronic Signature Certificate Profile.
 - 3.1.3 The Certification Authority will provide the official URL to all the Certification Authority information available on the web.
 - 3.1.4 The Certification Authority will accept the results of the evaluation process.
 - 3.1.5 The electronic signature verification tool, where available, free of charge, and downloadable from the web.
 - 3.1.6 Provide the access to enable reading of the managed Certificate Revocation List.
- 3.2 Provide all the necessary co-operation for the required interoperability testing which will be considered necessary during the evaluation.
- 3.3 Provide the X.509 Certificate Extension and options used by the PKI infrastructure and their meaning.
- 3.4 The CA will inform SPES on any changes in its procedures etc which might effect the acceptability of the CA in order to assist SPES in its maintenance of the processes and in support of the continuity of the scheme.

4. **Warranties and Undertakings**

Neither SPES nor the Certification Authority will be affected by the existence of this agreement in terms of their existing liabilities. All allocation of the existing risks associated with the independent activity of the SPES partners and of the Certification Authority will continue unaltered by this agreement.

There will be no additional liability to the Certification Authority as it will maintain its existing liability to its customers.

Nor will any liability fall upon SPES partners relating to the usage of the certificates supplied and relied upon by the relying parties.

Each electronic signature user will have the full responsibility in accepting that electronic signature. SPES provides no warranty, either actual or implied for certificates issued by member CAs and that the use of these certificates is completely at the discretion of the user who is the relying party.

The SPES software will be provided free of charge, but its use will be at the sole risk of the user.

5. **Membership Fees**

5.1.1 There is no Membership Fee.

6. **Intellectual Property and use of the Logo**

6.1 The intellectual property rights of the Tools used in the SPES interoperability solution will be retained by SPES.

6.2 The rights on all the material which the Certification Authority presents in the course of the joining process remains their own.

6.3 SPES owns the Intellectual Property Rights in the Logo and the SPES website and except for the express licences and permissions granted by this Agreement nothing hereunder will bestow on the Certification Authority any title in or right to use the Logo and the SPES website.

6.4 SPES hereby grants to the Certification Authority a non-exclusive license to reproduce and use the Logo in relation to the provision of Certification Services by the Certification Authority in accordance with the Logo Guidelines on its headed notepaper, marketing materials, websites and on any smartcard on which the Certificates issued by the Certification Authority are stored or processed. The license is personal to the Certification Authority and the grant does not include any right to grant sub-licenses.

6.5 All use of the Logo by the Certification Authority shall be for the benefit of SPES and the goodwill accrued to the Certification Authority arising from its use of the Logo (but no greater or other goodwill) shall accrue to and be held in trust by the Certification

Authority for SPES which goodwill the Certification Authority agrees to assign to SPES at its request at any time whether during or after the term of this Agreement.

- 6.6 The use of the Logo by the Certification Authority shall at all times be in keeping with and seek to maintain their distinctiveness and reputation as determined by SPES, and the Licensee shall forthwith cease any use not consistent therewith as the Licensor may reasonably require.
- 6.7 The Certification Authority shall not use any mark or name which is confusingly similar to the Logo.
- 6.8 The Certification Authority shall not use the Logo as part of any corporate business or trading name or style of the Certification Authority.
- 6.9 The Certification Authority shall grant the right to use its logo in a similarly agreed and appropriate way on the SPES website and in Verification Tools to provide a better service to the end-user and create greater clarity in links etc.

7. Confidentiality

- 7.1 Each party recognises that under this Agreement it may receive trade secrets and/or confidential or proprietary information belonging to the other. Subject to the exclusions detailed in Clause 8.3, all such information which is designated as confidential or which is otherwise clearly confidential in nature constitutes "Confidential Information".
- 7.2 Each party agrees not to divulge Confidential Information belonging to another to any third party and agrees not to use Confidential Information for any purpose other than that for which it is supplied under this Agreement.
- 7.3 The following will not be Confidential Information for the purposes of this clause:
 - 7.3.1 information which is in, or which comes into, the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information;
 - 7.3.2 information obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential;
 - 7.3.3 information which is lawfully in the possession of the other party before the date of this Agreement and in respect of which that party is not under an existing obligation of confidentiality.
- 7.4 Each party will be permitted to disclose Confidential Information to the extent that it is required to do so:
 - 7.4.1 to enable the disclosing party to perform its obligations under this Agreement;or

- 7.4.2 by any applicable law or by a court, arbitral or administrative tribunal in the course of proceedings before it; or
 - 7.4.3 by any regulatory body acting in the course of proceedings before it or any regulatory body acting in the course of its duties, or
 - 7.4.4 in order to give proper instructions to any professional adviser of that party who also has an obligation to keep any such Confidential Information confidential;
- 7.5 The obligation in Clause 7.1 above will survive the expiry or termination of this Agreement for a period of [5] years or, in respect of any particular item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information.

8. **Data Protection**

- 8.1 The Certification Authority will retain full responsibility for the personal data held under its control and as such is mandated to comply with all applicable National and European Data Protection Legislation.
- 8.2 The Certification Authority will take whatever steps are necessary to ensure that SPES can legally access and use personal data supplied to SPES under the terms of this agreement and which it is able to supply to third parties.

9. **Audits**

- 9.1 The Certification Authority will inform SPES on any changes in its procedures etc scheme and of the results of any audit which might effect the acceptability of the CA in order to assist SPES in its maintenance of the processes and in support of the continuity of the scheme.
- 9.2 SPES can, if necessary, can repeat the evaluation process should it be deemed desirable, and if the results are negative, the CA can be removed from the Trusted List at any time.
- 9.3 The Certification Authority will operate to its published security procedures.

10. **Dispute Resolution**

- 10.1 All disputes or differences arising in connection with this *Agreement* which cannot be settled amicably shall be subject to the jurisdiction of the appropriate national court of the country of the headquarters of the Party who will be the prospective defendant in legal action on the issue.

11. **Term and Termination**

11.1 This Agreement commences on the date shown on the first page, and, will continue in force until terminated by either party.

12. **Consequences of Termination**

12.1 Termination of this Agreement howsoever caused will be without prejudice to any obligations or rights of any of the parties hereto accrued prior to such termination and will not affect any provision of this Agreement which is expressly or by implication intended to come into effect on, or to continue in effect after such termination.

12.2 Clauses 7, 8.5 and 9 will survive the termination of this Agreement and will continue in full force and effect in accordance with their terms.

12.3 Upon the termination of this Agreement for whatever reason the Certification Authority shall cease to make any use of the Logo [save that where the Certification Authority has a stock of smartcards at the date of termination of this Agreement the Certification Authority may, but only with the SPES's specific permission, use such stock on the terms hereof or such other terms as may be agreed].

13. **Assignment and Sub-Contracting**

13.1 No Party shall, without the prior written consent of the other Parties, assign or otherwise transfer partially or totally any of its rights and obligations under this Agreement.

13.2 This provision shall not apply when such assignment or transfer is in favour of an Affiliate of the Party making the assignment or transfer.

14. **Benefit of Agreement**

14.1 Other than the benefit of the warranties and undertakings in clause 5, the dispute resolution provisions in clause 11 and the indemnity granted under clause 6 which shall be enforceable by each of the SPES Certification Authorities in accordance with their terms, no term of this Agreement is intended to confer a benefit on, or be enforceable by, any person who is not a party to the Agreement (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise). Notwithstanding the provisions of clause 13.1, nothing in this Agreement will affect any rights which a third party, who has relied on a Certificate, may have against the Certification Authority under the provisions of the Electronic Signatures Regulations 2002.

15. **Entire Agreement**

15.1 This Agreement, together with its Schedules and Appendices, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in them and supersedes any previous agreement between the parties relating to such matters [notwithstanding the terms of any previous agreement or arrangement expressed to survive termination].

15.2 Each party acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement [as a warranty]. [The only remedy available to it for breach [of the warranties] will be for breach of contract under the terms of this Agreement.]

15.3 Amendments or changes to this *Agreement* shall be valid only if made in writing and signed by an authorised signatory of each of the *Parties*.

16. **No Partnership/Agency**

16.1 Nothing in this Agreement is intended to create a partnership or joint venture of any kind between the parties, or save where expressly so stated in this Agreement to authorise either party to act as agent for the other. Save where expressly so stated in this Agreement no party will have authority to act in the name or on behalf of or otherwise to bind any other.

17. **Variation**

17.1 Any amendment, waiver or variation of this Agreement will not be binding unless set out in writing, expressed to amend this Agreement and signed by or on behalf of SPES and the Certification Authority.

18. **Waiver and Remedies**

18.1 No forbearance or delay by either party in enforcing its rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

18.2 The rights and remedies provided by this Agreement are cumulative and (subject as otherwise provided in this Agreement) are not exclusive of any rights or remedies provided at law or in equity.

19. **Severance**

19.1 If any provision of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions will not be prejudiced.

20. **Notices**

20.1 Any notice to be given under this Agreement shall be in writing to the following addresses and recipients. It shall be deemed to have been served when personally delivered, or, if transmitted by telefax, electronic or digital transmission when transmitted provided that such transmission is confirmed by receipt of a successful transmission report and confirmed by mail.

21. **Counterparts**

21.1 This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, will be an original, and all the counterparts together will constitute one and the same instrument.

22. **English Language**

22.1 This Agreement is written in English which shall be the governing language. Any translation of this Agreement into another language will be for convenience only. In the event of any conflict between the English version and any other language version of this Agreement the English version shall take precedence.

23. **Governing Law and Jurisdiction**

23.1 The law of Belgium shall govern this contract.

23.2 The Court of First Instance of the European Communities and, in the case of an appeal, the Court of Justice of the European Communities shall have sole jurisdiction to hear any disputes between the Community, on the one hand, and the *contractors*, on the other hand, as regards the validity, the application or any interpretation of this contract.

Signed by the parties on the day and year first before written.

SCHEDULE 1

SPES POLICY DOCUMENTS

Certificate Practices Statement

Certificate Policy

Registration Policy

Certificate Holder Agreement

Endorser Agreement for Electronic signatures

Electronic signature Certificate Profile

SCHEDULE 2

ADDRESSES FOR NOTIFICATION

SPES

1. Address: Città di Prato
Department: Comune di Prato – Sistema Informativo
Piazza del Comune,2
Prato, Italy
Direct tel: +39 0574 615224 Direct fax+39 0574 615212
E-mail:..... g.martinelli@comune.prato.it

For the attention of: Dottoressa Gabriella Martinelli

Certification Authority

Address:

For the attention of:

SCHEDULE 3

PART 1

LOGO



APPENDIX B – MAPPING POLICIES

Mapping Policies.

A set of policies embracing the following have been put together to help as a Mapping Tool: when considering new applications from CAs.

- Local Authorities Certificate Practices Statement
- Local Authorities Certificate Policy
- Local Authorities Registration Policy
- Local Authorities Certificate Holder Agreement
- Local Authorities Endorser Agreement for **Electronic signatures**
- Local Authorities **Electronic signature** Certificate Profile
- Additional Memorandum of Understanding for Cities adopting these policies for new PKI schemes.