



Service Agreement for Trusted Certificate Service

Date:

Reference: <<enter ref.no>>

Parties:

- (1) GÉANT Vereniging
- (2) <<Enter Name>>

THIS AGREEMENT is made on <<enter date>>, the "Commencement Date" and is made between:

<<enter ref.no>>

(1) **GÉANT Vereniging** registered in the Netherlands with the Chamber of Commerce in Amsterdam, registration number: 40535155, and registered office at: Hoekenrode 3, 1102BR Amsterdam, The Netherlands, ("**GÉANT**"); and

(2) **<<Enter name>>** a company incorporated in **<<enter Country>>** whose office is located at **<<enter address>>**, (the "**Subscriber**")

BACKGROUND

- (A) GÉANT published a contract notice for inviting potential TCS providers to tender for the required Service on behalf of the Subscribers (GÉANT NREN members).
- (B) The Service Provider submitted a response to the published contract notice.
- (C) The Trusted Certificate Services Agreement has been awarded to the Service Provider and GÉANT appointed the Service Provider to provide, and the Service Provider agrees to provide, the Services as detailed in **Annex A**.
- (D) The terms of this Service Agreement will govern the provision of Service delivered by the Service Provider and are set out below.

RECITALS:

Under this contract (the "Agreement") between the Subscriber and GÉANT (the "**Parties**"), the Subscriber wishes to participate in the GÉANT Trusted Certificate Service.

1. Definitions

1.1 In this Agreement the following expressions have the following meanings:

" Agreement "	means all parts of this agreement together with annex A agreed in accordance with agreement;
"Business Day"	means a day (other than a Saturday or Sunday) when clearing banks in London are open for the transaction of general banking business;
"CDD"	means Committed Delivery Date as specified in Annex A, the date from which billing can commence;
"Subscriber"	means the ordering Party;
"Service"	means the GÉANT Trusted Certificate Service (TCS), as specified in Annex A;
"Service Provider"	commercial party contracted by GÉANT to provide the TCS Service. For the duration of this contract, the Service Provider is Sectigo;
"Unscheduled Maintenance"	means maintenance and repair work which the Subscriber is obliged to undertake with respect to the service;
"TCS"	The GÉANT Trusted Certificate Service;
"TCS Certificate Practice Statement"	the Certificate Practice Statement (CPS) for the Trusted Certificate Service (TCS), managed by GÉANT for the community of the Subscribers, applicable to the Issuing Authorities for the Server, eScience Server, Code Signing, Personal, eScience Personal, and

Document Signing Certificate Profiles.

2. Governance

- 2.1 The Subscriber shall appoint a senior employee (the "Subscriber Representative") with suitable project management skills and experience and approved by the GÉANT (such approval not to be unreasonably withheld or delayed) to be the day-to-day contact for the Service.
- 2.2 GÉANT shall appoint an employee as its representative (the "GÉANT Representative") to liaise with the Subscriber Representative, and may change its nomination by notice to the Subscriber.
- 2.3 The GÉANT Representative and the Subscriber Representative will serve as the principal interface between Parties with respect to all issues relating to the delivery of the Service and will meet as such intervals as may be reasonably required by GÉANT. Approvals or consents given by either Party (including under provisions governing change control) will not be effective for the purposes of this Agreement unless given by the GÉANT Representative or Subscriber Representative (as applicable).
- 2.4 The Subscriber Representative should attend meetings with the GÉANT Representative or such other representatives of GÉANT as and when reasonably required by GÉANT, including any meeting required under a Dispute Resolution Procedure.

3. Term

- 3.1 Subject always to the provisions of the termination clauses within the Agreement, this Agreement shall have effect as of the Committed Delivery Date (specified in **Annex A**) till **May 1, 2021** (Initial Term).
- 3.2 The Agreement renews, without further notice or action by either Party, for successive twelve (12) months term ("Extended Term"), with a maximum of nine (9) renewal years, in accordance with the terms of this Agreement. The Service can be delivered until **April 30, 2030**, unless terminated earlier.

4. Termination

- 4.1 The Subscriber may prevent the automatic renewal of this Agreement by providing GÉANT with one hundred and twenty (120) days prior notice that the Agreement will terminate on the next anniversary date instead of renewing.
- 4.2 GÉANT may prevent the automatic renewal of this Agreement by providing the Subscriber with ninety (90) days prior notice that the Agreement will terminate on the next anniversary date instead of renewing.
- 4.3 In the case of termination of a Service but not the whole Agreement, the remainder of the Agreement, and all other Services, shall continue in force until terminated in accordance with the Agreement.
- 4.4 The Subscriber has the right to terminate the agreement with respect to the Service or the whole Agreement if the guaranteed service levels for the Service is not achieved for six (6) consecutive months.
- 4.5 Either Party shall, in addition to the grounds on which an Agreement may be rescinded in law, be entitled to terminate this Agreement in whole or in part by a written declaration forthwith and without application to a court of law if an insolvency event has occurred in relation to the other Party.

5. Termination for Default

- 5.1** Subscriber may terminate the Agreement without liability, in whole or in part, by written notice to GÉANT if GÉANT is either subject to an enforcement action by any Regulator or ceases to be authorised under any applicable Law, in either case preventing GÉANT from lawfully performing its obligations under the Agreement.
- 5.2** Subscriber may terminate the Agreement without liability, in whole or in part, by giving the GÉANT thirty (30) days written notice, if:
- 5.2.1 GÉANT fails to meet the same Service Level for six (6) consecutive months;
 - 5.2.2 there are multiple Critical Service Failures in any twelve (12) month period; or
 - 5.2.3 the limit of liability under **clause 16.4** is reached.
- 5.3** GÉANT may terminate the Agreement without liability, in whole or in part, upon written notice to the Subscriber if:
- 5.3.1 the Subscriber fails to make undisputed payments due to GÉANT under the Agreement; and
 - 5.3.2 GÉANT has given a notice in writing of default relating to such non-payment addressed for the attention of the Chief Finance Officer of the Subscriber and further notices at thirty (30) and sixty (60) days following the initial notice; and
 - 5.3.3 the Subscriber does not remedy such default within ninety (90) days of receipt of the initial notice of default from GÉANT.

6. Consequences of Termination

- 6.1** On termination or expiry of this Agreement:
- 6.1.1 each Party shall promptly return to the other Party all documents and materials (and any copies) containing the other Party's confidential information and shall certify in writing to the other Party that it has complied with the same;
- 6.2** Termination or expiry of this Agreement shall not limit GÉANT's rights and remedies which have accrued as at termination. Other than as set out in this Agreement, neither Party shall have any further obligation to the other under this Agreement after its termination.

7. Payment Terms and Conditions

- 7.1** In consideration for the Services defined in the GÉANT TCS Service Description, the Subscriber shall pay GÉANT the charges as specified in GÉANT TCS Service Description (**Annex 1**).
- 7.2** In respect of all sums payable by the Subscriber under this Agreement, GÉANT shall prepare and submit to the Subscriber a valid VAT invoice for the amount so determined and payable (an "Invoice"), unless the Subscriber is able to show they are VAT exempt. Subject to applicable law and local fiscal regulations each Invoice shall be stated in **EURO** and in no other currency. Each Invoice shall be calculated exclusive of value added tax (or any successor tax or equivalent local sales tax) which, to the extent applicable, shall be added thereto by GÉANT at the appropriate rate and payable by the Subscriber.
- 7.3** Subject to the terms of this Agreement the Subscriber shall pay GÉANT all amounts due for the period up to the effective date of expiration or termination of this Agreement, as relevant. This will be the GÉANT's sole and exclusive remedy.
- 7.4** The Subscriber shall not be obliged to pay any sums under this Agreement, nor shall it incur any interest for late payment thereof, unless and until it has received a correct and valid VAT Invoice

in respect of GÉANT's charges. The period for payment shall not begin to run until a correct and/or valid Invoice is issued by GÉANT. Payment shall be due within net thirty (30) days.

- 7.5** All payments made by the Subscriber under the Agreement shall be made by wire transfer to the bank account indicated in the invoices, and be free and clear of all bank charges. Invoices shall be issued in **EURO**, unless expressly agreed otherwise in writing. For the avoidance of doubt, GÉANT is not responsible for any charges imposed by the Subscriber's bank.

8. Due Diligence

- 8.1** The Subscriber acknowledges and confirms that it has had an opportunity to carry out a thorough due diligence exercise in relation to GÉANT's Service and has asked GÉANT all questions it considers to be relevant for the purpose of establishing whether GÉANT is able to provide the Service in accordance with Subscriber's requirements and the terms of this Agreement.

9. Services

9.1 GÉANT shall supply the Service in accordance with:

- 9.1.1 the terms of this Agreement;
- 9.1.2 the Specifications TCS Service Description (**Annex 1**);
- 9.1.3 Good Industry Practice; and
- 9.1.4 all Laws, codes of practice and standards from time to time applicable to supply of Service.

9.2 In supplying the Service and in performing its obligations under this Agreement, GÉANT shall:

- 9.2.1 use all reasonable skill and care;
- 9.2.2 devote such knowledge, personnel and time as is reasonably necessary for the proper and timely performance of the Service and its obligations under this Agreement;
- 9.2.3 conduct all communication with the Subscriber, and provide all documents to the Subscriber, in English.

9.3 Certificate validity period; Certificates are only valid until a set expiration date, typically one (1) to three (3) years. Intermediate Certificates are valid typically between ten (10) and fifteen (15) years. The Subscriber may not permit use of a Certificate after its expiration date. GÉANT may modify expiration dates and validity periods as necessary to comply with requirements of (i) this Agreement,(ii) industry standards and/or (iii) an Application Software Vendor.

9.4 Lawful Use; Subscriber shall abide by all applicable laws and regulations when marketing, selling, or providing the Service, including United States export laws. Some Certificates are not available in countries restricted by the United States Office of Foreign Assets Control (<https://www.treasury.gov/resource-center/sanctions/pages/default.aspx>).

9.5 The Subscriber shall use reasonable endeavours to:

- 9.5.1 provide to GÉANT such information as GÉANT may reasonably require for the performance of the Service;
- 9.5.2 provide documentation and information reasonably requested by GÉANT necessary for the provision or use of the Service;
- 9.5.3 obtain from any third party any authorizations and other cooperation reasonably required in advance by GÉANT for the provision of the Service;
- 9.5.4 report in writing malfunctions of the Service to GÉANT as soon as reasonably possible once made aware of the malfunction.

10. Service Delivery

10.1 GÉANT hereby grants to the Subscriber, with effect from the CDD and for the duration of this Agreement, subject to the terms and conditions set forth in this Agreement, and in consideration of the payment to GÉANT by the Subscriber of the charges as specified in the TCS Service Description (**Annex 1**), access to the Trusted Certificate Service (TCS) for the use of the Services defined in the Service Description.

10.2 The Subscriber shall use the Service in a manner that complies with the GÉANT TCS Certificate Practice Statement (TCS CPS) <https://wiki.geant.org/display/TCSNT/TCS+Repository> and any other requirements, restrictions and/or limitations and any safety, operational and other rules and regulations defined in this Agreement and shall not use, or intentionally or knowingly permit (to the extent permitted by law) the Service to be used for any illegal purpose or in any other unlawful manner.

11. Service Quality

11.1 GÉANT shall:

- 11.1.1 provide the Service in accordance with the TCS Service Description (**Annex 1**);
- 11.1.2 act reasonably with the purpose of bringing about the correction of failures;
and
- 11.1.3 act on behalf of the Subscriber (NRENS) in representations to the Service Provider.

11.2 GÉANT provides no warranty for any service level and shall have no liability to pay any credits for failure to meet any service level parameters, other than what is stated in the TCS Service Description (**Annex 1**).

12. Provisioning and Use of the Service

12.1 GÉANT warrants, represents and undertakes that;

12.1.1 it has obtained any and all rights, licences, authorisations, permits, easements, leases or other agreements necessary for the provision of the Service, including those that:

- a. are necessary in order to permit GÉANT to meet its obligations under this Agreement;
- b. are necessary to permit GÉANT to deliver the Service and are permitted under this Agreement.

12.1.2 no Underlying Rights impose limitations or requirements on GÉANT or on GÉANT's exercise of its rights under this Agreement;

12.2 GÉANT will use reasonable endeavours to ensure that the Service is used at all times in accordance with all applicable laws and/or regulatory requirements.

13. Licenses

13.1 GÉANT's Account: On **1 May 2020**, the Service Provider shall provide GÉANT with a GÉANT Account. Once the GÉANT Account is created, the Service Provider grants GÉANT an unlimited, revocable, sublicensable (to Subscribers and participants) and non-transferable license to provide the Certificates, Accounts, and related Services to its community members.

13.2 Subscriber: The Service Provider grants GÉANT a non-sub-licensable right to create a Subscriber Account for each Subscriber. GÉANT may permit Subscribers to use the Subscriber Account to create participant Accounts that ends-subscribers may use to order and manage Certificates. By creating or requesting a Subscriber Account, GÉANT represents that the Subscriber is a member of GÉANT community and is authorized to receive the Certificates under this Agreement. GÉANT shall promptly notify the Service Provider (i) a Subscriber is no longer an entitled participant in GÉANT's Service or is no longer a member of GÉANT community, (ii) an entity operating an Subscriber Account no longer qualifies as a Subscriber under this Agreement, (iii) the Subscriber is in breach of the contractual obligations, or (iv) there is suspected misuse of the GÉANT Account or the Subscriber Account.

13.3 Authentication Mechanisms: The Service Provider shall provide each account holder with independent Authentication Mechanisms and logically separated accounts.

13.4 Registration Authority appointment: GÉANT appoints a Subscriber, and the Subscriber accepts such appointment, as a Registration Authority for the purpose of assisting with the

validation and issuance of Certificates requested under this Agreement. As a Registration Authority, Subscriber is permitted to provide and retain validation information in accordance with applicable standards, effectively assisting in the validation process for the Certificates. Specifically, Subscriber is appointed to (i) gather, store, and verify information related to the issuance of eScience and client certificates, (ii) appoint and manage local registration authorities, (iii) provide information to GÉANT about whether a subscriber qualifies for a requested Certificate. GÉANT may rely on any information submitted by Subscriber or a local registration authority and may perform the validation required. Customer shall strictly follow the Agreement when operating as a Registration Authority under this Agreement. Subscriber is responsible for ensuring each local registration authority's compliance with the Agreement. The Subscriber shall promptly terminate the appointment of any local registration authority if the Subscriber believes the local registration authority has failed to materially follow its obligations or if GÉANT requests such termination or limitation because GÉANT reasonably believes the termination is necessary to protect GÉANT's and/or the Service Provider's continued business or reputation.

13.5 Non-Exclusive: The Subscriber acknowledges that customers may have multiple accounts within the Service Provider's system. Only accounts created under GÉANT and/or the Subscriber account are permitted to participate in the Agreement. GÉANT is not required to provide any credit, refund, or reimbursement to the Subscriber for entities creating separate accounts at the Service Provider.

14. Maintenance

14.1 From and after the relevant CDD, and during the term of this Agreement, GÉANT shall perform (or cause to be performed) all Scheduled Maintenance and Unscheduled Maintenance which may be required on the Service, in order to ensure the continued provision of the Service in accordance with the descriptions and service levels set out in TCS Service Description (**Annex 1**).

14.2 In the event of disruption of service due to an event of Force Majeure or other emergency or other reason, GÉANT shall cause the Service to be restored as quickly as is reasonably possible, and shall take such measures as are reasonably necessary to obtain such objective, all in accordance with the more detailed provisions of TCS Service Description (**Annex 1**).

15. Warranties

15.1 GÉANT warrants to the Subscriber as follows:

15.1.1 GÉANT is a limited liability association, duly organised and validly existing under the laws of the Netherlands and is qualified to do business in all jurisdictions relevant to its business (domestic and foreign) in which such qualification is required by applicable law, and has the requisite authority to execute this Agreement and to perform all of its obligations hereunder;

15.1.2 no order has been made or petition presented or resolution passed for its winding-up or for an administration order in respect of it, it is not insolvent or unable to pay its debts, and no receiver or receiver and manager has been appointed by any person of its business or assets or any part thereof and no power to make any such appointment has arisen and it has not assigned all or a substantial part of its business or assets for the

satisfaction of creditors and there is no unfulfilled or unsatisfied judgment or court order against it;

15.1.3 the provisions of this Agreement, in so far as they relate to GÉANT, constitute valid and binding obligations on GÉANT, enforceable against it in accordance with its terms; and

15.1.4 its execution and performance of this Agreement shall not violate any applicable existing laws, regulations, rules, statutes or court orders of any applicable local, state, federal, national or supra-national agency, court or body.

15.1.5 all Services delivered will fully comply with the agreed Specifications and requirements and are fit for the intended purpose;

15.2 The Subscriber warrants to GÉANT as follows:

15.2.1 the provisions of this Agreement, in so far as they relate to the Subscriber, constitute valid and binding obligations on the Subscriber, enforceable against it in accordance with its terms;

15.2.2 its execution and performance of this Agreement shall not violate any applicable existing national laws, regulations, rules, statutes or court orders of any applicable local, state, federal, national or supra-national agency, court or body;

15.2.3 there is no pending or, to the knowledge of the Subscriber, threatened claims, actions, suits, audits, investigations or proceedings by or against the Subscriber which could have a material adverse effect on the ability of the Subscriber to perform its obligations under this Agreement;

16. Limitation of Liability

16.1 Clause 16 (Limitation of Liability) sets out the entire liability of the Parties (including any liability for the acts and omissions of their respective Personnel) in respect of all claims arising under or in connection with this Agreement whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, howsoever arising.

16.2 Nothing in this Agreement shall limit or exclude the liability of either Party for:

- 16.2.1 death or personal injury resulting from negligence;
- 16.2.2 fraud or fraudulent misrepresentation;
- 16.2.3 any repudiation or deliberate breach of this Agreement or any intentionally harmful or negligent act or omission;
- 16.2.4 breach of any of the provision of **clause 24** (Statement of Non-Processing Personal Data) of the Agreement;
- 16.2.5 any other matter in respect of which liability cannot by any applicable Law be excluded.

16.3 Subject to **clause 16.2**, neither the Subscriber nor the GÉANT shall have any liability to each other for:

- 16.3.1 loss of goodwill or injury to reputation;
 - 16.3.2 loss of business opportunity; and/or
 - 16.3.3 indirect, consequential or special loss or damages,
- regardless of the form of action, whether in contract, strict liability or tort (including negligence), and regardless of whether the either Party knew or had reason to know of the possibility of the loss, injury, or damage in question.

16.4 Subject to **clause 16.1** and **16.2**, the total liability of either Party in respect of all losses arising under and/or in connection with the Agreement suffered by one Party arising out of or in connection with any and all Defaults by the other Party and any and all torts (including negligence) or breaches of statutory duty committed by one Party shall be limited to and will in no circumstances whatsoever exceed one hundred percent (100%) of the total Charges paid or payable under the Agreement for the full one (1) year term of the Agreement as set out therein.

16.5 GÉANT shall not be liable for:

- 16.5.1 any defect, error, interruption, delay, or attenuation of Services caused by or resulting from any equipment controlled by the Subscriber or its customers.

17. Force Majeure

17.1 For the purposes of this Agreement “Force Majeure” shall mean any cause or circumstance whatsoever beyond the reasonable control of the Party invoking it including, but not limited to, Act of God, outbreak of hostilities, riot, civil disturbance, student disorder, acts of terrorism, the acts and/or omissions of any government or authority (including refusal or revocation of any licence or consent), the acts and/or omission of any third party not under the Party’s control, fire, explosion, flood, fog or bad weather, failure or breakdown of vehicles, bankruptcy of suppliers or sub-contractors, theft, malicious damage, strike, lockout or industrial action of any kind.

17.2 Provided it takes reasonable steps to minimise the effect of any Force Majeure on the delivery, availability and quality of the Service, GÉANT will not be liable for delay in performing or failure to perform its obligations under this Agreement if the delay or failure results from events or circumstances of Force Majeure. Such delay or failure shall not constitute a breach of this

Agreement and the time for performance shall be extended by a period equivalent to that during which performance is so prevented.

17.3 The Subscriber shall be entitled to terminate this Agreement either in whole or in part by a written declaration forthwith and without application to a court of law if GÉANT has invoked Force Majeure and the event of Force Majeure has continued for a period in excess of three (3) months or sooner if both Parties agree that the event of Force Majeure will last for a period in excess of three (3) months.

18. Notices

18.1 All notices served on either Party by the other will be in the English language.

18.2 Any notice to be given under this Agreement shall be in writing and shall be deemed to have been served: immediately if personally delivered, on the expiry of seven (7) days after being sent by registered post; or on the expiry of twenty-four (24) hours after delivery by e-mail, which shall be evidenced by a successful transmission receipt. Notices should be issued to the following parties:

18.2.1 GÉANT: TCS Service owner, tcs-so@lists.geant.org.

18.2.2 Subscriber: [NAME, EMAIL]

19. Confidentiality

19.1 Subject to **clause 19.2**, each Party undertakes to the other that it shall:

19.1.1 maintain and treat in confidence, and shall not disclose to any third party (except its professional advisers or representatives to the extent assisting it in connection with this Agreement or to comply to local governing laws), all information (including the terms of this Agreement) and documentation, including (without limitation) information concerning the business or trade secrets, processes, know-how or methods used by the other Party in carrying on business, obtained from the other Party pursuant to or in connection with this Agreement (“Confidential Information”);

19.1.2 procure that its affiliates, directors, employees and professional advisers (being only those lawyers, accountants, bankers and other advisors under a professional duty of confidentiality to the advised Party), sub-contractors and agents maintain and treat in confidence all Confidential Information; and

19.1.3 not (and will ensure that all affiliates, directors, employees or professional advisers, sub- contractors and agents shall not) disclose such Confidential Information other than for the purposes of this Agreement and for which it was provided except with the written permission of the other Party.

19.2 Clause 19.1 shall not apply to any Confidential Information which:

19.2.1 is in or comes into the public domain other than by default of the recipient Party; or

19.2.2 is or has already been independently generated by the recipient Party; or

19.2.3 is lawfully received by the recipient from a third party on an unrestricted basis; or

19.2.4 is in the possession of or is known by the recipient Party prior to the date of this Agreement, to the extent that such recipient Party is not bound by any existing obligation or confidentiality in respect of such information to the other Party.

19.3 Nothing in this **clause 19** shall prohibit or restrict either Party from disclosing any Confidential Information to the extent to which the same is required to be disclosed by law, regulation or pursuant to an order of a competent authority, or to a professional adviser, provided the recipient provides (where practicable), in the case of disclosure by law, regulation or order, the disclosing Party with reasonable written notice prior to any such disclosure and in the case of disclosure to a professional advisor that the professional advisor undertakes to treat the Confidential Information as confidential.

19.4 The provisions of this **clause 19** shall survive the termination or expiry of this Agreement for a period of five (5) years.

20. Variation

20.1 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties.

21. No Waiver

21.1 Failure or delay in exercising any right or remedy under this Agreement shall not constitute a waiver or a waiver of any other right or remedy and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

22. Counterparts

22.1 This Agreement may be executed in counterparts, each of which when executed and delivered shall be deemed an original. Such counterparts shall together (as well as separately) constitute one and the same instrument.

23. Assignment and Novation

23.1 The Subscriber hereby agrees that GÉANT may, at any time on written notice to the Subscriber, novate, assign or subcontract any or all of its rights and obligations under this Agreement to any legal entity within GÉANT's Group in the European Union/European Economic Space.

24. Statement of GDPR Compliance

24.1 Both Parties will ensure full compliancy with the Regulation (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL and declare that any processing of any personal data connected with the execution of this Agreement is done by each Party in the role of independent controller.

24.2 If the supply of the Service change for any reason and personal data starts being processed by Subscriber on behalf of GÉANT, the processing Party will contact the other Party immediately for initiating further actions.

25. Amendments

25.1 No amendments to this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties in accordance with an agreed change control procedure.

26. Dispute Resolution

26.1 If a dispute arises out of or in connection with this Agreement, or the performance, validity or enforceability of it ("Dispute") then, except as expressly provided in this Agreement and except in the case of Technical Disputes, the Parties shall comply with the following provisions:

- 26.1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice");
- 26.1.2 the GÉANT Representative and the Subscriber Representative (acting in good faith) shall meet to attempt to resolve the Dispute;
- 26.1.3 if the Dispute remains unresolved twenty (20) days following of the Dispute Notice, the Senior Vice President or equivalent officer of each Party (acting in good faith) shall meet to attempt to resolve the Dispute;
- 26.1.4 if the Dispute is not resolved within thirty (30) days of the Dispute Notice or within longer period if agreed between parties, the Dispute shall be finally settled in accordance with the Arbitration Rules of the Commerce London Court of International Arbitration (LCIA), by a single arbitrator either appointed jointly or, if the Parties cannot agree on the identity of the arbitrator, appointed by the chairperson of the LCIA. The place of arbitration shall be London. All negotiations and arbitration will be conducted in the English language; and
- 26.1.5 all negotiations connected with the Dispute shall be conducted in complete confidence, and the Parties undertake not to divulge details if such negotiations except to their professional advisors who shall also be subject to such confidentiality and shall be without prejudice to the rights of the Parties in any future proceedings. The Parties shall require the LCIA not to disclose the fact of or the details of the arbitration to any third party.

26.2 Prior to the commencement of arbitration, neither Party may commence any court proceedings in relation to any Dispute unless such proceedings:

- 26.2.1 are for interim relief (including injunctive relief);
- 26.2.2 would be prejudiced by any delay; or
- 26.2.3 are intended to preserve a superior position with regard to the creditors of the other Party.

26.3 If any dispute arises out of or in connection with this Agreement which is technical or objective in nature (including whether any Deliverable meets the requisite specification and whether service levels have been met) ("Technical Dispute"), either Party may serve notice on the other ("Referral Notice") that it wishes to refer the dispute to an expert (the "Expert") as follows:

- 26.3.1 The Parties will agree the identity of a single neutral, independent, impartial expert to determine the Technical Dispute. In the absence of agreement within fourteen (14) days of the Referral Notice, the matter will be referred to an expert based in the United Kingdom and appointed by the LCIA.
- 26.3.2 Within twenty-eight (28) days after the giving of a Referral Notice, both Parties will exchange simultaneously statements of case of no more than ten thousand (10,000) words, in total, and each Party will simultaneously send a copy of its statement of case to the Expert.
- 26.3.3 Each Party may, within fourteen (14) days of the date of exchange of statement of case pursuant to **clause 26.3.2** above, serve a reply to the other side's statement of case of not more than ten thousand (10,000) words. A copy of any such reply will be simultaneously sent to the Expert.
- 26.3.4 The Expert will make his decision on the matter on the basis of written statements and supporting documentation, and following an oral hearing at which the Parties may be represented by counsel of their choice. The Expert may ask additional questions of either Party. Any answers will be provided to the other Party as well as to the Expert. The Expert shall issue his decision in writing within thirty (30) days of the date of service of the last reply pursuant to **clause 26.3.2** above or, in the absence of receipt of any replies, within sixty (60) days of the date of exchange pursuant to **clause 26.3.3** above or the date of the last oral hearing, whichever is the later.

26.3.5 The Expert's decision will be final and binding on the Parties, save for any manifest errors or fraud contained on the face of his decision, which may be annulled by a court.

26.3.6 Each Party shall act reasonably and co-operate to give effect to the provisions of this **clause 26.3** and otherwise do nothing to hinder or prevent the Expert from reaching his determination.

26.3.7 The Expert's charges will be borne equally by the Parties, but each Party shall be responsible for its own legal and professional costs, transport and attendance at any hearing and any other costs.

26.4 Unless agreed otherwise, the Parties shall continue to comply with their respective obligations under the Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

27. General

27.1 If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall not be affected. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable and the remaining provisions shall continue in full force and effect.

27.2 Each Party shall (at its own expense) promptly execute and deliver all such documents, and do all such things, or procure the execution and delivery of all documents and doing of all such things as are required to give full effect to this Agreement and the transactions contemplated by it.

27.3 The failure to exercise or delay in exercising a right or remedy provided to a Party under this Agreement shall not constitute a waiver of that right or remedy, and no waiver by a Party of any breach of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision. Each right or remedy of a Party under this Agreement is without prejudice to any other right or remedy of that Party under this Agreement or at Law.

27.4 Nothing in this Agreement will be construed as constituting or evidencing any partnership, contract of employment or joint venture of any kind between either of the Parties or as authorising either Party to act as agent for the other. Neither Party will have authority to make representations for, act in the name or on behalf of or otherwise to bind the other Party in any way.

27.5 Except as expressly provided in this Agreement, no terms and conditions, standard or otherwise, contained on any invoice, order form, licence or other document of the Subscriber shall apply to the subject matter of this Agreement unless expressly stated in this Agreement or incorporated as a variation via a change control procedure.

27.6 This Agreement (including the TCS Service Description) constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all prior agreements, understandings or proposals, whether oral or written, with respect to the subject matter of this Agreement. Accordingly, all other terms, conditions, representations, warranties and other statements which would otherwise be implied (by law or otherwise) shall not form part of this Agreement.

27.7 Each Party acknowledges that in entering into this Agreement it places no reliance on any representation, warranty or other statement relating to the subject matter of this Agreement, save for the representations and warranties set out in this Agreement.

27.8 Each Party shall bear its own legal costs associated with the preparation, negotiation and execution of the Agreement and any documents referred to in it.

28. Governing Law

28.1 This Agreement as well as all non-contractual claims, rights and obligations arising therefrom shall be governed by and construed in accordance with the laws of the Netherlands. The application of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded hereby.

28.2 If the English or American legal meaning of the provisions of the Agreement differs from the Dutch legal meaning of the provisions of the Agreement, the Dutch legal meaning shall prevail.

28.3 Any dispute or difference arising out of or in connection with the Agreement including any question regarding its existence, validity or termination or the legal relationships established and/or all non-contractual obligations arising from or connected with the Agreement shall be finally resolved by the Courts of the Netherlands unless an exclusive jurisdiction applies.

EXECUTION:

The Parties have shown their acceptance of the terms of this Agreement by executing it below.

SIGNED for and on behalf of **SUBSCRIBER** **SIGNED** for and on behalf of **GÉANT**

Date: Date:
.....

Name: Name:
.....

Position: Position:
.....

Signature: Signature:
.....

Annex 1 TCS Service Description

1 Committed Delivery Date

1. The Committed Delivery Date for the Service is: << enter date >>

2 Overview

2. GÉANT's Trusted Certificate Service allows NREN members of GÉANT to offer an unlimited number of certificates for use by NRENs and their membership. The service is offered via a layered approach, with GÉANT being able to add and approve NRENs, and NRENs being able to add and approve their constituents as users.
3. NRENs access TCS using SAML login. The research and education community use SAML via multilateral federations and it is essential that a Bidder for TCS can support this model, and not just single-organisation SAML mapping.
4. TCS is supported by a Policy Management Authority (PMA). The PMA is a group of experts from the community responsible for determining the suitability of certificate policies via the creation of Certificate Practice Statements (CPS). The Authority is also responsible for determining the suitability of proposed changes to the CPS prior to the publication of an amended edition.
5. The TCS PMA supports the Certificate Authorities for TCS.
6. Further information about TCS can be found on the service wiki and on the GÉANT website by following the links below:

□ <https://wiki.geant.org/display/TCSNT>

□ https://www.geant.org/Services/Trust_identity_and_security/Pages/TCS.aspx

3 GÉANT TCS Service Description

3.1 Technical Description of the Service

7. NREN Subscribers will be able to order certificates via the Sectigo Certificate Manager as provided by the Service Provider. Subscribers will have access to order the following certificate types:

- a) **Server certificates:** certificates including a TLS Web Server Authentication key usage, in two variants that are verified according to and trusted as **(1)** meeting the requirements of the CA/Browser Forum *Baseline Requirements* for assertion of the certificate policy identifier 2.23.140.1.2.2 ("Organization validated" or "OV" server certificates), as well as a variant **(2)** that meets the requirements of the CA/Browser Forum *"Guidelines For The Issuance And Management Of Extended Validation Certificates"* for assertion of the certificate policy identifier 2.23.140.1.1 ("Extended Validation" or "EV") and issued by a Root CA approved to issue EV Certificates.
- b) **Client certificates:** TLS Web Client Authentication, E-mail protection, and combination of both TLS Web Client Authentication and E-mail protection.
- c) **Code Signing certificates:** 2.23.140.1.4 - in accordance with the requirements for Oracle Java, Microsoft Windows Authenticode, Office VBA, MacOS and Mozilla Object signing.
- d) **Extended Validation Code Signing certificates:** in accordance with the CA/Browser Forum "Guidelines for the Issuance And Management Of Extended Validation Code Signing Certificates", accessible via <https://cabforum.org/>.
- e) **Document signing certificates:** in accordance with the requirements of the Adobe Approved Trust List programme.

3.2 Service-Level Target

8. The Sectigo Certificate Manager provides 24/7 uptime with the exclusion for planned maintenance and enhancements.

Support availability	24 hours a day, 7 days per week, 365 days a year		
Interaction method	Email, telephone call and chat		
Response times	Normal:	24	hours
	Critical: 4 hours		

3.3 Requesting connection to Trusted Certificate Service (TCS)

9. Interested Subscribers should address their request to connect to the GÉANT Trusted Certificate Service to the TCS Service Owner: tcs-so@lists.geant.org.

4 Pricing and Charges

10. The price per annum for the Trusted Certificate Service is as follows:

Subscriber Membership Category	Subscriber Membership Categories	Price 2020/2021 (€ per year)	Price 2021/2022 (€ per year)
1	Membership Categories in accordance with the guidelines “Boundaries between TERENA membership categories”, accessible via:		
2			
3			
4			
5			
6			
7			
8			

11. Prices for the Trusted Certificate Service will be increased with a flat rate of 2% per year from 2022/2023 onwards for all above Subscriber Membership Categories.