



BANCA D'ITALIA
EUROSISTEMA

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**AGREEMENT
REGARDING
A LICENCE FOR THE PROVISION OF
CONNECTIVITY SERVICES
FOR TARGET2-SECURITIES**

between

THE EUROSISTEM

and

[THE NETWORK SERVICE PROVIDER]

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This Agreement regarding a Licence for the Provision of Connectivity Services for the TARGET2 Securities (the "**Agreement**") was entered into on [date] between

- (1) the Eurosystem Central Banks, represented by **the Banca d'Italia**, with registered offices at Via Nazionale, 91, 00184 Roma, (hereinafter the "**Eurosystem**")

and

- (2) [**Network Service Provider**], with registered offices at [address] (hereinafter the "**Network Service Provider**")

The Eurosystem and the Network Service Provider are hereinafter together referred to as the "**Parties**" and individually as a "**Party**".

WHEREAS

A) Since November 2007, the European System of Central Banks ("**ESCB**") operates the Trans-European Automated Real-time Gross Settlement Express Transfer System ("**TARGET2**") for the settlement of money transfers within the European Union.

B) On 17 July 2008, the Governing Council of the European Central Bank ("**ECB**") decided to launch a project for the design, development and implementation of a single technical platform for settling securities transactions ("**TARGET2-Securities**" or "**T2S**"). As part of the Eurosystem's task in accordance with Articles 17, 18 and 22 of the Statute of the ESCB and of the ECB, T2S aims to facilitate post-trading integration by offering core, neutral and borderless pan-European cash and securities settlement in central bank money so that CSDs can provide their customers with harmonised and commoditised delivery-versus payment settlement services in an integrated technical environment with cross-border capabilities. As the provision of central bank money is a core task of the Eurosystem, T2S has the nature of a public service. The Eurosystem will provide collateral management services and settlement in central bank money in T2S.

C) In fulfilment of its mandate, the Eurosystem has charged four Eurosystem Central Banks, the Deutsche Bundesbank, the Banco de España, the Banque de France and the Banca d'Italia (together the "**4CB**"), with the development and operation of T2S. Except to the extent expressly provided otherwise in this Agreement, the 4CB perform any task assigned to them in this

Agreement, the Attachments hereto or otherwise assigned to them by the Eurosystem solely as part of an internal distribution of work within the Eurosystem.

D) T2S will not only be available for settlement in euro, it will also be open to non-euro area Central Banks that may wish to participate by making their currency available for central bank money settlement in T2S.

E) T2S will be based on a single technical platform connected with central bank real-time gross settlement systems.

F) T2S requires the secure and reliable transfer of messages and files between the participating Central Banks and Central Securities Depositories, on the one hand, and the T2S Platform, on the other hand.

G) The Governing Council of the ECB has decided that the establishment of a technical connection to the T2S Platform for the provision of Connectivity Services to the Directly Connected T2S Actors would be subject to competition and that a maximum of two (2) licences would be granted. In addition to the connectivity services to be provided by the Network Service Providers to whom licences have been granted, the Eurosystem intends to provide the participating Central Banks and Central Securities Depositories access to T2S through the public internet, mainly for the purpose of exchanging small volumes of data with T2S and for contingencies, for example in the event of a Network Disaster. The access to T2S through the public internet to be provided by the Eurosystem is outside the scope of the Licence and of this Agreement. Furthermore, the T2S Actors shall have the option to connect to the T2S Platform via a Dedicated Link. A Dedicated Link is a mechanism to exchange data between the T2S Actors and the T2S Platform, whereby the provider of services via the Dedicated Link will only provide basic Connectivity Services. Regarding the provision of these basic connectivity services, the Eurosystem is considering two alternative options:

1. A provider of basic connectivity services (the DL-NSP) will be selected on the basis of a formal process and will act as a single concentrator for data traffic to and from the T2S Actors making use of a Dedicated Link, whereby such T2S Actors will either make use of the connectivity services of the DL-NSP, or will request a provider of their choice to interconnect with that provider. The DL-NSP will have to provide access points at least in the T2S data centres (see description in annex 1 to the Awarding Rules). The Eurosystem will apply the full-cost-recovery principle in relation to costs necessary to implement and manage these access points and to manage the communication with the T2S Actors. The Eurosystem will not bear any costs necessary for a T2S Actor to reach these access points.
2. The Eurosystem will provide directly end-to-end connectivity services via a network that the Eurosystem already uses for data communication between EU Central Banks (and with a few non-EU Central Banks and international public organisations). This network has access

points distributed all over Europe. The Eurosystem will apply the full-cost-recovery principle in relation to costs necessary to implement and operate the Dedicated Links between the T2S Platform and the data centres of the T2S Actors. The Eurosystem acknowledges that the general principles of EU Competition Law apply to the provision of such services by the Eurosystem.

In order to allow the T2S Platform to communicate with the systems of the Directly Connected T2S Actors via a Dedicated Link, the Eurosystem will make use of the same “Data Exchange Protocol” (DEP) and the “WebSphere MQ” transport protocol as the one required for the Network Service Provider, as described in the Technical Requirements (attachment 1 to the Licence Agreement).

H) Acting on behalf of the Eurosystem, the Banca d'Italia, on the basis of the Decision ECB/2011/5¹, has conducted a procedure governed by Italian law for the selection of the provider of Connectivity Services between the T2S Platform and the T2S Actors. On the basis of said Decision, the Banca d'Italia has also been authorised to enter into this Agreement with the Network Service Provider in the name and interest of the Eurosystem. The Network Service Provider(s) selected by the Banca d'Italia shall not be granted any rights of exclusivity, but shall compete among each other to provide their Connectivity Services to T2S Actors.

I) Taking into account the systemic relevance of T2S as a pan-European market infrastructure for the settlement of domestic and cross-border securities transactions in central bank money, the Network Service Provider might be subject to the oversight by a Competent Authority as a consequence of the provision of the Connectivity Services on the basis of this Agreement.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS

Article 1

Defined Terms and Construction

1.1 Defined Terms. As used herein, the following terms shall have the meaning ascribed to them in the Articles set forth next to such term below:

4CB has the meaning set out in Recital C;

4CB Hosting has the meaning set out in Article 5.1;

Additional Term has the meaning set out in Article 17.2;

¹ OJ L 134, 21.5.2011, p. 22.

Agreement has the meaning set out on the first page of this Agreement;

Attachment has the meaning set out in Article 1.2;

Archival Information has the meaning set out in Article 10.1;

Awarding Rules means the awarding rules for the public procurement procedure conducted by the Banca d'Italia for the selection of the Network Service Providers;

Business Requirements has the meaning set out in Article 3.3(b);

Central Bank or **CB** means the ECB or any national central bank of any Member State of the European Economic Area or of Switzerland or any other national central bank that makes its currency available for central bank money settlement in T2S;

Central Securities Depository or **CSD** means an entity that: (a) enables securities transactions to be processed and settled by book entry; (b) provides custodial services, e.g. the administration of corporate actions and redemptions; and (c) plays an active role in ensuring the integrity of issues of securities;

Change has the meaning set out in Article 9.2;

Change Request has the meaning set out in Article 9.2;

Confidential Information has the meaning set out in Article 19.2;

Connection Availability means the availability of the connection of the Directly Connected T2S Actors with the T2S Platform expressed as a percentage and calculated as more specifically described in the Technical Requirements.

Connectivity Services means any or all of the following services: (i) the Physical Connectivity Services, (ii) the Messaging Services, (ii) the Security Services and (iii) the Operational Services, in each case as more specifically described in the Technical Requirements;

Contract Notice means the contract notice published in the Supplement to the Official Journal of the European Union 2 on [*insert date to publication*] in connection with the procedure for awarding the License;

Contract Year means the one-year period commencing on the Effective Date and any one-year period commencing on an anniversary of the Effective Date;

Data has the meaning set out in Article 10.4;

Data Protection Laws has the meaning set out in Article 10.5;

Data Protection Policy has the meaning set out in Article 10.5;

Dedicated Link has the meaning set out in Article 2.5;

Delay has the meaning set out in Article 3.2;

Development Phase has the meaning set out in Article 4.1;

Development Reviews has the meaning set out in Article 9.1;

Directly Connected T2S Actors or **DiCoAs** means the T2S Actors which have entered into a T2S Connectivity Services Agreement with the Network Service Provider;

Disclosing Party has the meaning set out in Article 19.2;

ECB has the meaning set out in Recital B;

Effective Date has the meaning set out in Article 17.1;

Embedded Software means any third-party software used by the Network Service Provider to implement or operate the Network or to provide the Connectivity Services, including any updates, upgrades and new releases thereof;

Escalation Procedure has the meaning set out in Article 22.2;

ESCB has the meaning set out in Recital A;

Eurosystem Network Acceptance Tests has the meaning set out in Article 5.4;

Feasibility Assessment has the meaning set out in Article 9.3;

Failure has the meaning set out in Article 6.6;

Failure Resolution Time has the meaning set out in Article 6.6;

File means a data structure in an XML format containing two or more Messages as more specifically described in the Technical Requirements;

Force Majeure Event has the meaning set out in Article 15.1;

Go-Live Date means the date on which the first CSD starts using the T2S services as

specified in Art. 17.1;

Hosting Terms and Conditions has the meaning set out in Article 3.3(c);

Implementation Phase has the meaning set out in Article 5.1;

Implementation Plan has the meaning set out in Article 5.1;

Infringement Claim has the meaning set out in Article 16.3;

Initial Term has the meaning set out in Article 17.1;

Intellectual Property Rights means any (a) patents, patent applications, patent disclosures and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, Internet domain names and registrations and applications for the registration thereof together with all of the goodwill associated therewith; (c) copyrights and copyrightable works (including computer programs and mask works) and registrations and applications thereof; (d) trade secrets, know-how and other proprietary information of a like kind; (e) waivable or assignable rights of publicity, waivable or assignable moral rights; and (f) all other forms of intellectual property, such as data and databases;

Liability Cap has the meaning set out in Article 14.2;

Licence means the right granted to the Network Service Provider by the Eurosystem to design, develop, implement and operate the Network and to provide the Connectivity Services;

Loss means any loss, including loss of interest, liability, damage, cost and expense, including any cost and expense for the assertion or enforcement of rights and claims;

Mandatory Change has the meaning set out in Article 9.4;

Message is a data structure in an XML format containing an instruction or information with respect to a single securities transaction or position or a single static data item as more specifically described in the Technical Requirements;

Messaging Services means the messaging services more specifically described in the Specifications, in particular in Section 3.2 of the Technical Requirements, and shall include the application to application service (the "**A2A Service**") and the user to application service (the "**U2A Service**"), each as more specifically described in Section 3.3 of the Technical Requirements ;

Milestone has the meaning set out in Article 3.1;

Network means the technical infrastructure, including hardware and software, operated by the Network Service Provider to provide the Connectivity Services to the Directly Connected T2S Actors and shall include any interfaces between the T2S Platform and the Network, on the one hand, and between the Network and the technical infrastructure of the Directly Connected T2S Actors, on the other hand;

Network Disaster has the meaning set out in Article 11.3;

Network Operational Phase has the meaning set out in Article 6.1.

Network Service Provider or NSP has the meaning set out on the first page of this Agreement;

Network Service Providers means the two Network Service Providers selected in the context of the procedure for awarding the Licences conducted by Banca d'Italia;

Offer means the offer submitted by the Network Service Provider in the selection procedure conducted by the Banca d'Italia for the selection of the Network Service Provider;

Operational Services means the operational services more specifically described in the Specifications, in particular in Section 5 of the Technical Requirements;

Parties has the meaning set out on the first page of this Agreement;

Party has the meaning set out on the first page of this Agreement;

Physical Connectivity Services means implementing, maintaining and keeping available the Network for the purpose of exchanging Files and Messages between the Directly Connected T2S Actors, on the one hand, and the T2S Platform, on the other hand, as more specifically described in the specifications, in particular Section 2 of the Technical Requirements;

Point of Demarcation means (i) the point of separation of responsibility between the Eurosystem and the Network Service Provider as more specifically described in the Technical Requirements and (ii) the point of separation between the Network Service Provider and the technical infrastructure of a Directly Connected T2S Actor as agreed between the Network Service Provider and the Directly Connected T2S Actor in the T2S Connectivity Services Agreement;

Project Manager has the meaning set out in Article 8.2;

Proof of Concept Test has the meaning set out in Article 4.3;

Receiving Party has the meaning set out in Article 19.2;

Recovery Plan has the meaning set out in Article 3.2;

Rules has the meaning set out in Article 22.3;

Security Services means the security services more specifically described in the Specifications, in particular in Section 4 of the Technical Requirements;

Service Availability means the availability of the A2A Service and the U2A Service for the purpose of sending and receiving Messages and Files expressed as a percentage and calculated as more specifically described in the Technical Requirements;

Service Desk has the meaning set out in Article 6.3;

Service Levels means the key performance indicators defined in this Agreement and the Specifications with respect to Connection Availability and Service Availability and any other service levels defined in the Specifications or the service level agreement to be concluded between the Parties pursuant to Section 5.5.2 of the Technical Requirements;

Solution has the meaning set out in Article 4.1;

Specifications has the meaning set out in Article 3.3;

Steering Committee has the meaning set out in Article 8.3;

Subcontractors has the meaning set out in Article 12.2;

Successor Network Service Provider has the meaning set out in Article 17.7;

T2S has the meaning set out in Recital B;

T2S Actors means either a CSD, a CSD participant (a legal entity or, as the case may be, an individual) having a contractual relationship with the CSD for the processing of its securities settlement-related activities in T2S, or a CB or a member of a CB having a contractual relationship with the CB for the processing of its securities settlement-related activities in T2S;

T2S Connectivity Services Agreement has the meaning set out in Article 7.1;

T2S Platform means the technical infrastructure, including hardware and software, of T2S;

T2S Services means the services offered by the Eurosystem to the Directly Connected T2S Actors with respect to T2S from time to time;

TARGET2 has the meaning set out in Recital A;

Target Date has the meaning set out in Article 3.1;

Technical Requirements has the meaning set out in Article 3.3(a);

Transition Period has the meaning set out in Article 17.7;

User Documentation has the meaning set out in Article 6.4;

Volumetric Assumptions has the meaning set out in Article 8.4;

1.2 List of Attachments. The following annexes (the "**Attachments**") are attached to and form an integral part of this Agreement:

- Attachment 1 – Technical Requirements
- Attachment 2 – Business Requirements
- Attachment 3 – Hosting Terms and Conditions
- Attachment 4 – Maximum Prices
- Attachment 5 – Proof of Concept Test
- Attachment 6 – Eurosystem Network Acceptance Tests

1.3 Construction.

- (a) Unless the context requires otherwise, any reference to this Agreement includes this Agreement and the Attachments as a whole. Where this Agreement refers to provisions of the Attachments, such provisions shall be legally binding upon the Parties as if they were set out in this Agreement.
- (b) References in this Agreement to an Attachment hereto shall, unless the context requires otherwise, be construed as a reference to the Attachment as amended in accordance with this Agreement from time to time irrespective of whether the Attachment (as amended) is attached hereto or not.

- (c) The headings of the sections and subsections in this Agreement are for convenience purposes only and shall not affect the interpretation of any of the provisions hereof.
- (d) Terms to which a German translation has been added shall be interpreted as having the meaning assigned to them by the German translation.
- (e) Words such as "hereof", "herein" or "hereunder" shall, unless the context requires otherwise, refer to this Agreement as a whole and not to a specific provision of this Agreement. The term "including" shall mean "including, without limitation".
- (f) Terms starting with a capital letter shall have the meaning defined in Article 1.1. Terms defined in the singular have a comparable meaning when used in the plural, and vice versa.
- (g) Any reference to "applicable law" or "applicable laws" contained in this Agreement shall include any statute, code, regulation, directive, ordinance, binding guideline or other legally binding general rule or decree (*anwendbares Recht*), applicable in any jurisdiction and relating to any matter whatsoever.
- (h) For the purpose of this Agreement, a "Business Day" shall be any calendar day which is not a Saturday, Sunday or public holiday in Frankfurt am Main, Germany or at the seat of the Network Service Provider.
- (i) Any reference in this Agreement to a person or entity shall, unless the context requires otherwise, be construed as a reference to that person or entity and any other person for which it is vicariously responsible. This includes without limitation its employees, directors, consultants, counsel and agents.

1.4 Priority of Documents. In the event of any conflict or inconsistency between relevant provisions of this Agreement and the Attachments hereto, the Agreement shall prevail over any relevant provision of the Attachments. In the event of any conflict or inconsistency between relevant provisions of several Attachments to this Agreement, the relevant provisions of that Attachment shall prevail which are consistent with (or more precisely reflect) this Agreement or the purposes of this Agreement.

Article 2

Scope of the Agreement; Main Obligations of the Parties

- 2.1 Scope of the Agreement.** This Agreement sets out the rights and obligations of the Parties in relation to the Licence.
- 2.2 Main Obligations of the Network Service Provider.** Without prejudice to its other obligations under this Agreement, the Network Service Provider shall
- (a) timely design, develop and implement the Network;
 - (b) provide the Connectivity Services to the Directly Connected T2S Actors who have entered into a T2S Connectivity Services Agreement with the Network Service Provider at terms and conditions which are consistent with with the minimum requirements set out in this Agreement and in the Specifications;
 - (c) provide the Connectivity Services to the Eurosystem in accordance with this Agreement and the Specifications and to ensure that the Connectivity Services meet the Service Levels;
 - (d) comply with all laws which are applicable to the subject matter of this Agreement.
- 2.3 Main Obligations of the Eurosystem.** Without prejudice to its other obligations under this Agreement, the Eurosystem shall procure that the 4CB
- (a) grant the Network Service Provider access to the T2S Platform as more specifically described in the Specifications for the purpose of establishing a connection with the T2S Platform,
 - (b) permit the Network Service Provider to install and to maintain certain equipment (e.g., routers and VPN devices) at the premises of the 4CB,
 - (c) provide to the Network Service Provider the technical and operational support as more specifically described in the Specifications.

The Parties agree that the Eurosystem shall have no obligation under this Agreement to ensure that the project for the design, development or implementation of T2S will be completed or will be completed on time or that the T2S Platform or the T2S Services will be made available to the Directly Connected T2S Actors. Accordingly, and without limiting the generality of the foregoing, the Eurosystem shall, except to the extent required by mandatory law, have no liability under or in connection with this Agreement

towards the Network Service Provider for any Losses incurred as a result of a failure, discontinuation or delay of the project for the design, development or implementation of T2S or of any events or circumstances which have a similar effect.

2.4 Cooperation. Without prejudice to either Party's obligations under this Agreement, the Parties shall cooperate closely and transparently in order to enable each other to perform their respective obligations under this Agreement in a timely and orderly manner. Each Party shall perform its obligations and exercise its rights and remedies under this Agreement in good faith. Each Party shall, without undue delay, give the other Party notice of any facts, events, circumstances or other information that may reasonably be expected to materially affect its or the other Party's ability to perform its obligations under this Agreement.

2.5 No Exclusivity. Nothing in the Licence or this Agreement shall be construed to grant the Network Service Provider any right of exclusivity with respect to the provision of the Connectivity Services. The Network Service Provider is aware that the Eurosystem has awarded licenses to provide Connectivity Services to one additional Network Service Provider and that the Eurosystem may in the future, in its sole discretion, decide to award further licences to other third parties to provide Connectivity Services or similar services. Without limitation to the generality of the foregoing, further licences to provide Connectivity Services may in particular be awarded if an existing licence is revoked, withdrawn or declared unlawful, invalid or unenforceable or if the Eurosystem, in its sole discretion, believes that awarding further licences will increase competition among the providers of Connectivity Services and will, thus, result in a more cost-effective service offering for all Directly Connected T2S Actors. The Network Service Provider is aware that the Eurosystem intends to provide the T2S Actors with the possibility to obtain direct access to T2S through the public internet mainly for the purpose of exchanging low volumes of data with T2S and for contingencies, for example in the event of a Network Disaster. The Network Service Provider is further aware that T2S Actors shall have the option to connect to the T2S platform via a Dedicated Link. A Dedicated Link is a mechanism to exchange data between the T2S Actors and the T2S Platform, whereby the provider of services via the Dedicated Link will only provide basic Connectivity Services. Regarding the provision of these basic connectivity services, the Eurosystem is considering two alternative options:

3. A provider of basic connectivity services (the DL-NSP) will be selected on the basis of a formal process and will act as a single concentrator for data traffic to and from the T2S Actors making use of a Dedicated Link, whereby such T2S Actors will either make use of the connectivity services of the DL-NSP, or will request a provider of their choice to

interconnect with that provider. The DL-NSP will have to provide access points at least in the T2S data centres (see description in annex 1 to the Awarding Rules). The Eurosystem will apply the full-cost-recovery principle in relation to costs necessary to implement and manage these access points and to manage the communication with the T2S Actors. The Eurosystem will not bear any costs necessary for a T2S Actor to reach these access points.

4. The Eurosystem will provide directly end-to-end connectivity services via a network that the Eurosystem already uses for data communication between EU Central Banks (and with a few non-EU Central Banks and international public organisations). This network has access points distributed all over Europe. The Eurosystem will apply the full-cost-recovery principle in relation to costs necessary to implement and operate the Dedicated Links between the T2S Platform and the data centres of the T2S Actors. The Eurosystem acknowledges that the general principles of EU Competition Law apply to the provision of such services by the Eurosystem.

In order to allow the T2S Platform to communicate with the systems of the Directly Connected T2S Actors via a Dedicated Link, the Eurosystem will make use of the same “Data Exchange Protocol” (DEP) and the “WebSphere MQ” transport protocol as the one required for the Network Service Provider, as described in the Technical Requirements (attachment 1 to the Licence Agreement).

- 2.6 **No Remuneration.** The Eurosystem, in its capacity as the owner and operator of T2S, shall not be obligated to pay, and the Network Service Provider shall not be entitled to claim or receive, a remuneration or compensation for the performance of its obligations under this Agreement.
- 2.7 **Non-discrimination.** In respect of supply contracts which the Network Service Provider enters into with third-party suppliers as part of or in connection with the activities contemplated in the Licence and in this Agreement, the Network Service Provider must comply with the principle of non discrimination on the basis of nationality.
- 2.8 **Performance Guarantee.** Before the execution by the Parties of this Agreement, the Network Service Provider has delivered to the Banca d'Italia, acting in the interest and in the name of the Eurosystem, a guarantee for the compliance by the Network Service Provider with the terms and conditions of the Licence and this Agreement and the timely and orderly performance by the Network Service Provider of its obligations under this Agreement including its obligation to pay penalties.
- 2.9 **No Third-Party Rights.** This Agreement is made between the Eurosystem and the Network Service Provider and, except as otherwise expressly provided herein, nothing contained herein shall, or shall be construed to, confer any rights or remedies on any third

party. Without limiting the generality of the foregoing, nothing contained in this Agreement shall be construed as an agreement for the benefit of third parties (*Vertrag zugunsten Dritter*) within the meaning of Section 328 of the German Civil Code (Bürgerliches Gesetzbuch - BGB) or an agreement with protective effect for the benefit of third parties (*Vertrag mit Schutzwirkung zugunsten Dritter*). Except as otherwise expressly provided herein, the Network Service Provider shall have no rights or remedies against the Eurosystem in respect of any act or omission of any third party, in particular a Directly Connected T2S Actor.

Article 3

Timing and Specifications

- 3.1 Timing.** The Network Service Provider agrees to design, develop and implement the Network and the Connectivity Services such that the milestones described in the schedule below (each a "**Milestone**") are reached by the dates set out in the schedule below (each a "**Target Date**"):

	Milestone	Target Date
1	Availability of a written description of the Solution for Proof of Concept Test	5 Business days from the Effective Date
2	Successful Completion of Proof of Concept Test (in 2 regions, 2 sites)	120 Business days from the Target Date for Milestone No. 1
3	Availability of the Network and the Connectivity Services in 2 Test Environments (in 2 regions, for sites) that are only available to 4CB	120 Business days from the Target Date for Milestone No. 2
4	Availability of the Network and the Connectivity Services in up to 4 Test Environments (in 2 regions, 4 sites) that are available to DiCoAs	60 Business days from the Target Date for Milestone No. 3
5	Availability of the Network and the Connectivity Services in Production (full bandwidth in 2 regions, 4 sites) for Eurosystem Network Acceptance Test	60 Business days from the Target Date for Milestone No. 3
6	Successful Completion of Eurosystem Network Acceptance Tests	120 Business days from the Target Date for Milestone No. 5

3.2 Delays and Recovery Plan. Without prejudice to any rights or remedies the Eurosystem may have under this Agreement or applicable law, failure by the Network Service Provider to reach a Milestone by the respective Target Date or to otherwise meet any timeline agreed between the Parties or set forth in this Agreement with respect to the design, development, implementation and making available of the Network and the Connectivity Services (each such failure a "**Delay**") shall not relieve the Network Service Provider of its obligation to design, develop, implement and make available, as the case may be, the Network or the Connectivity Services. In the event of a Delay, the Parties shall, without undue delay, agree and implement a plan to recover any lost time (the "**Recovery Plan**"). The Network Service Provider shall be required to make available any additional resources required to implement the Recovery Plan.

3.3 Specifications. Without limitation to the foregoing, and subject to the provisions of this Agreement, the Network Service Provider shall design, develop, implement and make available the Network and shall provide the Connectivity Services in accordance with the technical specifications of, and the functional requirements and operational procedures for, the Network and the Connectivity Services more specifically described in the following documentation:

- (a) the technical requirements attached hereto as **Attachment 1** (the "**Technical Requirements**");
- (b) the business requirements attached hereto as **Attachment 2** (the "**Business Requirements**");
- (c) the hosting terms and conditions attached hereto as **Attachment 3** (the "**Hosting Terms and Conditions**"); and
- (d) the proof of concept tests attached hereto as **Attachment 5** (the "**Proof of Concept Test**");
- (e) the Eurosystem network acceptance tests attached hereto as **Attachment 6** (the "**Eurosystem Network Acceptance Tests**");

or which are set out in the operations manual and the escalation manual to be agreed between the Parties in accordance with Section 5.1 of the Technical Requirements (such manuals together with the Technical Requirements, the Business Requirements, the Hosting Terms and Conditions, the Proof of Concept Test and the Eurosystem Network Acceptance Tests, the "**Specifications**").

Article 4

Development Phase and Proof of Concept Test

- 4.1 Development Phase.** The Network Service Provider shall present to the Eurosystem a solution for the Network and the Connectivity Services which complies with the current state of science and technology regarding the speed, functionality, security and resilience of virtual private networks (VPN) and which is scaleable and has the features and functionalities and complies with the technical, operational and business requirements more specifically described in the Specifications (the "**Solution**"). The Solution must, in particular, provide for a stable and resilient connection of the Network to the unique communication interface of the T2S Platform. The Eurosystem shall provide the Network Service Provider with the information regarding the unique communication interface of the T2S Platform which is reasonably required by the Network Service Provider for the design and development of the Solution. The Network Service Provider agrees to cooperate with the Eurosystem to identify best industry practice for increasing, and to agree concrete measures to increase, the stability and resilience of the connection between the Network and the unique communication interface of the T2S Platform and to include such measures in the Solution. The Solution must also allow for a timely, cost-effective and resilient implementation by the Directly Connected T2S Actors. For purposes of this Agreement, the "**Development Phase**" shall be the period from the Effective Date until the commencement of the Implementation Phase.
- 4.2 Description of the Solution.** Without undue delay, but in no event later than five (5) Business Days after the Effective Date, the Network Service Provider shall deliver to the Eurosystem a detailed written description of the Solution.
- 4.3 Proof of Concept Test.** In no event later than the Target Date for Milestone No. 2 (as defined in Article 3.1), the Network Service Provider shall demonstrate to the Eurosystem that the Solution has the features and functionalities and complies in all material respects with the technical, operational and business requirements more specifically described in the Specifications by performing the tests more specifically described in the Specifications, in particular in the Attachment 5 to this Agreement (the "**Proof of Concept Test**").
- 4.4 Failure of Proof of Concept Test.** The Eurosystem shall evaluate the results of the Proof of Concept Test and shall determine on the basis of the proof of concept test criteria with binding effect for the Parties whether the Proof of Concept Test has been successfully completed or not. The Proof of Concept Test shall, in particular, be deemed to have been unsuccessful if:

- (a) it reveals that the Solution does not comply with the requirements regarding the functionality, security or resilience of the Network or the Connectivity Services more specifically described in the Specifications,
- (b) it reveals that the Solution, in any material respect, does not comply with any other technical, operational or Business Requirements more specifically described in the Specifications, or
- (c) it reveals any material deficiencies of the Solution which could reasonably be expected to impede or materially impair the use by the T2S Actors of the T2S Service.

If the Proof of Concept Test is unsuccessful, the Eurosystem shall be entitled to either terminate this Agreement for cause (*aus wichtigem Grund*) within four (4) weeks after it has given notice to the Network Service Provider that the Proof of Concept Test was unsuccessful or request the Network Service Provider to modify, within a reasonable time period determined by the Eurosystem, the Solution to ensure that the deficiencies revealed during the Proof of Concept Test are remedied and that it otherwise complies with the requirements more specifically described in Article 4.1. In the latter case, the Proof of Concept Test shall be repeated without undue delay after the expiry of the time period determined by the Eurosystem.

Article 5

Implementation Phase and Acceptance Test by the Eurosystem

5.1 Implementation Phase. Within thirty (30) Business Days after the successful completion of the Proof of Concept Test, the Network Service Provider shall deliver to the Eurosystem a plan regarding the implementation of the Solution which shall describe in detail the process of implementing the Solution and the tasks to be performed in connection therewith, shall contain a detailed time schedule for the implementation, define the priorities of the tasks to be performed in connection with the implementation and set out the further information more specifically described in Section 6.4. of the Technical Requirements (the "**Implementation Plan**"). The Eurosystem shall be entitled to request changes to the Implementation Plan, in particular regarding the priorities of any tasks identified therein. Without undue delay after the Implementation Plan has been agreed by the Parties, the Network Service Provider shall implement the Solution in accordance with the Implementation Plan and as more specifically described in the Specifications. The Network Service Provider shall, in particular, install certain equipment (more specifically described in the Specifications) in the premises of the 4CB. The Eurosystem agrees to ensure that the 4CB will make their premises available to the

Network Service Provider to allow the Network Service Provider to install the aforementioned equipment and to maintain such equipment at such premises during the term of this Agreement (the "**4CB Hosting**") in accordance with the Hosting Terms and Conditions. The Network Service Provider agrees to adhere to and comply with the Hosting Terms and Conditions. For purposes of this Agreement, the "**Implementation Phase**" shall be the period commencing upon successful completion of the Proof of Concept Test and ending upon the commencement of the Operational Phase.

5.2 Testing Environments. During the Term of this Agreement the Network Service Provider shall make available the Solution in the testing environments more specifically described in the Specifications, which testing environments allow the Eurosystem to assess whether the Network and the Connectivity Services have the features and functionalities and comply with the technical, operational and business requirements more specifically described in the Specifications and to train the Eurosystem's employees with respect to the use of the Network and the Connectivity Services. The testing environments shall be modified to reflect any change agreed between the Parties.

5.3 Cooperation during Implementation Phase. Without prejudice to Article 2.4, the Parties shall cooperate during the Implementation Phase to ensure a stable and resilient implementation of the Network and, in particular, of the connection between the Network and the unique communication interface of the T2S Platform. For this purpose, the Network Service Provider agrees to meet and consult with the Eurosystem, upon the Eurosystem's request, to identify best industry practice for increasing, and to agree concrete measures to increase, the stability and resilience of the connection between the Network and the unique communication interface of the T2S Platform, and to implement such measures during the Implementation Phase,

5.4 Eurosystem Network Acceptance Tests. Without undue delay after the implementation of the Solution but in no event later than the Target Date for Milestone No. 5 (as defined in Article 3.1), the Network Service Provider shall notify the Eurosystem that the Network and the Connectivity Services are ready for acceptance (*Abnahme*) by the Eurosystem. The Network Service Provider shall then demonstrate to the Eurosystem that the Network and the Connectivity Services as implemented by the Network Service Provider have the features and functionalities and comply with the technical, operational and business requirements more specifically described in the Specifications by performing the tests more specifically described in the **Attachment 6** (the "**Eurosystem Network Acceptance Tests**"). The Eurosystem Network Acceptance Tests shall have been successfully completed if the Network and the Connectivity Services meet the criteria for acceptance more specifically described in **Attachment 6** (the "**Network Acceptance Tests**"). If the Network or the Connectivity Services do not meet the Network Acceptance Tests, the Network Service Provider shall, within a reasonable time period determined by

the Eurosystem, but in no event more than 10 Business Days, adapt the Network or the Connectivity Services, as the case may be, to ensure that they meet the network acceptance criteria, and the Eurosystem Network Acceptance Tests shall then be repeated. If the Network or the Connectivity Services do not meet the network acceptance criteria during the repeated Eurosystem Network Acceptance Tests, the Eurosystem shall be entitled to either terminate this Agreement for cause (*aus wichtigem Grund*) within four (4) weeks after the repeated Eurosystem Network Acceptance Tests have been performed or request the Network Service Provider to adjust, within a reasonable time period determined by the Eurosystem, the Network or the Connectivity Services, as the case may be, to ensure that they have the features and functionalities and comply with the technical, operational and Business Requirements more specifically described in the Specifications. In the latter case, the Eurosystem Network Acceptance Tests shall be repeated a third time without undue delay after the expiry of the time period determined by the Eurosystem. If the Eurosystem Network Acceptance Tests have not been successfully completed by the Target Date for Milestone No. 6 (as defined in Article 3.1), the Eurosystem shall be entitled to terminate this Agreement for cause.

5.5 Network Acceptance Report. The Eurosystem Network Acceptance Test shall be performed by the Network Service Provider in the presence of representatives of the Eurosystem. The Network Service Provider shall document the results of the Eurosystem Acceptance Test and shall deliver such documentation to the Eurosystem without undue delay after the completion of the Eurosystem Network Acceptance Test. Based on the documentation delivered by the Network Service Provider, the observations of the Eurosystem's representatives during the Eurosystem Network Acceptance Test and any documentation prepared by the Network Service Provider during or as a result of the Eurosystem Network Acceptance Tests, the Eurosystem will prepare a written report which sets out the results of such tests and whether such tests were successfully completed or not. In such report, the Eurosystem shall also declare whether it accepts or does not accept the Network and the Connectivity Services.

5.6 Malfunctions during Eurosystem Network Acceptance Test. Irrespective of whether the Eurosystem Acceptance Test has been successfully completed or not, the Network Service Provider shall, without undue delay, report to the Eurosystem, and remedy, any error, malfunction or irregularity in the operation of the Network or the performance of the Connectivity Services which was revealed during the Eurosystem Network Acceptance Test.

Article 6

Network Operational Phase

- 6.1 Network Operational Phase.** Without undue delay after successful completion of the Eurosystem Network Acceptance Tests, the Network Service Provider shall make available the Network and the Connectivity Services in all environments of T2S in a manner which allows the Eurosystem and the Directly Connected T2S Actors to use the Network and the Connectivity Services for their respective T2S testing and production activities. For purposes of this Agreement, the "**Network Operational Phase**" of the Network and the Connectivity Services shall be the period commencing on the date on which the Eurosystem has notified the Network Service Provider of its acceptance of the Connectivity Services and shall end upon the expiration or termination of this Agreement.
- 6.2 Availability of the Network and the Connectivity Services.** As from the Target Date for Milestone No. 6 (as defined in Article 3.1), the Network Service Provider shall ensure that, except as otherwise agreed by the Parties, the Network and the Connectivity Services are available between the Points of Demarcation 24 hours per day, seven days per week with the exception of a maintenance window commencing at 17:00 CET on each Saturday and ending at 8.00 CET on each immediately following Sunday. The availability of the Network and the Connectivity Services shall be measured by the Network Service Provider in accordance with the indicators more specifically described in the Specifications. The Network Service Provider's obligation to ensure the availability of the Network and the Connectivity Services shall be deemed fulfilled if, in every calendar month during the Network Operational Phase,
- a) the Connection Availability is not less than 99.999%, and
 - b) the Service Availability is not less than 99.98%.
- 6.3 Operational Support; Service Desk.** During the Network Operational Phase, the Network Service Provider shall provide to the Eurosystem and the Directly Connected T2S Actors operational support in relation to the use of the Network and the Connectivity Services as more specifically described in the Specifications. Without limiting the generality of the foregoing, the Network Service Provider shall provide the Eurosystem and the Directly Connected T2S Actors with remote support in the English language by telephone, e-mail, or facsimile to answer operational questions and to report irregularities within, and Failures of, the Network or the Connectivity Services 24 hours per day, seven days per week as more specifically described in the Technical Requirements (the "**Service Desk**").

- 6.4 User Documentation.** The Network Service Provider shall prepare and deliver to the Eurosystem and to the Directly Connected T2S Actors, at the latest upon the commencement of the Network Operational Phase, a comprehensive written user documentation describing all necessary procedures, required equipment and options available for Directly Connected T2S Actors to use the Network and the Connectivity Services, as well as the features and functionalities of the Network and the Connectivity Services in a clear and transparent manner (the "**User Documentation**" see Section 2.1 of the Business). During the Network Operational Phase, the Network Service Provider shall maintain and keep the User Documentation current and update it to reflect any modifications of the Network and the Connectivity Services, in particular any Changes.
- 6.5 Monitoring.** The Network Service Provider shall continuously monitor the performance of the Network and the Connectivity Services, including its connection with the T2S Platform and the technical infrastructure of the Directly Connected T2S Actors, and the Connectivity Services 24 hours per day, seven days per week as more specifically described in the Technical Requirements. If the annual volume of transactions or the average daily volume of transactions increases during the Operational Phase, the Network Service Provider shall adapt the Network or the Connectivity Services in order to ensure that they continue to meet the requirements regarding speed, functionality, security and resilience more specifically described in this Agreement and the Specifications.
- 6.6 Failures.** In the event of any problem with the Network or the Connectivity Services or any failure of the Network or the Connectivity Services to perform in accordance with the Specifications (each a "**Failure**"), the Network Service Provider shall remedy the Failure within the time period provided for such Failure (depending on its severity) in the Specifications (the "**Failure Resolution Time**"). In the event of any Failure, the Network Service Provider shall further follow the incident management and escalation procedure more specifically described in Section 1.4.2 of the Technical Requirements. The Network Service Provider shall perform its obligations under this Article 6.6 irrespective of whether the Failure was reported to it by the Eurosystem or a Directly Connected T2S Actor or was detected by the Network Service Provider as a result of its monitoring of the Network and the Connectivity Services.

Article 7

T2S Connectivity Services Agreements

- 7.1 Non-discriminatory Access to the Connectivity Services.** The Network Service Provider shall – on a non-discriminatory basis – grant T2S Actors access to the Connectivity Services in order to allow them to have direct access to the T2S Services. For this purpose, the Network Service Provider shall offer to T2S Actors to enter into

agreements regarding the provision of the Connectivity Services (each such agreement a "**T2S Connectivity Services Agreement**"). The Network Service Provider shall cooperate in a timely and constructive manner with any T2S Actors which have expressed an interest in receiving the Connectivity Services (or any part thereof) to ensure that such T2S Actors may enter into a T2S Connectivity Services Agreement and receive the Connectivity Services without undue delay after they have expressed their interest.

7.2 Terms and Conditions. The Network Service Provider shall be free to negotiate the terms and conditions of the T2S Connectivity Services Agreements with the T2S Actors, provided that the terms and conditions are clear and transparent, ensure equal treatment of the Directly Connected T2S Actors, and further provided that each T2S Connectivity Services Agreement meets the minimum requirements more specifically described in, and be otherwise consistent with, this Agreement (including its Attachments) and the Specifications.

7.3 Charges. The Network Service Provider may not, at any time during the term of this Agreement, charge the Directly Connected T2S Actors fees or charges for the operation of the Network and the provision of the Connectivity Services which are higher than those indicated by the Network Service Provider in the Offer and are set out in **Attachment 4 (Maximum Prices)**. The fees and charges payable by the Directly Connected T2S Actors must be transparent, as more specifically described in the Business Requirements. In particular the Network Service Provider shall publish the maximum prices set out in **Attachment 4 (Maximum Prices)** as more specifically described in the Business Requirements. The maximum prices set out in **Attachment 4 (Maximum Prices)** shall constitute the Network Service Provider's sole and entire compensation regarding the provision of the services more specifically described in **Attachment 4 (Maximum Prices)** including (1) the provision of any tasks which are incidental to, or inherent in, or are a necessary part of the proper discharge of such services and (2) the procurement, provision, licensing or otherwise making available to the Directly Connected T2S Actors of any software, hardware or other equipment which are necessary to enable the Directly Connected T2S Actors to receive, and enjoy the full benefit of the Connectivity Services. In order to allow the Eurosystem to monitor the Network Service Provider's compliance with the obligations provided for in this Article 7.3, the Network Service Provider may not prohibit the Directly Connected T2S Actors from disclosing to the Eurosystem the fees and charges paid by them for the Connectivity Services. If and to the extent Directly Connected T2S Actors require the Network Service Provider to provide any or all of the connectivity Services at higher service levels than those envisaged by this Agreement, then the Network Service Provider is not bound by the maximum price specified in its Offer with respect to these Connectivity Services. Services not listed in Attachment 4 (**Maximum Prices**) are not subject to a maximum price.

- 7.4 Licence.** The Network Service Provider shall grant the Directly Connected T2S Actors a non-exclusive, royalty-free licence or sub-licence, as the case may be, to use any Intellectual Property Rights in any materials, work results or software, including Embedded Software (in each case, including updates, upgrades, and new releases thereof) required to be used by the Directly Connected T2S Actors in order to use, and enjoy the benefit of, the Connectivity Services.
- 7.5 Service Availability, Failure Resolution Time.** The T2S Connectivity Services Agreements must contain provisions regarding the availability of the Network and the Connectivity Services and the time periods within which Failures of the Network and the Connectivity Services must be remedied which shall be no less favourable to the Directly Connected T2S Actors than the provisions regarding Service Availability and Failure Resolution Times contained in this Agreement.
- 7.6 Liability.** A T2S Connectivity Services Agreement may provide that the Network Service Provider's liability shall be limited. However, in no event the Network Service Provider's liability for Losses incurred by an individual Directly Connected T2S Actor during any twelve-month period shall be limited: a) to less than 25% of the charges payable to the Network Service Provider for that twelve-month period by that Directly Connected T2S Actor, if the Losses are due to the Network Service Provider's gross negligence (*grobe Fahrlässigkeit*); and b) to less than 2.5% of the charges payable to the Network Service Provider by that Directly Connected T2S Actor for that twelve-month period, if the Losses are due to the Network Service Provider's ordinary negligence (*einfache Fahrlässigkeit*).

Article 8

Contract Management; Reporting

- 8.1 Contract Management Structure.** In order to facilitate the cooperation and communication between the Parties and to ensure the timely and orderly performance by each Party of its obligations hereunder, the Parties have agreed to implement the contract management structure described in this Article 8.
- 8.2 Project Managers.** The Eurosystem and the Network Service Provider shall each designate, in accordance with the Specifications, an individual to serve as the other Party's primary contact person with respect to all matters relating to the performance of this Agreement (each a "**Project Manager**" and together the "**Project Managers**"). Each Party shall without undue delay notify the other Party of the name and contact details of any individual which it has designated to replace its Project Manager, provided, however, that the Network Service Provider shall not be entitled to replace its Project Manager without the Eurosystem's express prior consent which consent shall not be unreasonably

withheld. The Project Managers shall have the responsibilities that are assigned to them in this Agreement or otherwise by the Parties from time to time. The Network Service Provider's Project Manager shall also have the responsibilities set out in Section 6.4 of the Technical Requirements.

8.3 Steering Committee. Simultaneously with the designation of the Project Managers, as described in Article 8.2, each Party shall nominate at its sole discretion [up to three (3)] senior representatives to a steering committee (the "**Steering Committee**"). The Steering Committee shall meet on a quarterly basis, or more frequently, if so agreed by the Steering Committee itself or by the Parties, and shall be responsible for monitoring the implementation of the Solution and the performance of the Network and the Connectivity Services under this Agreement, reviewing the status of any Change Requests and examining issues relating to the development of the Network and the Connectivity Services, including the Development Reviews under Article 9. The Steering Committee shall also have the other responsibilities that are assigned to it in this Agreement or otherwise by the Parties from time to time.

8.4 Regular Reporting. During the Network Operational Phase, the Network Service Provider shall, on a monthly basis, provide reports to the Eurosystem regarding the performance of the Network and the Connectivity Services as more specifically described in the Specifications. Without prejudice to any reporting requirements defined in the Specifications, the reports shall contain all relevant information regarding the Network and the Connectivity Services, including any problems or Failures reported by the Directly Connected T2S Actors, the Failure Resolution Times for any Failures reported, and the Service Availability. Upon the Eurosystem's request, but at least once every Contract Year, the Network Service Provider shall provide to the Eurosystem a report including a forecast of the annual volume of traffic and average daily volume of traffic for each remaining Contract Year during the term of this Agreement, any changes of the assumptions regarding the annual volume of traffic and the average daily volume of traffic set out in Section 6.1 of the Technical Requirements (such assumptions, the "Volumetric Criteria" and any other information reasonably required by the Eurosystem for purposes of planning the capacity of the T2S Platform.

8.5 Ad hoc Reporting. Without prejudice to its obligations under Article 8.4, the Network Service Provider shall provide to the Eurosystem such other reports or information as the Eurosystem may reasonably request in order to assess the overall performance of the Network and the Connectivity Services or specific incidents which have arisen in connection with the Network or the Connectivity Services. Each such report or information shall be provided by the Network Service Provider within a reasonable time period after the Eurosystem's request taking into consideration the importance and urgency of the subject matter of the report.

Article 9

Development of the Network and the Connectivity Services; Change Management

- 9.1 Development Reviews.** Through the Steering Committee, the Parties shall at least once every calendar year review the status of the Network and the Connectivity Services and any future developments of the Network and the Connectivity Services in particular resulting from changes in applicable law, best industry practice or the state of science and technology (the "**Development Reviews**").
- 9.2 Change Requests.** Either Party may at any time during the term of this Agreement request or propose any modification of the Network or the Connectivity Services (each such modification a "**Change**", and each such request or proposal a "**Change Request**"). The Network Service Provider shall make such Change Requests which, in the Network Service Provider's opinion, are necessary or appropriate for the implementation of this Agreement, to ensure that, at any time during the term of this Agreement, the Network and the Connectivity Services comply with the state of science and technology or in order to generate economic benefits for the Eurosystem or the T2S Actors. Without limiting the generality of the first sentence of this Article 9.2, the Eurosystem may, in particular, request changes designed to improve the functionality, security and resilience of T2S and the security and integrity of the transactions carried out by the Directly Connected T2S Actors through T2S. The Network Service Provider shall implement any Change in accordance with the timeline agreed by the Parties, it being understood that any Change is to be implemented as soon as reasonably possible.
- 9.3 Change Procedure.** Any Change Request shall be submitted and any Change, including the timing of its implementation, shall be agreed by the Parties pursuant to the procedure set forth in this Article 9 and the Technical Requirements. Together with any Change Request submitted by it, the Network Service Provider shall deliver to the Eurosystem a written assessment (the "**Feasibility Assessment**") of:
- (a) the technical feasibility of the Change;
 - (b) the impact of the Change on the Network and the Connectivity Services in terms of operation, use and performance, in particular, on the Service Levels; and
 - (c) the proposed timing of the implementation of the Change.

Without undue delay after the receipt of a Change Request from the Eurosystem, the Network Service Provider shall deliver to the Eurosystem a Feasibility Assessment

(covering the same scope as indicated in lit. a) through c) above) of the Change proposed in such Change Request.

9.4 Mandatory Changes. The Network Service Provider shall not be entitled to reject any Change Request which relates to a Change

- (a) that is required by applicable law or by a competent government authority;
- (b) that was recommended by the Steering Committee as the result of a Development Review or was agreed by the Parties;
- (c) that is required due to an increase in the annual volume of traffic or the average daily volume of traffic which exceeds the Volumetric Assumptions;
- (d) the implementation of which is reasonably expected to require less than 40 man-hours or to cost the Network Service Provider less than Euro 5.000 or to otherwise require only minor works or efforts by the Network Service Provider;
- (e) that reflects a change in the generally accepted standards in the industry for communications network solutions and network, connectivity and messaging services which the Network Service Provider has implemented in the services it makes generally available to its customers;
- (f) that has been requested by more than 60% of the Directly Connected T2S Actors, which Directly Connected T2S Actors together represent more than 60% of the aggregate number of Files or Messages transmitted by using the Connectivity Services during the full twelve (12) calendar months immediately preceding the date on which the Change Request is submitted to the Network Service Provider provided that the Network Service Provider receives adequate compensation for the implementation of such Change under the T2S Connectivity Services Agreements (each of the Changes referred to in lit. a) through f) a "**Mandatory Change**");

9.5 Resources. The Network Service Provider shall keep adequate resources available during the term of this Agreement for the purpose of implementing Changes.

Article 10

Records; Audit Rights; Data Protection

10.1 Recordkeeping. Except to the extent prohibited by mandatory applicable law, the Network Service Provider shall retain for a period of minimum six (6) months after the

date on which any such information is generated or processed, the information regarding the performance of the Network and the Connectivity Services, in particular the information contained in the transmission logs maintained by the Network Service Provider regarding the Files and Messages exchanged, and for a period of minimum ten (10) years after the date on which such information is generated all security-relevant data regarding the performance of the Network and the Connectivity Services, in each case as more specifically described in the Specifications (such information the "**Archival Information**"). The manner in which Archival Information shall be stored is more specifically described in the Specifications.

10.2 Delivery of Archival Information. Except to the extent prohibited by mandatory applicable law, the Network Service Provider shall, upon the Eurosystem's request, make Archival Information available to the Eurosystem, including by providing the Eurosystem with copies of such information.

10.3 Audits; Access to Information. During the term of this Agreement, the Network Service Provider shall annually prepare an SAS 70 Type II report or a similar report in accordance with an at least equivalent standard (such as ISAE 3402 or the US SSAE 16 standard) and shall provide the Eurosystem (or any person designated by the Eurosystem who is subject to a professional duty of confidentiality) with copies of such reports without undue delay after such reports are prepared by the Network Service Provider. The Network Service Provider shall grant the Eurosystem (or any person designated by it who is subject to a professional duty of confidentiality), upon reasonable advance notice, access to the Network Service Provider's premises and to any Data reasonably required by the Eurosystem to assess whether the Network Service Provider, the Network and the Connectivity Services comply with this Agreement, the Specifications and applicable laws. The Network Service Provider shall not be obligated to provide the Eurosystem (or any person designated by it) with access to (i) information regarding any customers of the Network Service Provider other than Directly Connected T2S Actors, (ii) information regarding any communications network solutions and any network or connectivity services which are provided by the Network Service Provider to such customers or (iii) information which it may not disclose due to mandatory applicable law.

10.4 Data. The Network Service Provider acknowledges and agrees that, in the course of the implementation of the Network and the provision of the Connectivity Services it will gain access to personal data as defined in Directive 95/46/EC of the European Parliament and the Council of 24 October 1995, as well as data, information and material regarding the business transactions, financial situation and operations of the T2S Actors and their customers (together "**Data**"). The Network Service Provider undertakes to solely use Data for the purpose of performing the Connectivity Services.

10.5 Data Protection. Each Party shall comply with any laws regarding the collection, storage, transfer or processing of personal data (the "**Data Protection Laws**") which are applicable to it in connection with the performance of its obligations under this Agreement, in particular any laws by which Directive 95/46/EC of the European Parliament and the Council of 24 October 1995, Directive 97/66/EC of the European Parliament and the Council of 15 December 1997 and Directive 2002/58/EC of the European Parliament and the Council have been transformed into the laws of the EU Member States. The Network Service Provider shall, during the term of this Agreement and thereafter for as long as the Network Service Provider continues to have access to or to store any personal data or Confidential Information obtained in connection with the provisions of the T2S Services or this Agreement, maintain, and comply with, a data protection policy which complies with the Data Protection Laws and the requirements more specifically described in the Business Requirements and which provides for adequate technical and organisational measures regarding the protection of Data (the "**Data Protection Policy**"). The Network Service Provider shall be responsible for the compliance by any of its Subcontractors with the Data Protection Laws applicable to such Subcontractor to the extent such compliance is relevant for the performance of the Network Service Provider's obligations under this Agreement.

Article 11

Network Disaster Recovery; Business Continuity and Insurance

11.1 Security. The Network Service Provider shall be responsible for the maintenance of security of the Network, the hardware and the software and other technical infrastructure controlled by the Network Service Provider and used for the provision of the Connectivity Services as well as the Files and Messages exchanged by using the Network and the Connectivity Services. For this purpose, the Network Service Provider shall take security measures which comply with best industry practice, but in any event the security measures described in the Technical Requirements. Without limitation to the foregoing, the Network Service Provider shall take all technically feasible and commercially reasonable measures to prevent security threats from adversely affecting the Network or the Services.

11.2 Responsibility of the Network Service Provider. The Network Service Provider shall be fully responsible towards the Eurosystem for the operation of the Network and the provision of the Connectivity Services in accordance with this Agreement, the Specifications and the T2S Connectivity Services Agreements and for any Failure of the Network and the Connectivity Services within the respective Points of Demarcation. The Network Service Provider shall have no responsibility regarding the processing or exchange of Files or Messages outside the respective Points of Demarcation, except to the extent any problem or failure regarding the processing or exchange of Files or Messages

which becomes manifest outside the Points of Demarcation was caused within the Points of Demarcation.

- 11.3 Recovery from a Network Disaster.** The Network Service Provider shall, during the term of this Agreement and the term of any T2S Connectivity Services Agreement, maintain and comply with a disaster recovery and business continuity plan which complies with best industry practice and the requirements more specifically described in the Specifications, in particular Section 5.4.2 of the Technical Requirements. The Network Service Provider shall, in response to the occurrence of an event that results in an interruption or suspension of any of the Connectivity Services, including a Force Majeure Event (each such event a "**Network Disaster**") execute its disaster recovery and business continuity plan and shall use commercially reasonable efforts to minimize the disruption of the Connectivity Services and the effects of the Network Disaster on the Network and the T2S Actors. In the event of a Network Disaster, the Provider shall treat the Eurosystem and the Directly Connected T2S Actors no less favourably than any of its other customers, shall follow the procedures set out in Section 5.4.2 of the Technical Requirements and shall use all reasonable efforts to re-establish, and shall allocate all such resources as are reasonably necessary to re-establish, as soon as reasonably possible, its ability to provide the Connectivity Services to the Directly Connected T2S Actors in accordance with this Agreement and the T2S Connectivity Services Agreements. For the avoidance of doubt, neither the obligation to provide, nor the provision of, disaster recovery or business continuity services shall release the Network Service Provider from its obligation to provide the other Connectivity Services in accordance with this Agreement which are not affected by the Network Disaster.

Article 12

Assignment, Transfer and Subcontracting

- 12.1 Assignment/Transfer.** The Network Service Provider may not assign or transfer any or all of its rights or obligations hereunder, unless such a transfer occurs as a result of a merger of the Network Service Provider into another entity or any other transaction or event which has a similar effect on the Network Service Provider. In case any such transaction involving the Network Service Provider is contemplated, the Network Service Provider shall give the Eurosystem notice of such transaction reasonably in advance of the transaction becoming effective. The notice shall contain all information required to demonstrate to the Eurosystem that the entity to which the Network Service Provider's rights or obligations would transfer as a result of such transaction fulfils all requirements for participation in the selection procedure for the awarding of the Licence. If the requirements set out above are not met by the succeeding entity, the Eurosystem may object to the resulting transfer within sixty (60) Business Days from the receipt of the notice; in this case Article 17.4 (i) shall apply. If no objection is raised by the Eurosystem

within such period, the resulting transfer shall become fully effective towards the Eurosystem.

- 12.2 Subcontracting.** The Network Service Provider may, with the Eurosystem's prior written consent, delegate the performance of part (but not all) of its obligations hereunder to third parties (the "**Subcontractors**"), provided that the conditions set out in the Awarding Rules are fulfilled with respect to the Subcontractor.

The Eurosystem shall be entitled to deny its consent if the conditions set out in the Awarding Rules are not fulfilled with respect to the Subcontractor, including, if the required documents are not submitted in a timely manner or the delegation of the performance of the Network Service Provider's obligations hereunder has or is reasonably expected to have a detrimental effect on the speed, functionality, security or resilience of the Network or the Connectivity Services. If the Eurosystem has not denied its consent within thirty (30) Business Days from the delivery by the Network Service Provider of all documents to be delivered to the Eurosystem pursuant to the Awarding Rules (which period may be extended by up to thirty (30) Business Days for legitimate reasons by written notice of the Eurosystem to the Network Service Provider), the Eurosystem shall be deemed to have granted its consent.

Any Subcontractor shall be an agent (*Erfüllungsgehilfe*) of the Network Service Provider within the meaning of Section 278 BGB. Accordingly, the delegation of its obligations to a Subcontractor shall not relieve the Network Service Provider from liability for the performance of such obligations, and any act or omission of a Subcontractor or of any person acting for such Subcontractor shall be deemed to be an act or omission of the Network Service Provider.

- 12.3 Continuing Obligations.** The performance of obligations delegated to a Subcontractor may not be further delegated. The Subcontractors shall comply with all laws and collective bargaining agreements applicable to the relevant Subcontractor concerning security, safety at work, insurance, social security and assistance, working conditions and economic treatment. The Network Service Provider shall procure that the Subcontractors comply with such laws and collective bargaining agreements and with the requirements set out in this Article 12.3 and in the Awarding Rules and shall be jointly and severally liable with the Subcontractors for any failure to so comply. Each contract with a Subcontractor shall provide that the Subcontractor shall assume, and comply with, all obligations regarding traceability of funds referred to in Article 3 of Italian Law n° 136/2010 and subsequent amendments, including the obligations regarding current accounts described in Article 21.8. The Network Service Provider undertakes to inform the Eurosystem and the prefecture-territorial office of the government of the Rome-Province immediately of any non-compliance by a Subcontractor with the requirements regarding traceability of funds.

12.4 Withdrawal of consent. The Eurosystem shall be entitled to withdraw its consent to the delegation to a Subcontractor of the performance of the Network Service Provider's obligations hereunder at any time if

- (a) the Subcontractor no longer fulfils the requirements for participation in the selection procedure for awarding the Licence;
- (b) the Network Service Provider or the Subcontractor fail to comply with the requirements and obligations set out in Article 12.3 or in the Awarding Rules; or
- (c) the delegation of the performance of the Network Service Provider's obligations hereunder has or is reasonably expected to have a detrimental effect on the speed, functionality, security or resilience of the Network or the Connectivity Services.

Article 13

Representations and Warranties, Covenants

13.1 The Eurosystem and the Network Service Provider. Each Party hereby represents and warrants to the other by way of an independent promise of guarantee (*selbständiges Garantieverprechen*) within the meaning of Sections 311, 276 para. 1, first sentence BGB that it has full capacity and authority and all necessary consents to enter into and to perform this Agreement and that this Agreement is executed by one or more of its duly authorised representatives.

13.2 The Network Service Provider. The Network Service Provider hereby represents and warrants to the Eurosystem by way of an independent promise of guarantee (*selbständiges Garantieverprechen*) within the meaning of Sections 311, 276 para. 1, first sentence BGB that

- (a) it has all necessary permits, consents and approvals from government authorities required to enter into this Agreement, to design, develop, implement and operate the Network and to provide the Connectivity Services and to perform its other obligations under this Agreement;
- (b) except to the extent that pursuant to this Agreement such hardware or software is to be provided by the Eurosystem or the Directly Connected T2S Actors, it has all necessary rights and ownership interests, including ownership of, or rights of use or licenses with respect to, Intellectual Property Rights, in the hardware and software to be used in connection with the design, development, implementation and

operation of the Network and the provision of the Connectivity Services, in particular, but without limitation, the right to use any Embedded Software;

- (c) the Network originally designed, developed and implemented by the Network Service Provider complies with the Specifications and is fit for the purposes intended by the Eurosystem and the Directly Connected T2S Actors as they are described in this Agreement and the Specifications; and
- (d) its professional staff and other resources assigned to the operation of the Network and the provision of the Connectivity Services are sufficiently trained and experienced to perform its obligations under this Agreement in accordance with generally accepted industry standards and best industry practice;
- (e) no statement made and no information provided by the Network Service Provider during the procedure for its selection as set out in the Awarding Rules or in the Contract Notice, in particular in any documents submitted by it to the Banca d'Italia, or in connection with the awarding of the Licence or the entering into of this Agreement was at the time it was made or provided, or is at the date hereof, untrue, incorrect or misleading;
- (f) at the time it submitted its offer it fulfilled, and on the date hereof it fulfils, all requirements and prerequisites for the participation in the procedure for its selection, in particular those set out in the Awarding Rules.

13.3 Covenants. The Network Service Provider hereby agrees and covenants that throughout the term of this Agreement

- (a) it will have and maintain in full force and effect all necessary permits, consents and approvals from government authorities required to enter into this Agreement, to design, develop, implement and operate the Network and to provide the Connectivity Services and to perform its other obligations under this Agreement;
- (b) except to the extent that pursuant to this Agreement such hardware or software is to be provided by the Eurosystem or the Directly Connected T2S Actors, it will have and maintain in full force and effect all necessary rights and ownership interests, including ownership of, or rights of use or licenses with respect to, Intellectual Property Rights, in the hardware and software to be used in connection with the design, development, implementation and operation of the Network and the provision of the Connectivity Services, in particular, but without limitation, the right to use any Embedded Software;

- (c) it will procure that the Network and the Connectivity Services (as modified from time to time in accordance with this Agreement) comply with the Specifications and are fit for the purposes intended by the Eurosystem and the Directly Connected T2S Actors as they are described in this Agreement and the Specifications;
- (d) it will ensure that its professional staff and other resources assigned to the operation of the Network and the provision of the Connectivity Services are sufficiently trained and experienced to perform its obligations under this Agreement in accordance with generally accepted industry standards and best industry practice;
- (e) it will continue to fulfil all requirements and prerequisites for the participation in the public procurement procedure for its selection under Italian law, in particular those set out in the Awarding Rules;
- (f) it will comply with all applicable laws governing the design, development, implementation and operation of the Network and the provision of the Connectivity Services; and
- (g) it will comply with the obligations, requirements and criteria more specifically described in the Business Requirements.

Article 14

Liability

- 14.1 Standard of Care.** The Network Service Provider shall perform its obligations with the skill, care and diligence expected of a professional provider of communications network solutions and network, connectivity and messaging services, and in accordance with best industry practice. When performing its obligations under this Agreement, each Party shall act in good faith (*Treu und Glauben*, Section 242 BGB) and shall duly consider the rights and interests of the other Party (*Rücksichtspflicht*, Section 241, para. 2 BGB). Each Party shall be obligated to use commercially reasonable efforts to mitigate any Losses incurred by it in connection with this Agreement (*Schadensminderungspflicht*, Section 254 para. 2 BGB).
- 14.2 Liability for Losses.** Each Party shall be liable to the other Party for any Losses incurred by the other Party as a result of the first Party's non-performance of, non-compliance with or breach (*Pflichtverletzung*) of its representations and warranties, covenants, undertakings or obligations under this Agreement.

Each Party's liability for Losses incurred by the other Party due to the first Party's ordinary negligence (*einfache Fahrlässigkeit*) during any Contract Year shall be limited to an amount of EUR 2 Million (the "**Liability Cap**").

The Liability Cap shall not apply to a Party's liability (i) for Losses incurred by the other Party due to the first Party's gross negligence (*grobe Fahrlässigkeit*) or wilful misconduct (*Vorsatz*), (ii) for infringement of third party Intellectual Property Rights under Article 16, (iii) for breaches of representations and warranties under Article 13, (iv) for penalties under Article 14.3 and (v) under Article 14.4.

14.3 Penalties. In the events and under the circumstances described below, the Network Service Provider shall pay to the Eurosystem the following penalties (*Vertragsstrafen*)

- (a) a penalty in the amount of EUR 10,000 for each calendar day (or part thereof) of Delay with respect to any of the Milestones set out in Article 3.1;
- (b) for each calendar day (or part thereof) on which a failure by the Network Service Provider, the Network or the Connectivity Services to comply with the criteria or requirements set out in the Technical Requirements affects T2S
 - (aa) a penalty in the amount of EUR 1,000 if such failure reduces the reliability of T2S, but does not impair its operability;
 - (bb) a penalty in the amount of EUR 5,000 if such failure impairs the operability of T2S unless such impairment is not material and does not result in T2S not being available to the Directly Connected T2S Actors; and
 - (cc) a penalty in the amount of EUR 10,000 if such failure materially impairs the operability, or results in T2S not being available to the Directly Connected T2S Actors.
- (c) a penalty in the amount of EUR 1,000 for each calendar day (or part thereof) during the first calendar month (or any part thereof) which penalty shall be increased during any subsequent calendar month by an additional EUR 1,000 for each calendar day (or part thereof) (but in no event more than EUR 10,000 for each calendar day) on which
 - (aa) the Network Service Provider fails to deliver a statement regarding its solvency ratio as more specifically described in Section 1.1 of the Business Requirements;

- (bb) the Network Service Provider fails to deliver a legal opinion regarding its data protection policy as more specifically described in Section 1.2 of the Business Requirements;
 - (cc) the Network Service Provider fails to deliver a copy of its operational risk management policy or a statement from an external auditor as more specifically described in Section 1.3 of the Business Requirements;
 - (dd) the Network Service Provider fails to deliver a copy of its technology risk management policy or a statement from an external auditor as more specifically described in Section 1.4 of the Business Requirements;
 - (ee) the Network Service Provider fails to deliver the information regarding the technical solutions, documentation and support available to actual and potential T2S Actors, or regarding the stages of the connection to the Network and testing opportunities, as more specifically described in Section 2.1 of the Business Requirements;
 - (ff) the Network Service Provider fails to deliver the annual SAS 70 Type II report or a similar report prepared in accordance with an at least equivalent standard (such as ISAE 3402 or the US SSAE 16 standard) as more specifically described in Section 2.2 of the Business Requirements; and
 - (gg) the Network Service Provider fails to publish its maximum prices as more specifically described in Section 3 of the Business Requirements.
- (d) a penalty in the amount of the indemnification payable to a Directly Connected T2S Actor in accordance with the Business Requirements in Attachment 2 to this Agreement for fees charged to the Directly Connected T2S Actor exceeding the maximum prices; and a penalty in the amount of 10 % of such indemnification for each month of delay of the payment of such indemnification to the Directly Connected T2S Actor.

The aggregate amount of any penalties accrued hereunder shall be due and payable by the last day of the calendar month immediately following the calendar month in which they have accrued. The penalties payable in accordance with this Article 14.3 shall be cumulative and shall be payable in addition to, and shall not be set off or credited against, any liability of the Network Service Provider hereunder for Losses incurred by the Eurosystem.

14.4 Indemnity. The Eurosystem shall not be liable for any Losses incurred by the T2S Actors due to any act or omission of the Network Service Provider. The Network Service

Provider shall indemnify and hold harmless the Eurosystem from and against any Losses incurred in connection with any claim asserted against the Eurosystem by a T2S Actor or any other third party due to any act or omission of the Network Service Provider.

Article 15

Force Majeure

- 15.1 Suspension of Obligations.** If a Force Majeure Event occurs, the obligations affected by such Force Majeure Event shall be suspended and the Party affected by such Force Majeure Event shall not be obligated to perform such obligations for the period during which the Party is affected by such Force Majeure Event. The Party affected by the Force Majeure Event shall use commercially reasonable efforts to procure that it is able to perform the obligations affected by the Force Majeure event as soon as possible after the occurrence of the Force Majeure Event. A "**Force Majeure Event**" shall include political disturbance, catastrophes in nature, fire, war, epidemics and all other circumstances beyond a Party's reasonable control which prevent the respective Party against its will from performing its obligations under this Agreement.
- 15.2 Negotiations.** In case a Force Majeure Event occurs, the Network Service Provider and the Eurosystem shall promptly enter into good faith negotiations in order to agree a mutually acceptable solution to the matters arising therefrom.

Article 16

Intellectual Property Rights

- 16.1 No Licence to Network Service Provider.** Except as provided in the following sentence, nothing in this Agreement shall confer, or be construed to confer, on the Network Service Provider, any licence of, or right of use with respect to, any Intellectual Property Rights in T2S, the T2S Platform or the T2S Services. To the extent the Network Service Provider can reasonably demonstrate that the implementation or operation of the Network or the provision of the Connectivity Services requires the use by the Network Service Provider of any Intellectual Property Rights in T2S, the T2S Platform or the T2S Services, the Parties shall enter into good faith negotiations about a non-exclusive licence for the Network Service Provider to use the relevant Intellectual Property Rights which license shall be limited to the purpose of implementing or operating the Network or providing the Connectivity Services, as the case may be.
- 16.2 Licence.** The Network Service Provider hereby grants the Eurosystem a non-exclusive, royalty-free licence or sub-licence, as the case may be, to use any Intellectual Property

rights in any materials, work results or software, including Embedded Software (in each case, including any update, upgrade and new release thereof) required to be used by the Eurosystem in connection with this Agreement, the Network, the Connectivity Services or otherwise for making T2S available to the T2S Actors.

16.3 Infringement of Third Party Intellectual Property Rights. The Network Service Provider shall indemnify and hold harmless the Eurosystem from and against any Losses incurred in connection with any claims of a third party asserted against the Eurosystem that the Network, the Connectivity Services or any part thereof or the use of the Network or the Connectivity Services by the Eurosystem or the Directly Connected T2S Actors in accordance with this Agreement or the relevant T2S Connectivity Services Agreement, as the case may be, infringes the third party's Intellectual Property Rights (each such claim an "**Infringement Claim**") The Eurosystem shall, without undue delay after it becomes aware of such Infringement Claim, notify the Network Service Provider of any Infringement Claim asserted against the Eurosystem in writing. Without undue delay after having been notified of an Infringement Claim, the Network Service Provider shall assume, at its own cost, the defence of such Infringement Claim and shall, to the extent permitted under applicable law, conduct any negotiations and litigation in respect to such Infringement Claim, provided that the Network Service Provider shall not be entitled or authorised to make any declarations or take any actions in the name of the Eurosystem, in particular to agree to the settlement of any Infringement Claim, without the prior written consent of the Eurosystem which consent shall not be unreasonably withheld or delayed. The Eurosystem shall, to the extent reasonably required, assist the Network Service Provider with the conduct of any such negotiations and litigation.

16.4 Remedies for infringement of third party IP Rights. If the Network or the Connectivity Services or any part thereof is held to constitute an infringement of a third party's Intellectual Property Rights or if the use of the Network or the Connectivity Services by the Eurosystem or by the Directly Connected T2S Actors in accordance with this Agreement or the respective T2S Connectivity Services Agreements, as the case may be, is enjoined, the Network Service Provider shall, at its own cost,

- (a) obtain for the Eurosystem and the Directly Connected T2S Actors the right to continue using the Network and the Connectivity Services, or
- (b) modify the Network or the Connectivity Services to ensure that it no longer infringes the third party's Intellectual Property Rights provided, however, that the Network and the Connectivity Services must continue to have the features and functionalities and comply with the technical, operational and Business Requirements more specifically described in this Agreement and the Specifications.

Article 17
Term and Termination

- 17.1 Term.** This Agreement shall become effective as of the date on which this Agreement has been duly signed by both Parties (the "**Effective Date**") and shall, unless terminated or extended in accordance with this Agreement, have an initial term ending seven (7) years from the Go-Live Date (the "**Initial Term**"). The Go-Live Date is currently envisaged to occur on 22 September 2014. The Eurosystem may, in its sole discretion, postpone the Go-Live Date. Any postponement of the Go-Live Date shall be communicated to the Network Service Provider as soon as the Eurosystem is aware of circumstances which require such postponement.
- 17.2 Extension of the Term.** The Eurosystem shall be entitled to extend the term of this Agreement twice, in each case by a period of up to one (1) year (each such period an "**Additional Term**"), by giving the Network Service Provider notice of its intent to extend the term of this Agreement not less than one (1) year prior to the expiration of the Initial Term or six (6) months prior to the expiration of the first Additional Term, as the case may be. In its notice to the Network Service Provider the Eurosystem must indicate the period of time by which the term is to be extended.
- 17.3 Termination for Convenience.** During the Initial Term or any Additional Term, neither Party shall be entitled to terminate this Agreement for convenience.
- 17.4 Termination for Cause.** Without prejudice to any other rights or remedies provided for herein or by applicable law, each of the Eurosystem and the Network Service Provider shall be entitled to terminate this Agreement for cause (*aus wichtigem Grund*) within the meaning of Section 314 BGB. The Parties agree that good cause for termination of this Agreement by the Eurosystem shall, in particular, exist
- (a) if the Network Service Provider is in breach of any of the representation and warranty, covenants or undertakings set out in Articles 7, 13.1, 13.2, 13.3, 21.8;
 - (b) if the Network Service Provider does not perform or comply with any of its obligations hereunder or is in breach of any representation and warranty or covenant or undertaking under this Agreement (except for those set out in Article 17.4(a)), and such non-performance, non-compliance or breach, if it is capable of being cured, has not been cured within twenty (20) Business Days after the Eurosystem has given the Network Service Provider written notice of such non-performance, non-compliance or breach;
 - (c) if the Network Service Provider

- (i) is, or is deemed for the purposes of any applicable laws to be, unable to pay its debts as they fall due, insolvent, over indebted or in a state of impending illiquidity;
 - (ii) admits its inability to pay its debts as they fall due, suspends making payments on any of its debts or announces an intention to do so unless payment of those debts is being contested in good faith; or
 - (iii) files a petition or application for the opening of insolvency proceedings or its winding-up, administration, dissolution or liquidation.
- (d) if any person or entity files a petition or application for the opening of insolvency proceedings with respect to the Network Service Provider or its winding-up, administration, dissolution or liquidation, unless such petition or application is dismissed by the court within fourteen (14) Business Days of its receipt, or an order for the winding-up, administration, dissolution or liquidation of, the Network Service Provider or an order for the opening of insolvency proceedings or for rejection of insolvency proceedings due to lack of funds is issued by the competent court or government authority;
- (e) if a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator, insolvency administrator, interim insolvency administrator, custodian or similar officer is appointed by the competent court or government authority in respect of the Network Service Provider or any of its material assets, or Network Service Provider's shareholders, directors or officers request the appointment of, or give notice of their intention to appoint, any such person;
- (f) if any event or circumstance, including (but not limited to) a Force Majeure Event, which prevents the Network Service Provider from providing the Network or the Connectivity Services in accordance with this Agreement persists for a period of more than three (3) months;
- (g) if the Proof of Concept Test is unsuccessful as more specifically described in Article 4.4;
- (h) in the circumstances more specifically described in Article 5.4;
- (i) if the Network Service Provider has infringed the prohibition of the assignment or transfer of rights or obligations under this Agreement set out in Article 12.1 or fails

to comply with the obligations regarding a transaction pursuant to Article 12.1 or the obligations regarding Subcontractors in Article 12.2 and 12.3 or if the Eurosystem has objected to a transaction pursuant to Art. 12.1;

- (j) where the Business Requirements provide for a right of the Eurosystem to terminate this Agreement;
- (k) if the project for the design, development and implementation of T2S fails or is discontinued.

If this Agreement is terminated for cause by either Party, the other Party shall not be entitled to any compensation. The foregoing sentence shall, however, not exclude a Party's claims for the recovery of Losses incurred as a result of the events or circumstances giving rise to the right to terminate, provided such events and circumstances were directly caused by the gross negligence or wilful misconduct of the terminating Party.

17.5 Termination without Notice. This Agreement shall terminate automatically without requiring a notice of termination if

- (a) the award or the Licence are revoked, withdrawn or declared unlawful, invalid or unenforceable by a competent court or government authority (including, for the avoidance of doubt, the Banca d'Italia), in particular, without limitation, in any of the events described in paragraph 8 of the Awarding Rules; or
- (b) the procedure for the selection of the Network Service Provider is declared unlawful or invalid by a competent court or government authority.

17.6 Effect of Termination on Licence. The Licence shall expire automatically upon the expiration or termination of this Agreement.

17.7 Continuation of Connectivity Services. Unless otherwise agreed by the Parties, the Network Service Provider shall provide the Connectivity Services in accordance with this Agreement until the effective date of a termination of this Agreement. Upon the expiration or termination of this Agreement, the Network Service Provider shall continue to provide the Connectivity Services and shall use reasonable efforts to ensure an orderly transition of the Services to the Eurosystem or to such other persons or entities designated by the Eurosystem to assume the provision of the Connectivity Services (the "**Successor Network Service Provider**") until such time as the Eurosystem has notified the Network Service Provider of the completion of the transition to the Successor Network Service Provider but in no event longer than two (2) years from the effective date of the

termination or the expiration of this Agreement (the "**Transition Period**"). During the Transition Period, the Network Service Provider shall, in particular, provide to the Eurosystem or the Successor Network Service Provider any information or documentation reasonably required to render the Connectivity Services.

- 17.8 Surviving Provisions.** For the avoidance of doubt, the termination or expiration of this Agreement shall not release the Parties from any of their obligations under this Agreement which have arisen prior to or in connection with the expiration or termination. Article 10.1 (Recordkeeping), Article 10.5 (Data Protection), Article 16 (Intellectual Property Rights), Article 17.7 (Continuation of Connectivity Services), Article 19 (Confidentiality) and Article 20 (Notices), Article 21 (Miscellaneous), Article 22.1 (Governing Law) and Articles 22.4 through 22.6 (Arbitration, Confidentiality of Arbitration, Preliminary Relief) shall survive the termination or expiration of this Agreement.

Article 18

Taxes, Duties and Costs

Each Party shall bear all taxes, duties, fees and commissions it has incurred in connection with the negotiation and conclusion of this Agreement or will incur in connection with the performance of its respective obligations under this Agreement (including, without limitation, costs and fees for permits, licences, etc.).

Article 19

Confidentiality

- 19.1 General.** Unless expressly permitted by this Agreement, each Party shall treat as confidential and shall not disclose, without prior written consent of the other Party, any Confidential Information.
- 19.2 Confidential Information.** For the purposes of this Agreement "**Confidential Information**" means any information related to a Party's business operations, including products, services, methods of doing business, research and development activities, know-how, customers, trade secrets, commercial secrets, computer programs or finances and Data irrespective of the manner in which such information is stored or the manner in which it is disclosed by or on behalf of a Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") as well as the terms and conditions of this Agreement and the Specifications, any documentation provided in accordance with this Agreement and the description of the technical infrastructure, including software and hardware, of the Network.

19.3 Permitted Disclosure. The Receiving Party shall be permitted to disclose Confidential Information if and to the extent the Receiving Party can demonstrate that such information:

- (a) was already publicly known at the time it was disclosed to the Receiving Party;
- (b) became publicly known after the time it was disclosed to the Receiving Party without a breach by the Receiving Party of its obligations hereunder;
- (c) was already known to the Receiving Party at the time it was disclosed to the Receiving Party; or
- (d) was disclosed to the Receiving Party by a third party that was not under an obligation of confidentiality with respect to such information;
- (e) must be disclosed by the Receiving Party due to applicable law or the final and binding order of a competent court, arbitral tribunal or government authority that has jurisdiction over the Receiving Party, including without limitation the European Commission, any Central Bank Supervisory Authority or tax authority;
- (f) was disclosed by the Receiving Party to those of its officers, directors, employees, agents, delegates or Subcontractors who need to know such information in order to enable the Receiving Party to perform its obligations hereunder, provided that such persons are made aware of the confidential nature of such information and, in the case of agents, delegates or Subcontractors, such persons have undertaken in writing towards the Disclosing Party to keep such information confidential on terms substantially the same as the confidentiality obligations set forth in this Article 19;
- (g) must be disclosed in order to exercise, protect or enforce the rights of the Receiving Party under this Agreement before a competent court, arbitral tribunal or government authority;

19.4 Additional Requirements for Disclosure. As regards Article 19.3 (e), if the Receiving Party is required to disclose or otherwise make Confidential Information available to a court or a government authority, the Receiving Party shall:

- (a) notify the Disclosing Party reasonably in advance of any such disclosure in as detailed a manner as can be reasonably expected in the circumstances;

- (b) obtain and make available to the Disclosing Party reasonable substantiated assurance from a reputable law firm as to the lawfulness and enforceability of such disclosure;
- (c) cooperate with and provide such reasonable assistance as the Disclosing Party may reasonably request in the circumstances to allow the Disclosing Party to seek any legal remedies it may reasonably deem appropriate and pertinent to protect the Confidential Information against disclosure to the court or other government authority; and
- (d) notify the court or other government authority concerned of the confidential nature of the Confidential Information and request it to preserve the confidentiality of the Confidential Information.

19.5 Press Releases. The Eurosystem and the Network Service Provider may issue a press release concerning the signing of this Agreement, the content of which will be mutually agreed upon between the Parties. The Network Service Provider shall submit to the Eurosystem for approval the wording of any further press release it intends to issue or other public statements it intends to make with respect to this Agreement or the provision of the Network or the Connectivity Services under this Agreement.

Article 20

Notices

20.1 Form and language. Any notice, document or information to be furnished or supplied pursuant to this Agreement shall be in writing and in the English language.

20.2 Means. Unless provided otherwise in the Specifications, any notice given hereunder shall be delivered personally or dispatched by letter, by e-mail or by facsimile (in case of an e-mail or facsimile transmission, a subsequent confirmation letter is required) and shall be effective upon receipt of the mail or the facsimile transmission.

20.3 Addresses. All communications and deliveries of documents hereunder shall be made to the following addresses:

To the Eurosystem:

[●]

with a copy to:

[●]

To the Network Service Provider:

[•]

with a copy to:

[•]

The Parties shall promptly notify each other of any change of address for notice.

Article 21

Miscellaneous

21.1 The Eurosystem. The Banca d'Italia, as a member of the Eurosystem, has entered into this Agreement in its own name and interest and in the name and interest of the other Eurosystem Central Banks. The Eurosystem Central Banks shall be joint and several creditors (*Gesamtgläubiger*) of the duties, obligations and liabilities of the Network Service Provider under or in connection with this Agreement, provided, however, that the Network Service Provider shall, unless expressly agreed otherwise by the Parties, perform its duties and obligations and satisfy its liabilities under or in connection with this Agreement only towards the Banca d'Italia.

Unless expressly agreed otherwise by the Parties, the Eurosystem Central Banks shall be joint and several debtors (*Gesamtschuldner*) of the duties, obligations and liabilities of the Eurosystem under or in connection with this Agreement.

21.2 Agent for Service of Process. Each of the other Eurosystem Central Banks hereby appoints the Banca d'Italia as its agent for service of process (*Zustellungsbevollmächtigter*) in any proceedings, whether before a state court as arbitral tribunal, arising out of or in connection with this Agreement.

21.3 Representation in Proceedings. Each of the Eurosystem Central Banks hereby appoints (*bevollmächtigt*) the Banca d'Italia to represent it, to the extent permitted by applicable law, in any proceedings, whether before a state court or arbitral tribunal, arising out of or in connection with this Agreement. The Banca d'Italia shall be entitled to make and receive, in the name and on behalf of each of the other Eurosystem Central Banks, any declarations and to take, in the name and on behalf of each of the other Eurosystem Central Banks, any actions which it deems necessary or appropriate in connection with such proceedings and the conduct and termination, including by way of settlement, thereof.

- 21.4 Severability.** If any provision of this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. The affected provision shall be replaced with a valid and enforceable provision the economic and legal effect of which approximates as closely as possible that of the invalid, illegal or unenforceable provision.
- 21.5 Amendments.** Except as otherwise expressly provided for in this Agreement, or pursuant to a Change Request, this Agreement and, its Attachments may only be amended by a written instrument (*in Schriftform*) duly executed by authorised representatives of the Parties.
- 21.6 Waiver.** The provisions of this Agreement may only be waived by a written instrument duly executed by authorised representatives of the Party declaring such waiver. Except where a specific period exercising any right arising under this Agreement is provided for herein or under applicable law, no delay on the part of a Party to exercise such right shall constitute, or be construed to constitute, a waiver thereof. Neither any waiver by a Party of any right, power or privilege nor any single or partial exercise of such right, power or privilege shall preclude any further exercise by such Party thereof or of any other right, power or privilege.
- 21.7 Entire agreement.** The Contract Notice, the Awarding Rules, this Agreement and the Specifications constitute the entire agreement of the Parties with respect to the subject matter hereof and shall supersede any previous negotiations, proposals, agreements and understandings between the Parties relating to the subject matter of this Agreement.
- 21.8 Compliance with requirements regarding traceability of funds.** The Network Service Provider shall assume, and comply with, all obligations regarding traceability of funds referred to in Article 3 of Italian Law n° 136/2010 and subsequent amendments. To this end, the Network Service Provider undertakes to communicate to the Eurosystem promptly, and in any case no later than seven days after it is opened, the identifying particulars of the any current account intended to be used by the Network Service Provider in financial transactions relating to the present Agreement and the identifying particulars and tax numbers of the persons authorized to perform transactions with respect to such account. In the case the Network Service Provider intends to use one or more current accounts which are already in existence on the date of this Agreement, the Network Service Provider undertakes to communicate the data referred to above before the initial use of any such current account in financial transactions relating to the present Agreement. The Network Service Provider also undertakes to promptly communicate to the Eurosystem any change in respect of the data transmitted to the Eurosystem pursuant to this Article 21.8.

Article 22

Governing Law, Escalation Procedure and Arbitration

22.1 Governing law. This Agreement shall be governed by, and construed in accordance with, the laws of the Federal Republic of Germany (excluding the United Nations Convention on Contracts for the International Sale of Goods, 1980).

22.2 Escalation Procedure. In the event of a dispute between the Parties arising out of or in connection with this Agreement the Parties shall use commercially reasonable efforts to resolve the matter on an amicable basis and in a fair and equitable manner in accordance with the procedure set out in this Article 22.2 (the "**Escalation Procedure**").

- (a) Upon notification by one Party to the other Party, the matter shall first be referred to the Project Managers. If the Project Managers fail to resolve the matter within a reasonable period of time after it has been referred to them, but in no event more than twenty (20) Business Days, they shall refer the matter to the Steering Committee.
- (b) The Steering Committee shall use commercially reasonable efforts to resolve the dispute within a reasonable period of time taking into consideration the nature of the dispute, but in no event longer than twenty (20) Business Days after the matter has been referred to the Steering Committee in accordance with Article 22.2 (a).

Neither Party shall institute arbitration proceedings unless and until the Escalation Procedure has been completed, except where the other Party refuses to take part in the Escalation Procedure.

22.3 [Arbitration.] Any disputes arising out of or in connection with this Agreement, for which the jurisdiction of the competent state courts may be waived in accordance with mandatory law, shall, subject to the prior completion of the dispute resolution procedure set out in Article 22.2, be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) (the "**Rules**") without recourse to the state courts by three arbitrators appointed in accordance with the Rules. The third arbitrator, who will act as Chairman of the Arbitral Tribunal, shall be jointly appointed by the two arbitrators nominated by the Parties within a period of 30 calendar days beginning with the confirmation of the second arbitrator by the ICC Court. The arbitrators appointed by the Parties and the Chairman must either be eligible to hold the office of a judge (*Befähigung zum Richteramt*) pursuant to Section 5 of the German Act regarding Judges (*Deutsches Richtergesetz*) or have demonstrable expertise in the area of the design, development and implementation of communications network solutions and the provision of network, connectivity and messaging services. Without prejudice to Article 11 of the Rules, each

Party shall be entitled to challenge the appointment of an arbitrator (including the Chairman) if the arbitrator has been involved, directly or indirectly, in the performance of this Agreement or has expressed, before his or her appointment, any view regarding the dispute to be settled by the arbitrators. The seat of arbitration shall be Frankfurt am Main, Germany. The language of the arbitral proceedings shall be English.] [*Alternatively, if the Network Service Provider has objected to the arbitration clause: Jurisdiction.* Any disputes arising out of or in connection with this Agreement, for which the jurisdiction of the otherwise competent state courts may be waived in accordance with mandatory law, shall, subject to the prior completion of the dispute resolution procedure set out in Article 22.2, be subject to the exclusive jurisdiction of the courts in Frankfurt am Main.]

22.4 Confidentiality of Arbitration. The Parties expressly agree herewith that they, the arbitrators and the persons at the ICC Secretariat and ICC Court involved in the administration of any arbitral proceedings hereunder will maintain confidentiality towards all persons regarding the conduct of such arbitral proceedings, and in particular regarding the parties involved, the witnesses, the experts, all awards and procedural decisions, together with all other evidentiary materials as well as all other documents produced by any Party in the proceedings not otherwise in the public domain, except to the extent that disclosure may be required of a Party by legal duty, to pursue legal proceedings or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority. Persons acting on behalf of any person involved in the arbitral proceedings shall be subject to a like obligation of confidentiality.

22.5 Preliminary Relief. Nothing in this Article 22 shall limit, exclude or otherwise impair either Party's right to seek preliminary or injunctive relief before a state court.

THE EUROSYSYSTEM

Place, Date

Name:
Title:

Place, Date

Name:
Title:

[THE NETWORK SERVICE PROVIDER]

Place, Date

Name:
Title:

Place, Date

Name:
Title: