

Cyprus Energy Regulatory Authority

Consultancy Services for Establishing the Wholesale Electricity Market Monitoring procedures, the related Hardware & Software Needs and Supervision Services during the Implementation process of the agreed procedures

ESTIMATED VALUE: Fifty Thousand Euro (€50,000)

Tender procedure No.: 08.2021

The project is financed by the Cyprus Energy Regulatory Authority

Nicosia, July 2021

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PART A: INSTRUCTIONS TO ECONOMIC OPERATORS

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PART A: INSTRUCTIONS TO ECONOMIC OPERATORS

1. DEFINITIONS

1. The following terms shall have the meanings ascribed to them below:

AGREEMENT

Part B of the Tender Documents, as completed based on the Contractor's Tender after the contract has been awarded and signed by both parties.

AWARD DECISION

The decision issued by the competent body, whereby the Contract is awarded to the selected Tenderer.

CLARIFICATION

Clarification on the submitted certificates and / or alternative credentials, or even completion of information which are missing due to the failure of submit the required certificates, provided that they were held by the tenderer before the date of submission of tenders. During the evaluation process the Contracting Authority may request such clarification.

COMPETENT AUTHORITY

The Competent Authority is the Cyprus Energy Regulatory Authority (CERA).

COMPETENT BODY

A body established by virtue of the Regulations which, within the powers granted to it, undertakes and handles matters concerning public procurement.

CONTRACT

The public service contract between the Contracting Authority and the Contractor, which is concluded after announcement of the Award Decision and which comprises the following integral parts:

- a. The Agreement
- b. The Tender and any correspondence in relation thereto between the Contracting Authority and the Contractor.
- c. Annexes I and II of the Tender Documents.

CONTRACTING AUTHORITY

The *Cyprus Energy Regulatory Authority*, located in *Nicosia*.

CONTRACTOR

The Tenderer to be selected to enter into a Contract with the Contracting Authority

CONTRACT SCOPE

The provision of services for *Establishing the Wholesale Electricity Market Monitoring procedures, the related Hardware & Software Needs and Supervision of the Implementation process of the agreed procedures* falling under category **79000000** of the CPV classification, as identified in detail in the Tender Documents.

ECONOMIC OPERATOR

Any natural or legal person or public entity or group of such persons and/or entities, including any temporary association of undertakings which offers the supply of products or the provision of services or the execution of works.

ESTIMATED VALUE

The potential cost of the Contract, estimated by the Contracting Authority, exclusive of VAT, including any form of options and any renewals of the contract, as explicitly set out in the tender documents.

INTERESTED ECONOMIC OPERATOR

Any economic operator associated with the tender procedure in the System.

LAW

The Coordination of Procedures on the Public Procurement and on Related Matters Law of 2016 (Law 73(I)/2016), as amended in each case.

REGULATIONS

The General Regulations of 2012 (KDP 242/2012) on the Coordination of procedures for the Award of Public Works Contracts, Public Supply Contracts and Public Service Contracts including any amendments thereto.

REPRESENTATIVE

The person representing the Tenderer.

SYSTEM

The electronic platform for public procurement (e-Procurement) at the website address www.eprocurement.gov.cy

TENDER

The technical and financial proposal for implementation of the Contract Scope, drawn up and submitted by the Tenderer in the manner and under the terms described in the Tender Documents.

TENDER DOCUMENTS

The documents referred to in paragraph 4.2 as well as any addenda thereto.

TENDERER

Any Economic Operator, that has submitted a tender.

- Any other terms used in the present Part A of the Tender Documents shall have the meanings ascribed to them by the Law, the Regulations or any other part of the Tender Documents.
- The headings, article titles, subtitles and table of contents are used for convenience and shall not be taken into consideration in the interpretation of the Tender Documents.

2. KEY DETAILS OF THE TENDER PROCEDURE

Par.	ITEM	
2.1	Tender procedure No.	08/2021
2.2	Contract Scope	<i>Consultancy Services for Establishing the Wholesale Electricity Market Monitoring procedures the related Hardware & Software Needs and Supervision Services during the implementation process of the agreed procedures, falling under category 79000000 of the CPV classification</i>
2.3	Estimated Value	<i>Fifty Thousand (50,000) Euro exclusive of VAT.</i>
2.4	Financing	<i>Contracting Authority</i>
2.5	Right to use the negotiated procedure of article 29(5) of Law 73(I)/2016 (or article 44(στ) of Law 140(I)/2016)	<i>Not Applicable</i>
2.6	Tender procedure	Open tender procedure for the award of a service contract.
2.7	Award Criterion	Most economically advantageous tender based on the best price-quality ratio.
2.8	Contracting Authority	<i>Cyprus Energy Regulatory Authority</i>
2.9	Competent Official	<i>Andreas Frixou regulator.cy@cera.org.cy Ag. Paraskevis 20 2002 Strovolos, Nicosia 22666363</i>

Par.	ITEM	
		22667763
2.10	Period of time during which the Tender Documents may be available	Until the deadline of the submission of tenders.
2.11	Method and Place for collection of the Tender Documents	Free of charge, from the eProcurement System www.eprocurement.gov.cy
2.12	Deadline for the Submission of Comments / Questions / Recommendations Time and place of open meeting (if applicable) Time and place of site visit (if applicable) Dispatch of answers by the Contracting Authority	<ul style="list-style-type: none"> • By Monday 30/07/2021 at 14:00 • Not applicable • Not applicable • Tuesday, 06/08/2021 at 14:00
2.13	Deadline for the Submission of Tenders	by 14:00 hours of 27/08/2021
2.14	Place of Submission of Tenders	Electronically via the Cyprus e-Procurement System at www.eprocurement.gov.cy under the relevant functionality at the workspace of the specific tender procedure.
2.15	Commitment not to Withdraw the Offer	5%
2.16	Period of Validity of Tenders	6 months from the deadline of submission of Tenders
2.17	Language in which Tenders must be drawn up	Greek and/or English
2.18	Currency of Tenders	Euro

Par.	ITEM	
2.19	Estimated date for the presentation of technical offers (if applicable)	<i>Not applicable</i>
2.20	Estimated date of notification of tender procedure results	2 months, from the deadline of the submission of tenders
2.21	Estimated date of contract signature	3 months, from the deadline of the submission of tenders
2.22	Location where the Services will be provided	<i>Ag. Paraskevis 20 2002 Strovolos, Nicosia</i>
2.23	Duration of Contract Execution	4 months from the date of commencement of the implementation of the Contract Scope for results 1, 2 ,3. For result 4, duration of contract execution will depend on result 3 and will be agreed between the Contracting Authority and the Contractor.
2.24	Factor for conversion to current prices	<i>Not applicable</i>

3. LEGAL FRAMEWORK

3.1 *Applicable legislation*

1. The Tender Procedure shall be conducted in accordance with the relevant Laws and Regulations of the Republic of Cyprus on the award of public contracts, as amended and in force, and in particular in accordance with:
 - a. The Coordination of Procedures on the Public Procurement and on Related Matters Law of 2016, published in the Official Gazette of the Republic of Cyprus on 28 April 2016 (Law 73(I)/2016).
 - b. The Regulations on the Award of Public Contracts (Supplies, Works and Services) (Organisations governed by Public Law and Village Authorities), published in the Official Gazette of the Republic of Cyprus on 06 July 2012 (KDP 242/2012).
 - c. The Regulations on the Management of Public Contract Implementation and Procedures for the Exclusion of Economic Operators from Public Procurement Procedures published in the Official Gazette of the Republic of Cyprus on 28 April 2016 (KDP 138/2016).
 - d. The Law on the Review Procedures concerning the Award of Public Contracts of 2010, published in the Official Gazette of the Republic of Cyprus on 19 November 2010 (Law 104(I)/2010).

- e. The Regulations on the Award of Public Supply Contracts, Public Works Contracts and Public Service Contracts (use of electronic means), published in the Official Gazette of the Republic of Cyprus on 26 June 2009 (KDP 249/2009).

The above-mentioned legislation documents could be accessed by visiting the Website www.treasury.gov.cy.

3.2 General principles

1. Participation in the tender procedure is open to all interested economic operators meeting the legal, financial, technical or other requirements provided for in the Tender Documents.
2. By submitting their Tenders, Tenderers are assumed to be familiar with all relevant laws and Regulations of the Republic of Cyprus which affect, either directly or indirectly, the tender procedure and the implementation of the Contract Scope.
3. The Competent Body shall deem admissible the Tenders which comply with all terms, conditions and specifications of the Tender Documents, while it also may, in its absolute judgement and at its sole discretion, deem admissible Tenders exhibiting minor deviations. Minor deviations shall be taken to mean deviations which do not affect the extent of the Contract Scope or the quality of its execution, do not substantially limit the rights of the Contracting Authority or the obligations of the Contractor, and do not impair the principle of equal treatment of Tenderers.
4. Tenders which the Competent Body judges to be vague and impossible to be evaluated or contain terms which are contrary to the contents of the Tender Documents and/or conditional terms, shall be designated as inadmissible and shall be rejected.
5. Any attempt by or on behalf of a Tenderer to influence in any way whatsoever the judgement of the Contracting Authority or of the Competent Body in the discharge of their duties in connection with the tender procedure or its outcome, shall result in the rejection of its Tender.
6. Tenderers who have obtained or taken in their possession, without legal authority and at their own initiative, information or documents of a secret nature in connection to the tender procedure, shall be excluded from participation.

3.3 Protection of economic operators

2. Every interested economic operator who has or had an interest in being awarded the Contract and who has sustained or is likely to sustain a loss as a result of an act or decision of the Contracting Authority which precedes the signature of the Contract and for which it is alleged that it violates any provision of the legislation in force, has the right to file a recourse to the Tenders Review Authority in accordance with the provisions of the Law on the Review Procedures concerning the Award of Public Contracts of 2010 (Law 104(I)/2010).
3. To file a recourse to the Tenders Review Authority, the applicant must pay a fee which is deposited into the General Government Account. More details are given in the Website of the Tenders Review Authority (www.tra.gov.cy).

4. DETAILS OF TENDER DOCUMENTS

4.1 *Ownership and use of the Tender Documents*

1. All information contained in the Tender Documents and all rights thereon are the property of the Contracting Authority.
2. Use of the Tender Documents by the interested economic operators is restricted to the purposes of preparation of their Tenders.

4.2 *Contents of the Tender Documents*

1. The Tender Documents comprise the following:
 - a. The Contract Notice.
 - b. The present Part A 'Instructions to Economic Operators'.
 - c. Part B 'Agreement and Special Conditions of Contract'.
 - d. Annex I 'General Conditions of Contract' .
 - e. Annex II Terms of Reference – Technical Specifications'.
 - f. The attached Appendix containing Templates and more specifically:
 - **Form 1:** Commitment not to withdraw the Tender.
 - **Form 2:** Solemn Declaration Certifying the Tenderer's Personal Situation.
 - **Form 3:** Economic and Financial Standing.
 - **Form 4:** Technical and Professional Ability.
 - **Form 5:** CV.
 - **Form 6:** Declaration regarding the Protection of Employees.
 - **Form 7:** Technical Offer.
 - **Form 8:** Project Team Presentation Table.
 - **Form 9:** Financial Offer.
 - **Form 10:** Evaluation Criteria Table.
 - **Form 11:** List of Contractor's Certificates.
 - **Form 12:** Performance Guarantee
 - **Form 13:** Advance Payment Guarantee
 - ~~**Form 14:** Declaration of other Entities-Not Applicable~~
2. If it is found that the tender documents are incomplete, as compared against the table of contents of the preceding paragraph, economic operators are entitled to request its completion. Recourses filed against the legality of the tender procedure on the grounds of non-completeness of the tender documents shall be rejected as inadmissible.

4.3 Receipt of Tender Documents

1. Economic Operators may receive a copy of the Tender Documents, free of charge, via workspace of the tender procedure in the eProcurement System (www.eprocurement.gov.cy). Registered Economic Operators are urged to associate themselves with the competition, so as to receive notifications for any clarifications and/or addenda that may occur during this competition. Non-registered Economic Operators may register for free following the instructions available in the System. For any assistance for their registration or any other support on the use of the System, Economic Operators can contact the support team via telephone at +357 22605050 (extension 2), or via email at eprochelpdesk@treasury.gov.cy
2. It is highlighted that for anyone to be considered an Interested Economic Operator, they should be registered to the System and associated with the procedure (associate while logged in), so that any information regarding the tender can be communicated to them through the System.

5. PROVISION OF CLARIFICATIONS ON THE TENDER DOCUMENTS

5.1 Clarifications by the Contracting Authority

1. The Contracting Authority may make additions, corrections or modifications of a small scale to the terms of the Tender Documents, which should be published via the e-Procurement System (www.eprocurement.gov.cy), in order to be made available to all interested economic operators within the period specified in paragraph 2.12.

5.2 Submission of questions in writing by the interested economic operators

1. Any clarification questions, recommendations, comments and/or remarks regarding the terms of the Tender Documents shall be submitted by interested economic operators within the period specified in paragraph 2.12. The requests for clarifications must be submitted via the relevant functionality of the e-Procurement System, accessible from the workspace of the specific tender procedure.
2. As long as clarification requests, recommendations, comments and/or remarks are requested in accordance with the above, the Contracting Authority publishes on the e-Procurement System supplementary documents and/or clarifications where deemed necessary within the period specified in paragraph 2.12, whilst a relevant notification will be dispatched automatically to all Economic Operators associated with the competition.
3. Under any circumstances, interested economic operators cannot invoke verbal responses/answers/explanations given by any public servant. The Contracting Authority is not bound by any verbal responses/answers/explanations.

6. ELIGIBILITY AND REQUIREMENTS FOR PARTICIPATION

6.1 Eligibility for participation

1. Eligible for participation in the present tender procedure are natural or legal persons (governed by public or private law) or consortia of natural and/or legal persons lawfully established in Cyprus

or in any other Member State of the European Union (EU) or of the European Economic Area (EEA) or in third countries who have signed and ratified the International Government Procurement Agreement (GPA) or have signed and ratified association agreements or bilateral agreement with the EU or with the Republic of Cyprus in the sector of Public Procurement.

2. Consortia of natural and/or legal persons may submit a joint Tender on the following conditions:
 - a. That the rate of participation of each person is stated in the Tender.
 - b. That all persons participating in the Consortium fulfil the requirement of establishment specified in paragraph 1 above.
3. Consortia are not obliged to take a specific legal form either for the submission of the Tender, nor for the signature of the Contract.
4. Every natural or legal person may participate in the tender procedure either individually or in one consortium only.
5. ~~To implement the Contract Scope, the Tenderer may use subcontractors, whom it is obliged to name in its Technical Offer, also mentioning the part of the Contract Scope that they shall undertake. It is understood that in the event the Tenderer intends to subcontract to third parties any share of the contract, the Tenderer, in preparing his Tender, has been informed on whether the same subcontractor participates in more than one (1) Tender of the same tender procedure under any capacity. Not applicable~~
6. The same requirements for the lawfully establishment as described in item (1) above, must be met by the entities whose capacities the Tenderer is invoking, within the meaning of paragraph 6.3 or/and paragraph 6.4.

6.2 Personal situation of the Tenderer

1. To be able to sign the Contract, interested economic operators must meet the following requirements concerning their personal situation:
 - a. They must not have been convicted by final judgement for:
 - i. participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime,
 - ii. corruption as defined in Article 3 of the Convention of the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and Article 2(1) of Council Framework Decision 2003/568/JHA,
 - iii. fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities of 27/11/1995,
 - iv. terrorist offences or offences linked to terrorist as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism or inciting, aiding or abetting an offence as defined in Article 4 of the aforementioned Decision,
 - v. money laundering or terrorist financing, as defined in Article 2 of the national laws for the Prevention and Suppression of Money Laundering and Terrorist financing Laws of 2007 - 2016,

- vi. child labour and other forms of trafficking in human beings in accordance with Article 2 of the Law 60(I) of 2014 on the Prevention, Fighting against Trafficking in and Exploitation of Human Beings and Protection of Victims.

It is noted that the obligation of the Contracting Authority to exclude economic operators from the procurement procedure is also applicable if the person convicted by final judgement for any of the above, is a member of an administrative, management or supervisory body of the economic operator or has powers of representation, decision or control therein.

- b. They must not be in breach of their obligations relating to the payment of taxes or social security contributions as at the Contract signing date, where these have been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the Republic of Cyprus or with those of the country where they are established.

It is noted that the Contracting Authority can exclude an economic operator from participation in the procurement procedure where it can demonstrate by any appropriate means that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions.

- c. They must not be bankrupt or the subject of insolvency or winding-up proceedings, their assets must not be administered by a liquidator or by the court, they must not be in an arrangement with creditors, their business activities must not be suspended and they must not be in any analogous situation arising from a similar procedure under national laws and regulations.
- d. They must not be guilty of grave professional misconduct which renders their integrity questionable, as this can be demonstrated by the Contracting Authority by appropriate means.
- e. They must not have entered into agreements with other economic operators aimed at distorting competition, where the Contracting Authority has reasonably plausible indications to conclude so.
- f. They must not have a conflict of interest within the meaning of Article 6 of Law, that cannot be effectively remedied without excluding them from participation in the tender procedure.
- g. They must not have distorted the competition from the prior involvement in the preparation of the procurement procedure, as referred to in Article 38 of Law, unless this can be effectively remedied without excluding them from participation in the tender procedure.
- h. They must not have shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity or a prior concession contract which led to early termination of that prior contract, damages or other comparable sanctions.
- i. They must not be guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria, must not have withheld such information or are not able to submit the supporting documents required pursuant to Article 59 of Law,

2. It is understood that if the interested economic operator is a consortium of persons, the above requirements must be met by all consortium members.
3. The same requirements must be met by the entities whose capacities the Tenderer is invoking, within the meaning of related items in paragraphs 6.3 and 6.4.
4. Where corrective actions have been taken by the tenderer in relation to any events / situations which may be considered as one of the above-mentioned grounds for exclusion, such action shall be declared by the tenderer within their tender. The Contracting Authority will examine the statements made by the Tenderer and, if judged to be unsatisfactory, before any rejection of the tender and in order to reach its final decision, it will request its views in writing.

6.3 Economic and financial standing

To participate in the tender procedure, interested economic operators must meet the following requirements concerning their economic and financial standing:

1. The average annual turnover for the last three (3) financial years must be at least equal to 100.000 Euro.
2. It is understood that if the interested economic operator is a consortium of persons, it is sufficient for the above requirements to be met cumulatively by the consortium members.
3. Pursuant to the provisions of article 63 of Law 73(I)/2016, an interested economic operator may rely on the capacities of other entities, regardless of the legal connections between them. In such a case, the tenderer must be able to prove to the Contracting Entity that it shall have at its disposal the resources necessary.

6.4 Technical and professional ability

To participate in the tender procedure, interested economic operators must meet the following requirements concerning their technical and professional ability:

1. The number of persons permanently employed by the interested economic operator, on average during the last three (3) years, should not be less than **five (5)**.
2. They must, during the last three (3) years, have completed successfully at least **three (3)** contracts, with a value amounting to at least **50.000** euro each and having as their scope the provision of consulting services related to Electricity Markets Monitoring and/or Electricity Markets Power Abuse with a minimum participation rate of ~~per cent rate~~.

The term “completed” shall mean that implementation of the respective contract is at least 80% complete.

3. They must include in the proposed Project Team which will responsible for the implementation of the Contract Scope, as key experts, personnel whose qualifications cover the minimum required as listed below:

Key Expert 1: Contractor's Project Manager

B.Sc. and/or M/Sc. in Electrical/Mechanical Engineering, and/or Accounting/Economics

Minimum ten (10) years post-graduate experience in Electricity Markets consulting

Specific Experience in Net Pool Electricity Markets Monitoring will be considered as an advantage

Key Expert 2: Team Member

B.Sc. and/or M/Sc. in Electrical/Mechanical Engineering, and/or Accounting/Economics

Minimum five (5) years post-graduate experience in Electricity Markets consulting

Key Expert 3: Team Member

B.Sc. and/or M/Sc. in Information Technology,

Minimum five (5) years post-graduate experience in Information Technology in Electricity/Energy Markets consulting

At least 60% of the project's total person-hours must be called by the Key Expert 1.

In addition to the above key experts, Tenderers may also include in the Project Team other experts, if they deem that necessary for the successful implementation of the Contract Scope.

The cost of supporting personnel must be considered when defining the financial offer or the fee rates for the experts (according to the Contract type).

4. It is understood that if the interested economic operator is a consortium of persons, the above requirements could be met cumulatively by the consortium members. It should be noted that the criterion regarding the successful implementation of contracts, could be fulfilled cumulatively only in terms of number of contracts.
5. Pursuant to the provisions of article 63 of Law 73(I)/2016, an interested economic operator may rely on the capacities of other entities, regardless of the legal nature of the links it has with them. In such a case, it must be able to prove to the Contracting Authority that it shall have at its disposal the resources necessary.

6.5 Commitment not to withdraw the Tender

1. In the eventuality that the Tenderer:
 - a. After the expiry of the deadline for the submission of Tenders, withdraws its Tender or a part thereof, during its period of validity, or

- b. has submitted any false declaration or false certificate, or
- c. Having been notified of the acceptance of its Tender by the Contracting Authority during the period of validity of the Tender, and having been notified to present himself for signing the Contract:
 - (i) Refuses or neglects to provide within the specified time limit any Certificate and/or other document and/or the Performance Guarantee and/or fulfil any other of its obligations deriving from his participation in the present tender procedure, or
 - (ii) Refuses or neglects to sign the Contract.

He may be subject to the following penalties:

- a. Declaration in default and deprivation of all of their rights to the Award of the Contract,
 - b. The penalties provided by the Law and the Regulations regarding participation in future tender procedures for the award of a public contract.
2. Furthermore, the Tenderer undertakes the obligation to pay, by way of indemnification, an amount equal to 5% of their financial offer submitted, or part thereof which has been withdrawn.

7. DETAILS OF TENDERS

7.1 Ownership

- 1. The Contracting Authority will own the Tenders submitted in under the present tender procedure and the Tenderers are not entitled to the return of their Tenders by the Contracting Authority.
- 2. It is understood that any information contained in the submitted tenders will be used by the Contracting Authority for evaluation purposes and in compliance with the provisions of the Law.

7.2 Confidentiality

- 1. The Contracting Authority shall consider the legitimate interests of the Tenderers concerning the protection of secrecy which applies to technical or trade aspects of their businesses.
- 2. Tenderers may specify in their technical offers the information which they consider to be confidential and which cannot be disclosed to third parties, stating the reasons for considering such information to be confidential.

7.3 Period of validity

- 1. The period of validity of the Tenders is the period stated in paragraph 2.16 above. Tenders specifying a shorter period of validity than the one mentioned above shall be rejected as inadmissible.
- 2. The validity of Tenders may be extended, if requested by the Contracting Authority, in accordance with the Regulation.
- 3. Should the issue of extension of the validity of the Tenders arise, the Contracting Authority shall address a written question to the tenderers prior their expiry date, as to whether they accept the extension for a specific period of time. The tenderers must reply within the period specified by the

Contracting Authority and if they refuse to extend the validity of their Tenders, such Tenders shall be rejected as inadmissible.

7.4 Variants

Variants for all or part of the Contract Scope shall be admitted to the tender procedure, on the following conditions:

- a. The variant must meet the minimum specifications laid down for variants in Annex II of the Tender Documents.
- b. The variant must include a detailed presentation of its technical and/or financial advantages and disadvantages compared to the tender which is based on the terms and specifications of the Contract put out to tender. If the proposed alternative solution presents technical and/or financial disadvantages (which in all cases are unrelated to the minimum specifications), the benefit to the Contracting Authority of selecting the variant must be documented using technical drawings, calculations or other suitable means.

7.5 Submission of Tenders for part of the Contract Scope

Tenders either for the entire Contract Scope or for the entire scope of its individual components, are accepted as these are described in Annex II of the Tender Documents.

8. FORMAT AND SUBMISSION OF TENDERS

8.1 Time and place of submission

1. Economic operators must submit their Tenders no later than the deadline for the submission of Tenders specified in paragraph 2.13.
2. Tenders must be submitted electronically, via the workspace of this tender procedure in the e-Procurement System (www.eprocurement.gov.cy).
3. Tenders which were submitted after the specified date and time are considered to be late and shall not be taken into consideration.
4. Tenderers are allowed to modify or withdraw their submitted Electronic Tenders through the e-Procurement System, any time PRIOR to the deadline.
5. With the exception of the provisions of paragraph 9.5, no clarification, modification or rejection, by the tenderer, of a term of its Tender is allowed after the expiry of the deadline for the submission of Tenders.
6. Tenderers do not have the right to withdraw their Tenders or any part thereof after the expiry of the deadline for the submission of Tenders. If a Tender or any part thereof is withdrawn after this date, the Tenderer shall be subject to penalties and in particular to:
 - a. Declaration of the Tenderer in default and deprivation of all of its rights to the Award of *the Contract*,

- b. a compensation of amount payable to the Contracting Authority equal to 5% of the Tenderer's financial offer or part thereof which has been withdrawn, and
- c. The penalties provided for by the Law and the Regulations regarding participation in future tender procedures for the award of a public contract.

8.2 Format of Tenders and Submission

1. Tenders must be drawn up as determined in the Tender Documents, and must be submitted electronically through the eProcurement system (www.eprocurement.gov.cy) in the language specified in paragraph 2.18. Manuals, if any, accompanying the Technical Offer may be submitted in the English language.
2. The Tender contains three (3) Sub-folders with all the information pertaining to the Tender, as follows:
 - A. "Eligibility Criteria sub-folder"
 - B. "Technical Part sub-folder"
 - C. "Financial Offer Sub-folder"

If the technical data of the Tender is too large in volume and, consequently, its electronic submission may cause problems, it could be submitted in hard copy or in the form of a link.

The maximum volume of data that can be submitted through the System is 100MB.

3. If the Tender contains abbreviations to denote technical or other concepts, the Tenderer must provide definitions of the abbreviations in an accompanying table.
4. All Forms / Declarations requiring signature to be submitted, must be signed by an authorised person.
5. Guidance for the preparation and submission of electronic tender can be accessed in <Help> section in the eProcurement system.

The Economic Operators may contact the e-procurement support team at the telephone numbers mentioned in the Guide, for assistance on electronic tender submission procedures, prior the deadline for the tender submission, during working hours.

6. The eProcurement System (System) allows the initiation of the electronic submission of a Tender until the deadline for the submission of Tenders specified in Tender Documents. In the case where the submission of a Tender has been initiated prior to the said deadline, then the System allows for the uploading of the Tender for a period of 30 minutes after the submission deadline. Tenders of which their uploading to the System is not completed after 30 minutes have elapsed, or the uploading has been disrupted for any reason during this period, such Tenders will be rejected and will not be registered in the System. It is understood that the initiation or re-initiation of the tender submission process after the submission deadline is not possible and any issue that may arise during this period cannot be rectified.

Taking into consideration that the Tender upload speed can be affected by a number of factors, some uncertain, it is recommended that the initiation of the Tender submission process starts on time, allowing the necessary time to complete the submission, but also rectify any possible matters that may arise.

It is specifically noted that based on the Legal Framework, each Economic Operator that utilizes the System, is solely responsible for the quality of its infrastructure, network connection speed and, subsequently, for the effectiveness achieved from the use of the System.

8.3 Contents of Sub-folders

8.3.1 Contents of “Eligibility Criteria” Sub-folder

1. The “Commitment not to Withdraw the Tender” (Form 1).
2. For certifying the eligibility for participation, one of the following:
 - a. If the Tenderer is a legal person, proof of its establishment.
 - b. If the Tenderer is a consortium of natural and/or legal persons, the above supporting documents should be submitted for each legal person participating in the consortium. A Cooperation Agreement, signed by all parties in the consortium, should also be submitted, stating:
 - (i) The intention of each participant to participate in the consortium,
 - (ii) The participation rate of each member in the consortium,
 - (iii) The consortium member to act as the leader of the consortium, and
 - (iv) The person appointed as Representative of the consortium.
3. For certifying the Economic and Financial Standing of the Tenderer, Form 3 duly completed. It should be noted that the Contracting Authority may request from the tenderers at any time during the evaluation procedure, to submit any documentation considered necessary, regarding the data declared in Form 3.
4. For certifying the technical and professional ability of the Tenderer, the following:
 - a. A list of the personnel employed by the Tenderer under a permanent employment relationship, using Form 4.
 - b. A list of a maximum of ten (10) contracts, using Form 4.
 - c. Documentation for the successful implementation of the contracts, as follows:
 - If the Employer is a Public Entity, a relevant certificate issued by the competent Public Authority.
 - If the Employer is a private entity, a certificate from that private entity or, failing this, a simple declaration by the Tenderer in which contact details are given of a person at the entity where the contract was executed.
 - d. Detailed CVs of the key experts (Form 5).
5. If the Project Team includes key experts who are not in the permanent employment of the Tenderer, declarations by these persons, stating that a relevant cooperation agreement with the Tenderer exists and that they accept the terms of the tender procedure.

- If the Tenderer relies on the capacities of other entities within the meaning of related items in paragraphs 6.3 and/or 6.4, submission of declarations by these entities, whereby they guarantee to the Contracting Authority that, should the Tenderer be appointed Contractor, they shall place at its disposal the necessary resources as appropriate (Form 14).

It is understood that in such a case, the supporting documents of items (3) and (4) should also include the information/documents concerning these entities, depending on the resources made available. In addition, the supporting document of item (2)(a) above should also be included.

In the event that the Tenderer relies on the capacities of other entities and the Project Team includes key experts that are in the permanent employment of these other entities, then the declarations by these experts as requested by paragraphs 5 above and 8.3.2, is **not** required.

6. Declaration for the protection of employees (Form 6).

Interested economic operators may obtain information on the obligations deriving from the provisions of the legislation on the protection of the employees and on working conditions currently in force in the Republic of Cyprus and applicable to the place of execution of the Contract Scope, from the Website of the Department of Labour Inspection (www.mlsi.gov.cy/dli).

8.3.2 Contents of “Technical Part” Sub-folder

The Technical Part comprises of:

1. Technical Offer Form (Form 7)
2. Analysis of the technical Part as following:

Section A:

a. UNDERSTANDING THE REQUIREMENTS OF THE CONTRACT

Detailed description of the way in which the Tenderer intends to approach the implementation of the Contract Scope, from which it should be established that the Tenderer understands:

- The requirements of the Contract, as these derive from the Terms of Reference and Technical Specifications of Annex II of the Tender Documents,
- The critical issues which are related to the achievement of the objectives of the Contracting Authority,
- The risks and assumptions which may affect the smooth implementation of the Contract Scope. It is understood that reference to such risks or assumptions shall not make such risks and assumptions a part of the Contract and shall not change the rights and obligations of the parties as these derive from the Contract.

b. STRATEGY FOR IMPLEMENTATION OF THE CONTRACT SCOPE

- Detailed description of the methodology that the Tenderer intends to adopt for implementing the Contract Scope, with emphasis on quality assurance procedures, existing know-how and the tools to be used for the provision of the requested services.

- Appropriate description and breakdown of the Contract Scope into activities and work packages to support the execution of activities, with further breakdown of work packages into specific tasks, in accordance with the requirements stated in the Terms of Reference and Technical Specifications of Annex II of the Tender Documents.
 - Identification and detailed description of the deliverables of the Contract.
 - Statement regarding the subcontractors that the Tenderer intends to use and the precise part of the Contract Scope that they shall implement.
- c. ACTIVITIES SCHEDULE
- Detailed schedule of the activities, work packages and deliverables of the Contract (Gantt chart).

Section B: Project Team

- a. A detailed description of the organisational structure of the Project Team and of the roles/duties of its members.
- b. Presentation of the Project Team in Form 8.
- c. CVs of the other experts participating in the Project Team, using Form 5. The CVs of the other experts shall be considered in the evaluation indicated in Form 10.
- d. If the Project Team includes other experts who are not in the permanent employment of the Tenderer, declarations by these persons should be submitted, stating that a relevant cooperation agreement with the Tenderer exists and that they accept the terms of the tender procedure.

8.3.3 Contents of “Financial offer” Sub-folder

1. The “Financial Offer” (Form 9).
2. For the preparation of the Financial Offer the following must be considered:
 - a. In every case where price is omitted in the Financial form for specific items/services, it shall be deemed that the corresponding price is included in the other prices and the Contractor shall not be entitled to seek any additional remuneration for these items/services.
 - b. In the case of a discrepancy between the unit rate and the total price, the unit rate shall prevail.
 - c. The rates and the total price of the offer shall be denominated in the currency specified in paragraph 2.18. Prices shall be quoted exclusive of VAT.
 - d. In completing the Financial Offer Form, the Tenderer must consider the deductions, if any, made under the law, and all other expenses required for meeting its obligations, as well as its expenses and profit.
 - e. The prices offered must be inclusive of the duties and taxes payable, and of the contributions, if any, levied under European Union laws on imported products. The prices offered shall be deemed final and shall not be affected by any variations of the aforementioned taxes, duties and/or contributions.
3. Submission of the Financial Offer in any other way whatsoever will result in its rejection.

4. If the price offered does not result clearly from the Financial Offer, the Tender shall be rejected as inadmissible.

9. CONDUCT OF THE TENDER PROCEDURE

9.1 *Opening of Tenders*

1. The opening of the tenders submitted in time in the e-Procurement System shall be carried out by authorised persons, after the expiry of the deadline for the submission of tenders as shown in paragraph 2.13, as described in the Regulations mentioned in paragraph 3.1(e).
2. The sub-folders “Eligibility Criteria” and “Technical Part” are opened.
3. Assessment and evaluation of Technical Offers are carried out for the Tenders that have not been rejected in the stage of verification of the participation credentials.
4. Opening of the “Financial offer” Sub-folder shall take place for the Tenders that have not been rejected in the technical evaluation stage.
5. For the purpose of safeguarding the basic principles of public procurement, and more specifically that of transparency, upon the opening of the “financial Offer” Sub-folder, the prices submitted by the Tenderers shall be automatically visible in the System, by all interested parties, with the reservation that the recorded prices have not undergone any sort of evaluation.

9.2 *Verification of eligibility and requirements for participation*

1. After the opening of the “Eligibility Criteria” and “Technical Part” Sub-folders, the Competent Body shall first verify the fulfilment of the requirements for participation as well as the correctness and completeness of the submitted supporting documents. The results of this verification should be recorded in a form.
2. If the verification procedure establishes that there are Tenders which do not meet the requirements or the disqualification reasons of paragraph 6.2(1)(a) and (c)-(i) are valid, and having considered any actions that have been declared pursuant to paragraph 6.2(4), the Contracting Authority considers such Tenders as inadmissible, their Technical Offers shall not be evaluated and their Financial Offers is not opened. Such Tenders shall be rejected by the Contracting Authority, through its Competent Body.

9.3 *Evaluation of Technical Part*

1. The Competent Body shall proceed with the evaluation of the Technical Offers submitted in order to establish their completeness and determine whether or not they meet the requirements and specifications of the Contract Scope, and shall enter in a special form any Offers which it deems should be rejected, detailing for each one of them the exact grounds for rejection.
2. Technical offers are evaluated in accordance with the criteria set in the relevant Table (Form 10).
3. The mark given to each individual criterion is set to a maximum of 100 points.
4. The mark of each individual criterion shall be weighted using the weighting factor for that particular criterion and rounded to 2 decimal digits.

5. By adding the weighted mark of every individual criterion within each group of criteria, the total mark of that group is obtained.
6. The final technical evaluation mark (T) is the sum of the marks of the section's criteria.
7. The final Technical Offer marks will be entered in a special form by the Competent Body, with adequate justification of the mark.
8. With the completion of the above-mentioned evaluation stages, the Award Competent Body, shall decide to reject or not the tenders. The tenders that have not been rejected from the Award Competent Body, shall proceed to the opening of their Financial Offer Sub-section.

9.4 Evaluation of Financial Offers

1. The Competent Body shall verify the contents of the Financial Offer Sub-section, to determine the degree to which they meet the requirements of the Tender Documents.
2. If the verification procedure establishes that there are Tenders which do not satisfy the relevant terms and conditions as required by the Tender Documents, then the Contracting Authority, through its Competent Body, shall reject these Tenders.
3. Evaluation of the Financial Offers shall take place on the basis of current prices, using the factor specified in paragraph 2.24 (if applicable) to convert all future payments, if any, to current prices. Evaluation of the Financial Offers shall be made on the basis of the revised Financial Offer figures, as these shall be obtained after the above conversion.
4. Where the Competent Body considers a Financial Offer to be abnormally low, the Competent Body must request in writing the Tenderer to supply, within ten (10) days of being requested to do so, those clarifications about the composition of its Offer which the Competent Body may deem advisable, as per the provisions of article 69 of Law 73(l)/2016. The Competent Body shall examine the clarifications and shall decide whether to accept or reject the tender.
5. For the Evaluation of the Financial Offers, the relative cost C of each Tender is calculated as follows:

$$C = \frac{\textit{Financial Offer of Lowest Bidder}}{\textit{Financial Offer under Evaluation}} \times 100$$

Where:

- Financial Offer under Evaluation: the total amount for which the Tenderer intends to implement the Contract,
- and,
- Financial Offer of Lowest Bidder: the price of the Tender with the lowest Financial Offer.

9.5 Clarifications on the Tenders

1. The Contracting Authority may, request a Tenderer to provide clarifications regarding the contents of its Tender, throughout the evaluation procedure. In such a case, the provision of clarifications is mandatory for the Tenderer and is not considered to be a counter-offer.
2. Where information or documentation to be submitted by economic operators is or appears to be incomplete or erroneous or where specific documents are missing, the Contracting Authorities may request the economic operators concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit provided that such requests are made in full compliance with the principles of equal treatment and transparency. Economic operators in this case are obliged, under penalty of disqualification, to supply such missing information *within ten (10) working days* from the day on which they are requested to do so.
3. From the clarifications supplied by Tenderers in accordance with the above, only those concerning the issues for which they were requested shall be considered.

9.6 Conclusion of the Evaluation

1. The establishment of the final ranking of Tenders in decreasing order of their final mark is calculated as follows:

$$L = T * 0.80 + C * 0.20$$

where:

T = the Technical Offer evaluation mark, and

C = the relative cost of the Financial Offer.

2. The Tender with the highest mark L shall be considered to be the most advantageous Tender based on best price-quality ratio.
3. In cases where the marks of two or more Tenders are the same, these Tenders are ranked in decreasing order of their Technical Offer mark.

10. CONCLUSION OF THE TENDER PROCEDURE

10.1 Award of Contract

The Contract is awarded to the Tenderer whose Tender is found, after the conclusion of the evaluation procedure, to be the most economically advantageous tender based on price-quality ration.

10.2 Notification of the results of the tender procedure

1. The Contracting Authority shall inform the candidate Contractor of the Award Decision.
2. The Contracting Authority shall notify the Tenderers of the decision taken and of the reasons for it, as per the provisions of article 54 of Law 73(I)/2016.

10.3 Cancellation of the tender procedure

1. The tender procedure may be cancelled before the specified deadline for the submission of Tenders for specific and justified reasons, by decision of the Contracting Authority.
2. Cancellation of the tender procedure after the expiry of the deadline for the submission of Tenders may be decided, provided that it is duly justified and consistent with the fundamental principles of the European Community act regarding public procurement.
3. The interested economic operators / Tenderers do not maintain and shall waive any claim against the Contracting Authority on account of such cancellation, if any, without prejudice to the rights defined in paragraph 3.3 above.

10.4 Drawing up and signature of the Agreement

1. The Tenderer who has been awarded the Contract is obliged to present himself, within a period of twenty (20) days of receipt of the relevant invitation of the Contracting Authority, for signing the relevant Agreement (Part B of the Tender Documents). If the aforementioned deadline expires and the Tenderer has not presented himself to sign the Agreement, then he shall be declared in default of the Award made to him and of all rights deriving from it, and the Tenderer shall be subject to the penalties refer to in paragraph 6.5.
2. In such a case, the Contracting Authority has the right to refer the matter back to the Competent Body, with a view to awarding the Contract to the Tenderer who has submitted the next, as per the ranking of paragraph 9.6. it is Understood that the Tenders are valid at the date of award.
3. The Tenderer who has been awarded the Contract is obliged to present himself for signing the Agreement, also providing the following items:
 - a. The Certificates / Declarations contained in the relevant Table (Form 11),
 - b. The authorisation documents for the person who shall sign the Agreement,
 - c. In the case of a consortium of persons, a final Cooperation Agreement determining the participation rate of each member in the consortium, the legal representative of the consortium and the consortium member to act as the leader of the consortium. It is understood that this information can not be different from that defined in the cooperation agreement of paragraph 8.3.1.
 - d. The Performance Guarantee for the Contract, in accordance with the provisions of the following paragraph.
4. The stamp duties of the Agreement to be signed shall be fully borne by the Contractor.

10.5 Performance Guarantee

1. The amount of the Performance Guarantee must cover 10% of the Contract price.
2. The Performance Guarantee for the Contract shall be returned to the Contractor after the final qualitative and quantitative acceptance of the Contract Scope and after the claims, if any, of both parties have been settled, while it shall be automatically forfeited in favour of the Contracting

Authority in the event of failure by the Contractor to fulfil its obligations, as these derive from the Contract.

3. The Performance Guarantee for the Contract shall be issued by financial institutions or other legal persons lawfully operating in Cyprus or in other countries of the European Union (EU) or of the European Economic Area (EEA) or in third countries who have signed and ratified the International Government Procurement Agreement (GPA) or in other countries who have signed and ratified association agreements or bilateral agreements with the EU or with the Republic of Cyprus, and having the right to issue such guarantees in accordance with the legislation of these countries.
4. The Performance Guarantee for the Contract must be in the format of Form 12.
5. In the case of a consortium, the Guarantee must state that it covers jointly and severally all consortium members.

**PART B: AGREEMENT – SPECIAL CONDITIONS OF
CONTRACT**

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PART B: AGREEMENT – SPECIAL CONDITIONS OF CONTRACT

PREAMBLE

Cyprus Energy Regulatory Authority,, having its headquarters in **Ag. Paraskevis 20, Strovolos, 2002, Nicosia** (hereinafter “Contracting Authority”)

of the one part,

and

<Business Name or Name and Surname of Contractor>, having its registered office in **<postal address>**, **<name of town/city>** (hereinafter “Contractor”), legally represented by **<name and surname, capacity>**

of the other part,

following a tender procedure no. **08/2021** for the award of the Contract for **Consultancy Services for Establishing the Wholesale Electricity Market Monitoring procedures, the related Hardware & Software Needs and Supervision Services during the Implementation process of the agreed procedures** which was awarded pursuant to award decision no. **<award decision number>**,

have agreed as follows.

1. STRUCTURE OF THE CONTRACT

1. It is explicitly agreed that the Contract consists of the following documents, which form integral parts of it:
 - a. The present Agreement.
 - b. Annex II. TERMS OF REFERENCE – TECHNICAL SPECIFICATIONS
 - c. Annex I. GENERAL CONDITIONS FOR SERVICE CONTRACTS
 - d. Annex III. *Non-Disclosure Agreement*
 - e. *Annex IV. DATA PROCESSING AGREEMENT*
 - f. The Contractor’s Tender as submitted on **<date of submission of tender>** and any correspondence relating thereto between the Contracting Authority and the Contractor.

In the case of differences between the above parts, their provisions shall be applied according to the above order of precedence.

2. CONTRACT SCOPE

1. By the present Contract, the Contractor undertakes to provide **Consultancy Services for Establishing the Wholesale Electricity Market Monitoring procedures, the related Hardware & Software Needs and Supervision Services during the Implementation**

process of the agreed procedures in accordance with the terms and conditions laid down in the Contract.

3. CONTRACT VALUE

1. The Contract Value amounts to **<amount in words (amount in numbers)>** Euro. The amount is exclusive of VAT.
2. The Contract Value, which the Contractor deems legitimate, reasonable and adequate consideration for the performance of the Contract Scope, is inclusive of all types of costs which the Contractor shall or may require in order to meet its obligations, and of the Contractor's expenses and profit, including any fees of third parties, without any further charge whatsoever to the Contracting Authority.

4. ORGANISATION AND ADMINISTRATION OF CONTRACT IMPLEMENTATION

1. The Contractor shall be fully responsible for the execution of the Contract Scope.
2. The Contracting Authority shall have the key responsibility of supervising and controlling the progress in the performance of the Contract Scope and the quality and completeness of the deliverables of the Contract.
3. Cooperation between the Contracting Authority and the Contractor in all stages of performance of the Contract Scope and until its final acceptance, shall be an obligation of both parties.
4. The Project Manager on behalf of the Contracting Authority is **Andreas Frixou**.

5. DATE OF COMMENCEMENT AND PERIOD OF IMPLEMENTATION

1. The present Contract shall enter into effect as of the time of its signature.
2. The date of commencement of the performance of the Contract Scope shall be determined by an administrative order to be issued by the Project Manager after entry of the Contract into effect, and shall be the same of such entry into effect.
3. The period of implementation of the Contract Scope shall be as stated **in paragraph 2.23, in 'Part A'**, and the periods for implementation of the individual deliverables and their delivery times shall be as stated in the Tender and in Annex II.
4. Implementation of the individual activities, as required in each case, and delivery of the individual deliverables of the Contract may be varied in time in accordance with the procedures in force, following mutual agreement and on condition that the overall period of implementation of the Contract does not change.
5. The present Contract shall cease to be in effect upon the final acceptance of all services and activities included in the Contract Scope or at an earlier time, should the Contractor perform and the Contracting Authority accept the aforementioned services and activities at

an earlier time, or if the need arises to apply the articles on termination of the Contract of Annex I.

6. REPORTS

The Contractor is obliged to draw up and submit the Reports specified in Annex II.

7. CONDITIONS AND PROCEDURE FOR PAYMENT

1. Payments shall be made in **EURO** into the bank account notified by the Contractor to the Contracting Authority in accordance with article 16.1 of Annex I.
2. The payments shall be made in accordance with the following schedule, subject to the provisions of articles 16 and 17 of Annex I:
 - a. An advance payment equal to **ten percent (10%)** of the Contract Value, after signature of the Contract and against submission by the Contractor of an Advance Payment Guarantee for the same amount, drawn up in accordance with the relevant Template (Form 13).

The Guarantee shall be issued by financial institutions or other legal persons lawfully operating in Cyprus or in other countries of the European Union (EU) or of the European Economic Area (EEA) or in third countries who have signed and ratified the International Government Procurement Agreement (GPA) or in other countries who have signed and ratified association agreements or bilateral agreements with the EU or with the Republic of Cyprus, and having the right to issue such guarantees in accordance with the legislation of these countries.

- b. 1st instalment equal to **twenty percent (20%)** of the Contract Value, after approval of the **1st** interim report, provided that all deliverables which according to the implementation schedule are due for submission prior to the specific interim report shall have been already accepted-
 - c. 2nd instalment equal to **twenty percent (20%)** of the Contract Value, after approval of the **2nd** interim report, provided that all deliverables which according to the implementation schedule are due for submission prior to the specific interim report shall have been already accepted.
 - d. 3rd instalment equal to **twenty percent (20%)** of the Contract Value, after approval of the **3rd** interim report, provided that all deliverables which according to the implementation schedule are due for submission prior to the specific interim report shall have been already accepted.
 - e. Final instalment equal to **thirty percent (30%)** of the Contract Value, after final acceptance of the entire Contract Scope.

8. PENALTIES FOR DELAY

1. In the event of a delay in the performance of work or in the submission of a deliverable under the Contract for which the Contractor is responsible, a Penalty for Delivery Delay shall be imposed.
2. Such penalty shall amount to a per cent rate of ten percent (5%) of the daily Contract Value of the work or of the deliverable, for every day of delay of delivery.
3. Any penalties imposed by the Contracting Authority in accordance with the above paragraphs shall be withheld from the next payment to the Contractor or, if such payment is insufficient, shall be collected through forfeiture of an equivalent amount of the Performance Guarantee and/or Advance Payment Guarantee.
4. In the event that the delivery periods set have been exceeded and the penalties for delay imposed in connection therewith have reached in total **five percent (5%)** of the Contract Value, the Contracting Authority may declare the Contractor in default and terminate the Contract, the specific provisions of Annex I applying.

9. PERFORMANCE GUARANTEE

1. The Contractor shall furnish a Performance Guarantee, as specified in article 1. This guarantee must remain in effect one month after the completion of the contract scope and shall be returned to the Contractor after the final acceptance of the Contract Scope, has taken place and the final payment has been made.
2. The Performance Guarantee for the Contract shall be returned to the Contractor after the final qualitative and quantitative acceptance of the Contract Scope and after the claims, if any, of both parties have been settled, while it shall be automatically forfeited in favour of the Contracting Authority in the event of failure by the Contractor to fulfil its obligations, as these derive from the Contract.

10. REPLACEMENT OF PERSONNEL

1. The Contractor shall not make changes to the personnel agreed under the terms of the Contract without notifying the Contracting Authority, which may oppose such a change on the basis of the Contract.
2. The Contractor must on its own initiative propose the replacement of Project Team members in the following cases:
 - (a) In the event of death, illness or accident of a Project Team member.
 - (b) If it becomes necessary to replace a Project Team member for any other reasons beyond the Contractor's control (resignation etc.).
3. Moreover, in the course of the execution of the Contract and on the basis of a written and justified request, the Contracting Authority may request a replacement if it considers that a Project Team member is inefficient or does not perform its duties under the Contract.

4. Where a Project Team member must be replaced, the replacement must meet the minimum qualification criteria as set in the tender documents. In cases where the evaluation process involved the marking of the project team, the replacement should meet at least the marks granted by the member to be replaced. Where the Contractor is unable to provide such a replacement, the Contracting Authority may either decide to terminate the Contract, if the due execution thereof is jeopardised, or, if it considers that this is not the case, accept the replacement, it being understood that an amendment of the Contract shall follow to reduce accordingly the Contract Value.
5. Any expenses which may be necessary due to the replacement of personnel are the responsibility of the Contractor. Where the Project Team member is not replaced immediately and sometime elapses before the new member assumes its duties, the Contracting Authority may request the Contractor to assign temporarily to the project another person pending the arrival of the new member, or to take other measures to compensate for such temporary absence.
6. The Contracting Authority, additional to any other matters that are regulated independently, may deduct an amount, according to each case, for the Project Team member that is replaced as a setoff for the period that it will be required for the new member to adjust to and get acquainted with the Contract Scope, but also for the Administrative Cost that the Contracting Authority will incur following this replacement.

11. TAX AND CUSTOMS ARRANGEMENTS

The Contract shall not be exempted from duties and taxes, including also VAT.

12. SETTLEMENT OF DISPUTES

The dispute settlement procedure of article 25 of Annex I shall apply.

13. LAW AND LANGUAGE OF THE CONTRACT

1. All matters not covered by the Contract shall be governed by the legislation of the Republic of Cyprus.
2. The language of the Contract and of all written communications between the Contractor and the Contracting Authority shall be the English language.

14. COMMUNICATION BETWEEN THE PARTIES

Any written communication relating to the present Contract is addressed as follows:

- a. by the Contractor to the Contracting Authority, to the postal address **Ag. Paraskevis, 20, Strovolos, 2002, Nicosia** or to the electronic mail address **regulator.cy@cera.org.cy** or, if sent by facsimile, to 00357 **22 667763**

- b. by the Contracting Authority to the Contractor, to the postal address **<postal address>** or to the electronic mail address **<electronic mail address>** or, if sent by facsimile, to **<facsimile number>**.

15. OTHER ARRANGEMENTS

The following modifications or additions to the General Conditions shall apply:

- An additional article is added regarding COVID-19 (Article 26) Written notice of a Party's failure or delay in performance due to COVID-19 must be given to the other party no later than five (5) business days following the event commencing, which notice shall describe the event and the actions taken to minimize the impact thereof. More specifically, the following terms shall apply per case:
 - Deliverable submission

Submission date of all due deliverables under this Agreement that become affected by the event, shall be postponed for the duration of the event. The Parties hereby agree, when feasible, not to cancel but reschedule the pertinent obligations and deliverables for mutually agreed dates as soon as practicable after event ceases to exist.
 - Personnel

Pertaining to Contractor's personnel affected or quarantined due to COVID-19, all terms of Clause 10 – Replacement of Personnel shall be applied.

Drafted in three originals, where two originals are intended for the Contracting Authority and one for the Contractor, and signed on **<day>**, **<XX/XX/20XX>**.

For and on behalf of the Contracting Authority:

Witnesses:

Signature:

1. Signature:

Title:

Name:

Name:

2. Signature:

Name:

For and on behalf of the Contractor:

Witnesses:

Signature:

1. Signature:

Title:

Name:

Name:

2. Signature:

Name:

ANNEX I: GENERAL CONDITIONS OF CONTRACT

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ANNEX I: GENERAL CONDITIONS OF CONTRACT

PRELIMINARY PROVISIONS

Article 1 – Definitions

1. The following definitions shall apply to the Contract:

ADMINISTRATIVE ORDER

Any written or verbal instruction or order issued by the Project Manager to the Contractor regarding the performance of the services.

CONTRACT

The signed agreement entered into by the Contracting Authority and the Contractor for the performance of the Contract Scope, together with all attachments thereto and all documents incorporated therein, including the present General Conditions.

CONTRACTING AUTHORITY

The Contracting Authority or the Contracting Entity entered into an agreement with the Contractor for executing the Contract.

CONTRACTOR

The natural or legal person or the consortium of natural and/or legal persons entering into an agreement with the Contracting Authority for performing the services.

CONTRACT SCOPE

The provision by the Contractor of all the services under the contract.

CONTRACT VALUE

The amount specified in article 3 of the Special Conditions.

DAY

Calendar day.

FEE-BASED / LABOUR-BASED CONTRACT

A contract whereby services are provided for an agreed fee per working day, week or month, for each category of personnel employed.

GENERAL DAMAGES

The amount, not stated previously in the Contract, which is awarded by a Court or determined by arbitration procedure, or agreed between the parties, as compensation payable to the injured party in the event of breach of contract by the other party.

GLOBAL PRICE CONTRACT

A contract whereby services are provided for a total agreed price, or for individual agreed prices

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for the individual services under the total Contract Scope.

LIQUIDATED DAMAGES OR PENALTY CLAUSE

The compensation specified in the Contract as being payable by one contracting party to the other for failure by the latter to fulfil their obligations as set out in the Contract.

MONTH

A calendar month.

PROJECT MANAGER

The natural or legal person responsible for monitoring the implementation of the Contract and for handling the Contract on behalf of the Contracting Authority.

REGULATIONS

The Regulations of 2016 (KDP 138/2016) on the Execution of Public Contracts (Supplies, Works and Services), including any amendments thereto.

SERVICES

The activities to be performed by the Contractor under the Contract, such as advisory support, technical assistance, development of studies, compilation of manuals, education and training, maintenance or supervision.

TERMS OF REFERENCE

The document (Annex II of the Tender Documents), prepared by the Contracting Authority, which defines its requirements and/or objectives in respect of the requested provision of services and specifies, where necessary, the methods and resources to be used by the Contractor and/or the results to be achieved.

2. Where the Contract provides for time limits or periods of time, these shall start from the day following the day on which the action or event which serves as the starting point of such a period occurs. Should the last day of the period fall upon a non-working day, then the period shall expire at the end of the first working day following the last day of the period.
3. If the Contract is signed in more than one language, the Greek version shall prevail in the event of inconsistencies between the different language versions.
4. The headings and titles in the present General Conditions shall not be taken as part thereof or be taken into consideration in the interpretation of the Contract.
5. Were the context so permits, words in the singular shall be deemed to include the plural and vice versa, and words in the masculine shall be deemed to include the feminine and vice versa.

Article 2 – Notices and Written Communications

1. Whenever there is a deadline for the receipt of a written communication, the sender shall take all necessary measures to ensure timely receipt of the communication.

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2. Any notice, consent, approval, certificate or decision by any person required under the Contract shall be in writing, unless otherwise specified in the Contract.
3. Any verbal instructions or orders shall take effect as of their transmission and shall be subsequently confirmed in writing.

Article 3 – Ownership - Intellectual and Property Rights

1. All Contract deliverables, interim and final reports, and data such as maps, diagrams, drawings, specifications, plans, statistics, calculations, as well as any and all other relevant document or material acquired, compiled or prepared by the Contractor in the execution of the Contract, shall be treated as confidential and shall be the absolute property of the Contracting Authority. The Contractor is obliged to deliver all such documents and data to the Contracting Authority upon completion of the Contract.
2. The Contractor may retain copies of such documents and data but is not allowed to use them for purposes other than the purposes of the Contract.
3. Any results or rights thereon, including copyright and other intellectual and industrial property rights obtained in the execution of the Contract, shall become the absolute property of the Contracting Authority, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where intellectual or industrial property rights already exist.
4. The Contractor shall defend itself, at its own expense, against infringements or alleged infringements which may be reported by third parties with regard to patents, plans, intellectual property or trade secrets and, in the event that the Contracting Authority is prevented from using the Contract deliverables on account of such a reason, shall modify or replace the deliverables at its own expense, without prejudice to the provisions of Article 19.

OBLIGATIONS OF THE CONTRACTING AUTHORITY

Article 4 – Obligations of the Contracting Authority

1. The Contracting Authority shall provide to the Contractor as soon as possible any information and/or documentation at its disposal which may be relevant to the execution of the Contract. If this information is contained in documents, such documents shall be returned to the Contracting Authority at the end of the period of execution of the Contract.
2. The Contracting Authority shall co-operate with the Contractor for providing information which the latter may reasonably request in order to execute the Contract.
3. In discharging their duties, the Project Manager and all persons authorised by him or by the Contracting Authority must not divulge to any person other than those entitled to know, any information which they have obtained in the course and on occasion of the execution of the Contract and which refers to technical or commercial matters or to work or production methods of the Contractor.

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4. The Contracting Authority shall inform its employees, agents and representatives of all such instructions or information as may be necessary or appropriate to facilitate prompt and effective performance of the services by the Contractor.
5. The Contracting Authority shall provide to the Contractor, if the latter so requests, information in connection with securing copies of laws, regulations and information on personnel insurance and the protection of employees, on local customs, taxation, orders or by-laws of the Republic of Cyprus, which may affect the Contractor in the performance of its obligations under the Contract.
6. In the event that the Terms of Reference provide that all or part of the Services shall be provided by the Contractor at premises of the Contracting Authority, the latter undertakes to:
 - Secure adequate office space for the Contractor's personnel, in accordance with the commonly acceptable standards on working conditions.
 - Ensure the access of the Contractor's personnel to the work area, at such days and times as provided for in the Terms of Reference.

OBLIGATIONS OF THE CONTRACTOR

Article 5—Assignment NOT APPLICABLE

- ~~1. An assignment is any agreement whereby the Contractor transfers the Contract or part thereof to a third party without the prior written consent of the Contracting Authority.~~
- ~~2. Approval of an assignment by the Contracting Authority presupposes that the third party to which such assignment is made meets the eligibility criteria which applied to the award of the Contract. To allow the Contracting Authority to check that the eligibility criteria are met, the Contractor must submit all necessary data and information concerning such third party.~~
- ~~3. Approval of an assignment by the Contracting Authority shall not relieve the Contractor of its obligations for the part of the Contract already executed or for the part not assigned.~~
- ~~4. The Contracting Authority reserves the right to request that the third party to which the Contract is assigned also assume the obligations for the part of the Contract already executed.~~

Article 6—Subcontracting NOT APPLICABLE

- ~~1. To implement the Contract Scope, the Contractor is limited to using the subcontractors identified in its tender for the corresponding part of the Contract Scope as stated in the Contractor's tender for each such subcontractor.~~
- ~~2. The Contractor may exceptionally, after the Contract has been signed, enter into a new subcontract or replace a subcontractor identified in its tender, or undertake itself the part of the Contract Scope which it had stated in its tender that would be implemented by a subcontractor, after obtaining the prior written authorisation of the Contracting Authority.~~
- ~~3. In connection with the requirement for authorisation by the Contracting Authority under paragraph~~

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~~2, the Contractor must notify the Contracting Authority of the parts of the Contract Scope which it intends to assign to the subcontractor.~~

- ~~4. The Contracting Authority shall, within a reasonable time of receipt of the relevant application, notify the Contractor of its decision, giving full justification in case such authorisation is denied.~~
- ~~5. It is understood that approval of such application by the Contracting Authority shall not relieve the Contractor of any of its obligations under the Contract.~~
- ~~6. It is understood that the part of the Contract Scope assigned to a subcontractor by the Contractor can not be assigned to third parties by the subcontractor.~~
- ~~7. The Contractor shall be responsible for the acts, defaults and negligence of its subcontractors and their agents or employees, as if they were the acts, defaults or negligence of its own, its agents or employees.~~
- ~~8. If a subcontractor is found by the Contracting Authority to be incompetent in discharging its duties, the Contracting Authority may request the Contractor forthwith, either to provide a new subcontractor as a replacement, or to undertake itself the performance of the services.~~

Article 7 – Compliance Obligations and Legal Liability

1. The Contractor shall respect and abide by all laws and regulations in force in the Republic of Cyprus and shall ensure that its personnel, its dependants, and any of its subcontractors or associates also respect and abide by all such laws and regulations. The Contractor shall indemnify the Contracting Authority against any claims and proceedings arising from any infringement by the Contractor, its employees and dependants, of such laws and regulations.
2. In the case of Contracts relating to matters relevant to the processing of personal data, the Contractor warrants that it will respect and comply with all applicable laws and regulations on the protection of individuals with regard to the processing of personal data and that it will assume responsibility and will be able to prove compliance to such laws and regulations. In addition, it will ensure that its personnel and any subcontractors or affiliates and persons under its control will also respect and comply with these laws and regulations. (Relevant is EU Regulation 2016/679 of 27 April 2016 of the European Parliament and of the Council).
3. The Contractor warrants to the Contracting Authority that the Contract Scope shall be performed in accordance with the terms and conditions of the Contract, the technical rules and the internationally recognised standards applicable to the modern methods for the provision of the specific services, shall have all the properties and features provided for in the present Contract and shall meet the specifications, results and properties as specified in the Tender Documents or as allowed to be defined by the Contracting Authority during the execution of the Contract.
4. The Contractor shall comply with the Administrative Orders given by the Project Manager. Where the Contractor considers that the requirements of an Administrative Order exceed the authority of the Project Manager or the scope of the Contract, it shall notify in writing the Contracting Authority, justifying its opinion, within 30 days of receipt of such Administrative Order. Execution of the Administrative Order shall not be suspended because of this notice.

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5. The Contractor is obliged to provide the Contracting Authority or the Project Manager or any person authorised by the Contracting Authority with evidence regarding the execution of the Contract as well as with any information concerning the Contract Scope.
6. In cases of contracts the control of which, in accordance with the European Law, falls within the jurisdiction of the European Commission or the European Court of Auditors or the European Anti-Fraud Office or any other European body, the Contractor warrants that it shall allow the unobstructed conduct of accounting audits and of other checks or verifications in its premises and in the records that it keeps, and undertakes that the same shall apply to its subcontractors and to any associate under the Contract, both during the execution of the Contract and for a period of seven (7) years thereafter.
7. In cases of contracts the control of which, in accordance with the National Law, falls within the jurisdiction of the Superintendent of Internal Audit or the Auditor General or any other authorised body of the Republic of Cyprus, the Contractor warrants that it shall allow the unobstructed conduct of accounting audits and of other checks or verifications in its premises and in the records that it keeps, and undertakes that the same shall apply to its subcontractors and to any associate under the Contract, for such a period time as provided for by the provisions of the legislation in force.
8. If the Contractor is a consortium of two or more persons, all such persons shall be jointly and severally bound to fulfil the terms of the Contract. The person designated by such consortium to act on its behalf for the purposes of this Contract shall have the authority to bind the consortium.
9. Any change in the composition of the consortium without the prior written consent of the Contracting Authority shall be considered to be a breach of contract.

Article 8 – Confidentiality - Secrecy

1. All documents, data and information which the Contractor receives from the Contracting Authority as part of its contractual obligations or of which it becomes aware on account of its contractual relation with the Contracting Authority or which are the result of studies, tests or research conducted during the Contract or for the purposes of the execution thereof, are confidential.
2. The Contractor is not entitled to publish or disclose such information and data to any third party, save only to the persons employed by it or associated with it who are directly involved with the contents of the Contract and with the performance of its Scope, and shall ensure that such employees are informed of and agree with the confidentiality obligation, the Contractor being further obliged to impose such obligation to its subcontractors, if any.
3. Should the Contractor be in breach of its obligation as above, the Contracting Authority reserves the right to terminate the Contract as per the provisions of Article 23 and seek payment for all losses which it estimates it may have suffered on account of the leak.
4. The Contractor shall not make any public statements regarding the Contract Scope or the Services that it provides without the prior authorisation of the Contracting Authority, and shall not engage in any activity which is in conflict with its obligations towards the Contracting Authority under the

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Contract. The Contractor shall not bind the Contracting Authority in any way without its prior written consent and shall clarify, where required, this obligation to third parties.

5. The Contractor shall not be subject to the obligations of the present Article as regards the know-how which it may acquire on account of the execution of the Contract Scope.

Article 9 – Code of Ethics

1. The Contractor and its personnel shall respect human rights and undertake not to offend the political, cultural and religious practices prevailing in the Republic of Cyprus.
2. If the Contractor or any of its subcontractors, personnel, agents or employees offers to give or agrees to offer or to give or gives to any person, any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any act in relation to the Contract or any other contract with the Contracting Authority, or for showing favour or disfavour to any person in relation to the Contract or any other contract with the Contracting Authority, then the Contracting Authority may terminate the Contract, without prejudice to any accrued rights of the Contractor under the Contract.
3. The payments to the Contractor under the Contract shall constitute the only income or benefit it may derive in connection with the Contract, and neither it nor its personnel shall accept any commission, discount, allowance, indirect payment or other consideration in connection with, or in relation to, or in discharge of, its obligations under the Contract.
4. The Contractor shall not have the benefit, whether directly or indirectly, of any royalty, gratuity or commission in respect of any patented or protected article or process used for the purposes of the Contract, without the prior written approval of the Contracting Authority.

Article 10 – Conflict of interests

1. The Contractor shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective execution of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during the execution of the Contract must be notified in writing to the Contracting Authority without delay.
2. The Contracting Authority reserves the right to verify that such measures are adequate and may request that additional measures be taken, if this is considered necessary. The Contractor shall ensure that its personnel, including its Management, are not involved in a situation which could give rise to conflict of interests. The Contractor shall replace immediately and without compensation from the Contracting Authority any member of its personnel exposed to such a situation.
3. The Contractor shall refrain from any contact which would compromise its independence or that of its personnel. If the Contractor fails to maintain such independence, the Contracting Authority may, without prejudice to compensation for any damage which it may have suffered on this account,

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terminate the Contract immediately.

4. Contractor shall be excluded from participation in future tender procedures in case those procedures are connected /related with the present contract and conflict of interest is present which endangers the compliance to principle of equal treatment, in accordance with Article 38 of Law 73(I)/2016.

Article 11 – Protection of employees

1. The Contractor must fulfil its obligations deriving from the provisions of the legislation in force in the Republic of Cyprus, in relation to the protection of its employees and to working conditions.
2. The Contractor is obliged to insure its personnel with the competent insurance organisations and maintain such insurance in effect throughout the execution of the Contract Scope, and shall ensure that its subcontractors shall do the same.
3. The Contracting Authority undertakes that it shall take all appropriate measures for the protection and safety of the personnel of the Contractor and of its subcontractors in the event that implementation of the Contract Scope shall take place at its own premises, and especially that it shall advise the Contractor in writing of the peculiarities, if any, of its premises.

Article 12 – Trainees

1. If required by the Terms of Reference, the Contractor shall provide training for the period of execution of the Contract for trainees designated by the Contracting Authority under the terms of the Contract.
2. Training by the Contractor of the above trainees shall not confer on them the status of Contractor employees. They must however comply with the instructions of the Contractor and with the provisions of Articles 8 and 9, as if they were employees of the Contractor. The Contractor may, by a justified written request, request the Contracting Authority to replace any trainee whose work or conduct is not satisfactory.
3. Unless otherwise provided for in the Contract, the remuneration of trainee employees of the Contracting Authority and the travel, accommodation and all other expenses incurred by such trainees shall be borne by the Contracting Authority.

IMPLEMENTATION OF CONTRACT SCOPE

Article 13 – Approval of Reports - Acceptance of Deliverables

1. The approval by the Contracting Authority of the reports and deliverables prepared and submitted by the Contractor shall certify that they comply with the terms of the Contract.
2. The Contracting Authority shall inform the Contractor of its decision regarding the reports and/or deliverables it has received within fifteen (15) days of receiving them, giving reasons should it

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reject the reports and/or deliverables or request amendments. For the final report, the time limit is extended to twenty (20) days.

3. The reports and/or deliverables shall be deemed to have been approved by the Contracting Authority if it does not expressly inform Contractor of any comments within the specified time constraints.
4. Where a report and/or deliverable is approved by the Contracting Authority subject to amendments to be made by the Contractor, the Contracting Authority shall prescribe a reasonable period of time for making the amendments requested.
5. Where the final progress report of a global price Contract is not approved, the dispute settlement procedure shall be automatically invoked.
6. Where the Contract is executed in stages-activities, the execution of each stage-activity shall be subject to the approval by the Contracting Authority of the preceding stage-activity, except in cases where the phases-stages-activities are carried out concurrently.

Article 14 – Amendment to the Contract

1. Any amendment to the Contract must be of a form that shall not substantially impair competition, and should be specified in writing by way of an Addendum to the Contract, to be concluded under the same terms as the original Contract.
2. If the request for an amendment comes from the Contractor, the latter must submit such a request to the Contracting Authority at least thirty (30) days before the amendment is intended to enter into force, except in cases which are duly substantiated by the Contractor and accepted by the Contracting Authority.
3. Prior to any administrative order for variation issued by the Contracting Authority, the Project Manager shall notify the Contractor of the nature and form of such variation. As soon as possible after receiving such notice, the Contractor shall submit to the Project Manager a written proposal containing:
 - The description of the service to be performed or of the measures to be taken and the programme for execution, and
 - Any necessary modifications to the programme of execution or to any of the Contractor's obligations under the Contract.
4. Following the receipt of the Contractor's proposal, the Competent Body, in accordance with the Regulation, shall decide as soon as possible whether or not the variation shall be carried out. If the variation is approved, then the Project Manager shall issue a relevant Administrative Order.
5. Upon receipt of the Administrative Order requesting the variation, the Contractor shall proceed to carry out the variation and in so doing shall be bound by the present General Conditions as if such variation were specified in the Contract.
6. No amendment shall be made retroactively.

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Article 15 – Suspension of Execution

1. The Contracting Authority shall be entitled to suspend performance of the Services or of any part thereof for such time and in such a manner as it may deem necessary.
2. If the period of suspension exceeds one hundred and twenty (120) days and the suspension is not due to the Contractor's default, the Contractor may, by notice to the Project Manager, request permission to resume the relevant activities within thirty (30) days or terminate the Contract.
3. Where the award procedure or execution of the Contract is vitiated by substantial errors or irregularities or by fraud, the Contracting Authority shall suspend execution of the Contract to verify whether or not any alleged substantial errors and irregularities or fraud have indeed occurred. If they are not confirmed, execution of the Contract shall resume as soon as possible.
4. Where such errors, irregularities or fraud are attributable to the Contractor, the Contracting Authority may in addition refuse to make payments or may recover monies already paid, in proportion to the seriousness of the errors, irregularities or fraud.

PAYMENTS AND DEBT RECOVERY

Article 16 – Payments

1. Upon commencement of the Contract, the Contractor shall notify in writing to the Contracting Authority the bank account to which it wishes the payments of the Contract Value to be made by completing the Form provided by the Contracting Authority. The Contracting Authority reserves the right to oppose the Contractor's choice of bank account.
2. All payments made by the Contracting Authority into the above bank account shall have releasing effect.
3. The Contract Value shall be paid to the Contractor in the manner described in article 7 of the Special Conditions. The period of time between the time of commencement of the Contractor's right to remuneration, as such right is specified in article 7 of the Special Conditions, and the date on which the account of the Contracting Authority is debited, shall not exceed thirty (30) calendar days.
4. The Contracting Authority may halt the countdown to the expiry of this deadline for any part of the invoiced amount disputed by the Project Manager, notifying the Contractor that that part of the invoice is not admissible, either because the amount in question is not due for payment or because the relevant report can not be approved and the Contracting Authority considers the conduct of further checks to be necessary. In such cases, the Contracting Authority must not unreasonably withhold any non-disputed part of the invoiced amount, but may request clarifications, modifications or additional information, which must be supplied within thirty (30) days of the relevant request being made. The countdown to the expiry of the deadline of the above paragraph (3) shall resume on the date on which the Contracting Authority shall receive a correctly formulated invoice.
5. When the above-mentioned deadline shall expire, the Contractor may, within two weeks of expiry

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of the deadline set for the overdue payment to be made, claim interest on the payment so overdue at the default rate specified by a decree of the Minister of Finance based on the “Uniform Public Default Rate Law of 2006”.

6. Payment of the final balance shall be subject to the performance by the Contractor of all its obligations relating to the execution of all stages or parts of the Services and to the approval by the Contracting Authority of the final stage or part of the Services. Final payment shall take place only after the final report shall have been submitted by the Contractor and approved as satisfactory by the Contracting Authority.
7. If any of the following events occurs and persists, the Contracting Authority may, by written notice to the Contractor, suspend, in whole or in part, the payments due to the Contractor under the Contract:
 - The Contractor defaults in the execution of the contract.
 - Any other condition for which the Contractor is responsible and which, in the opinion of the Contracting Authority, interferes, or threatens to interfere, with the successful completion of the Contract.

Article 17 – Recovery of debts from the Contractor

1. Any amount which the Contracting Authority has paid in excess of the Contractor’s rights under the Contract, shall be repaid by the Contractor to the Contracting Authority within thirty (30) days of receipt by the Contractor of the request for repayment.
2. Should the Contractor fail to make repayment within the above deadline, the Contracting Authority may increase the amounts due by adding interest at the default rate specified by a decree of the Minister of Finance based on the “Uniform Public Default Rate Law of 2006”.
3. Should the Contractor fail to make repayment of the initial amount and of any interest added in accordance with paragraph 2 within thirty (30) days of expiry of the deadline of paragraph 1, the Contracting Authority may proceed to forfeiture of corresponding part of the Performance Guarantee.
4. Amounts to be repaid to the Contracting Authority may be offset against amounts of any kind due to the Contractor. This shall not affect the right of the Contractor and the Contracting Authority to agree on repayment by instalments.
5. Bank charges arising from the repayment of amounts due to the Contracting Authority shall be borne entirely by the Contractor.

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BREACH OF CONTRACT – CONTRACT TERMINATION

Article 18 – Breach of contract

1. The parties shall be in breach of contract when either one of them fails to discharge any of its contractual obligations.
2. Where a breach of contract occurs, the party injured by the breach shall be entitled to the following remedies:
 - Damages, and/or
 - Termination of the Contract for the reasons specified in Articles 21 and 22 of the present Annex.
3. In any case where the Contracting Authority is entitled to damages, it may deduct such damages from any amounts due to the Contractor or call on the Performance Guarantee.

Article 19 – Insurance – Indemnification

1. At its own expense, the Contractor shall indemnify, protect and defend the Contracting Authority and its employees from and against all actions, claims, losses or damage arising from the execution of the Contract by the Contractor.
2. At its own expense, the Contractor shall, upon request of the Contracting Authority, remedy any defect in the performance of the services in the event of the Contractor's failure to perform its obligations under the contract.
3. The Contractor shall have no liability for actions, claims, losses or damage which the Contractor may prove, by presenting the true facts to the Contracting Authority, that they are caused by:
 - The Contracting Authority omitting to act on any justified recommendation of the Contractor, or requiring the Contractor to apply a decision or recommendation with which the Contractor justifiably disagrees or about which it is expressing serious and justified reservations,
 - Improper execution, by the employees or independent contractors of the Contracting Authority, of the Contractor's instructions which have been adopted by the Contracting Authority.
4. The Contractor shall remain responsible for any breach of its obligations under the Contract for such period after the Services have been performed as may be provided for by the legislation governing the Contract or specified in the Tender Documents.

Article 20 – Administrative and financial penalties to the Contractor

1. In the event that Article 21 on termination of the Contract is applied, then, in addition to the provisions of the said Article, the Contractor may be deprived of the right to participate in future tender procedures, either permanently or for a specific period of time, in accordance with the provisions of the Regulation.

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2. Additionally, in such a case the Contracting Authority shall proceed immediately to forfeiture of the Performance Guarantee. In the event that the damage suffered by the Contracting Authority exceeds the amount of the aforementioned guarantee, then the Contracting Authority shall reserve the right to take against the Contractor the legal or other measures which it considers necessary in order to redress the situation.
3. As regards penalties for delay, the specific provisions of the article 8 of the Special Conditions of Contract shall apply.

Article 21 – Termination by the Contracting Authority

1. This Contract shall terminate automatically if it has not given rise to any payment within a period of one year after its signature by both parties.
2. Termination shall be without prejudice to any other rights or powers of the Contracting Authority and the Contractor under the Contract.
3. In addition to the grounds for termination defined in the present General Conditions, the Contracting Authority may, after giving seven (7) days' notice to the Contractor, terminate the Contract in any of the following cases:
 - the contract has been subject to a substantial modification, which would have required a new procurement procedure pursuant to Article 72 of Law 73(I)/2016 or Article 86 of Law 140(I)/2016.
 - the contractor has, at the time of contract award, been in one of the situations referred to in Article 57(1) of Law 73(I)/2016 or Article 86 of Law 140(I)/2016.
 - the contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the Treaties and this Directive that has been declared by the Court of Justice of the European Union in a procedure pursuant to Article 258 TFEU.
 - The Contractor fails substantially to fulfil its contractual obligations.
 - The Contractor does not comply within a reasonable time with the notice given by the Project Manager, whereby the Contractor is requested to repair every negligence or failure to perform its contractual obligations which seriously affects the proper execution of the Contract within the deadlines prescribed.
 - The Contractor refuses or neglects to carry out Administrative Orders given by the Project Manager.
 - The Contractor assigns the Contract or subcontracts a part thereof or replaces subcontractors without the authorisation of the Contracting Authority.
 - Any other legal disability hindering execution of the Contract occurs.
4. In addition to the grounds for termination defined in the present General Conditions, the Contracting Authority may, after giving thirty (30) days' notice to the Contractor, terminate the Contract when the circumstances under which the tender procedure was announced was

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published have changed to such an extent that the scope of the contract is no longer necessary or when any other serious grounds apply.

5. Except in the case of termination of Contract mentioned in the above paragraph 3, the Contracting Authority may thereafter complete the Services itself or conclude any other contract with a third party for implementation of the specific scope of the present Contract, the Contractor covering the difference, if any, in price. The Contractor's liability for delay in completion shall cease immediately upon termination of the contracts by the Contracting Authority, without prejudice to any liability which may have already been incurred.
6. Upon receiving notice of termination of the Contract, the Contractor shall take immediate measures to bring the Services to a prompt and orderly close and in such a way as to keep costs to a minimum.
7. The Project Manager shall, as soon as possible after termination, certify the value of the Services and all amounts due to the Contractor as at the date of termination.
8. The Contracting Authority shall not be obliged to make any further payments to the Contractor until the Services are completed. Following the completion of the Services, the Contracting Authority shall be entitled to recover from the Contractor the extra costs, if any, to be incurred for the completion of the Services, or shall pay the balance due to the Contractor.
9. If the Contracting Authority terminates the Contract, it shall be entitled to recover from the Contractor any loss it has suffered up to the maximum amount determined in the Contract. If no maximum amount is determined, the Contracting Authority shall be entitled, without prejudice to its other remedies provided for by the Contract, to recover such part of the Contract value as is attributable to the part of the Contract Scope which has not, by reason of the Contractor's failure, been satisfactorily completed.
10. Additionally, the Contractor may be subject to administrative and financial penalties as described in Article 20.
11. The Contractor shall not be entitled to claim, over and above the amounts due to it for work already performed, compensation for any damage or loss it has suffered.
12. If the Contractor is a consortium of legal and/or natural persons and one or more of the grounds for termination of the Contract listed in paragraph 3 refers to one of the consortium members, the other consortium members, being jointly responsible, shall be obliged to complete the implementation of the Contract Scope without differentiation regarding the contractual obligations of the Contractor. In any case, the Contracting Authority shall reserve the right to terminate the Contract if the consortium member for which the grounds for disqualification apply is the coordinator of the consortium, or if the participation percentage of this member gives rise to reasonable suspicions of inability of the other members to fulfil the contractual obligations.

Article 22 – Termination by the Contractor

1. The Contractor may, after giving thirty (30) days' notice to the Contracting Authority, terminate the Contract if the Contracting Authority:

[Type here]

- Does not pay to the Contractor the amounts due on the basis of the certificate issued by the Project Manager after the expiry of the deadline of two months, or
 - Consistently fails to fulfil its contractual obligations after repeated reminders, or
 - Suspends the progress of the Services or of any part thereof for more than one hundred and twenty (120) days for reasons not stated in the Contract or for which the Contractor is not responsible.
2. Such termination shall not affect any other rights of the Contracting Authority or the Contractor which derive from the Contract.
 3. In the event of such termination, the Contracting Authority shall pay the Contractor compensation for any loss or injury the Contractor may have suffered. Such additional payment may not be such that the total payments exceed the Contract Value.

Article 23 – Force Majeure

1. Neither party shall be considered to be in default of its contractual obligations if the fulfilment of such obligations is prevented by any force majeure event which arises after the date of signature of the Contract by both parties.
2. For the purposes of this Article, the term “Force Majeure” shall mean acts of God, strikes (except if these are limited to the persons in the Contractor’s employment), lock-outs or other industrial disturbances, hostilities, wars (whether declared or not), blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosions and any other similar unforeseeable events which are beyond the control of the parties, are occurring in the territory of the Republic of Cyprus over which Government exercises effective control or in the place where the Contractor is established, and cannot be overcome by due diligence by either party.
3. If the Contractor invokes the occurrence of force majeure, it shall be obliged, within twenty (20) days of the occurrence of the events constituting the force majeure, to report these in writing and to present, if required, the necessary evidence to the Contracting Authority.
4. If, within the above deadline, the Contractor does not report the events and does not present the necessary evidence, then it shall be deprived of the right to invoke the existence of force majeure.
5. The Contracting Authority shall be obliged to reply, within twenty-five (25) days of receiving the aforementioned report of the Contractor. If the Contracting Authority does not reply within the above period of time, it shall be deemed to have accepted such force majeure event.
6. If the Contracting Authority invokes the occurrence of force majeure, it shall be obliged to inform the Contractor within twenty (20) days of the occurrence of the events constituting the force majeure. If the force majeure affects the Contractor’s activities, the Contracting Authority shall suspend performance of the Services.

[Type here]

Article 24 – Death

1. If the Contractor is a natural person, the Contract shall be automatically terminated if that person dies. However, the Contracting Authority shall examine any proposal made by that person's heirs or beneficiaries, should they express their wish, within fifteen (15) days of the date of decease, to continue the Contract. The decision of the Contracting Authority shall be notified to the parties concerned within thirty (30) days of receipt of the said proposal.
2. If the Contractor is a group of natural persons and one or more of them die, a report shall be drawn up, which shall be agreed between the parties, on the progress of the Services. The Contracting Authority shall decide whether to terminate or continue the Contract in accordance with the undertaking given by the survivors and by the heirs or beneficiaries, as the case may be, within fifteen (15) days of the date of death. The decision of the Contracting Authority shall be notified to the parties concerned within twenty (20) days of receipt of such a proposal.
3. Such persons shall be jointly and severally liable for the proper execution of the Contract to the same extent as the Contractor. Continuation of the Contract shall be subject to the rules relating to issue of the guarantee provided for in the Contract.

Article 25 – Settlement of disputes

1. If a dispute arises between the Contracting Authority and the Contractor in connection with, or as a result of, the Contract or its execution, either during or after such execution, including any dispute arising from any decision, opinion or Administrative Order of the Project Manager, then either the Contracting Authority or the Contractor shall notify the other party accordingly, with notification to the Project Manager. The notification must state that it is submitted in accordance with the present article.
2. In such an event, both parties shall make every effort to settle amicably such dispute within the next fifty-six (56) days.
3. Any dispute for which amicable settlement has not been reached within fifty-six (56) days of the date on which the above notification has been served, shall be settled finally in the Courts of the Republic of Cyprus.

**ANNEX II: TERMS OF REFERENCE – TECHNICAL
SPECIFICATIONS**

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1. BACKGROUND INFORMATION

Cyprus Energy Regulatory Authority calls for tenders for the provision of Consultancy Services for Establishing the Wholesale Electricity Market Monitoring procedures & the related Software and Hardware needs and Supervision Services during the implementation process of the agreed procedures required for the operation of the competitive electricity market in Cyprus.

1.1 General background

CERA was established by Law N.122 (I) 2003 according to European Directive 99/92/EEC. It is the National Independent Energy Regulatory Authority of the Republic and is legally distinct and functionally independent of any other public or private entity. CERA consists of Dr. Andreas Poullikkas (President), Mr. Philippos Philippou (Vice President) and Mr. Neophytos Hadjigeorgiou (Member).

According to the Electricity Market Regulation, CERA has the following objectives, powers and responsibilities:

- It acts as the Dispute Resolution Authority.
- It is a single point of contact for informing consumers.
- Promotes Renewable Energy Sources.
- Encourages and facilitates genuine competition in the Electricity Market, avoiding adverse discrimination and aiming ultimately at reduced prices.
- Protects the interests of the final consumers.
- Promotes the development of an economically viable and efficient Electricity Market.
- Ensures adequacy in electricity supply for the satisfaction of all reasonable needs and demands for electricity.
- Safeguards the Continuity, Quality, Reliability and Security of electricity supply.
- Encourages the efficient use and generation of electricity.
- Issues, controls, enforces, amends and recalls Licences or grants Exemptions from a Licence.
- Ensures that Licensees operate efficiently and are in a position to finance the business activities for which the Licence has been issued.
- Determines, publishes and imposes quality standards with which Licensees have to comply.
- Regulates tariffs, charges and other terms and conditions to be applied by Licensees, for any services provided according to the terms of their Licences.
- Promotes the development of regional markets within the Community so that they operate competitively and properly in order to achieve security of supply.
- Promotes the elimination of restrictions in the electricity trade among Member States, including developing appropriate cross-border transmission capacities to meet demand and enhance the integration of national markets.

- Ensures that the Rules governing the operation of electricity networks and the electricity market (Transmission and Distribution Rules and the Electricity Market Rules) are prepared and approved in accordance with the Law.
- Sets the rules or the procedures under which complaints are examined which relate to services offered by the Licensees including, when it considers it appropriate, the carrying out of investigations and the taking of decisions for such complaints.
- Carries out investigations, either following the submission of a complaint or initiated by CERA ex officio.
- Imposes administrative fines in the event of violation of laws or regulations.
- Ensures the implementation of the provisions of Regulation (EU) no 1227/2011.
- Promotes Research and Development in the field.
- Prepares and implements long-term planning regarding capacity for generation, transmission and distribution on a long-term basis, in order to meet the demand for electricity in the system and to secure supplies to customers and includes security of supply, energy efficiency / demand-side management and achievement of environmental objectives and targets for energy from renewable sources.

During the execution of its duties and exercising its authorities and jurisdictions, CERA can:

- Take decisions in accordance with the provisions of the Law and the Regulations issued thereunder.
- Take regulatory decisions to determine how it will regulate the electricity market and which licensees will be bound by such a regulatory decision.
- To issue Regulations on the basis of the Law.

1.2 Tender Specific background

In 2015 Regulatory Decision (RD) 01/2015 was issued by CERA for the «The new electricity market arrangements in Cyprus». The RD was the high-level design for the restructuring of the wholesale electricity market and the net pool electricity market model was the chosen implementation. It incorporates a central Day Ahead Market and a forward market to provide participants with risk management tools. The proposed design is supplemented with a) an Integrated Scheduling Process along with a real time Balancing Mechanism which provide the TSO with the ability to procure and activate balancing services and b) a settlement process. Specifically, bilateral physical forward contracts are notified and corresponding schedules are nominated to the Market Operator by Over the Counter market gate closure on the day ahead. Suppliers and generators provide bid curves to a Day Ahead Market on a half hourly basis. Suppliers submit orders based on individually forecast demand. Orders in the Day Ahead Market should correspond to quantities not already covered by bilateral contracts. The Day Ahead Market is centrally managed by a Market Operator. The Market Operator runs a process of matching bid curves to optimize dispatch of residual volumes at the day ahead. Contracts resulting from the Day Ahead market are between market participants and the Market Operator at the Day Ahead Market Clearing Price. An Integrated Scheduling Process with a real time

Balancing Mechanism and later a continuous intra-day trading platform will be organized to further support market operations. RD 01/2015 can be downloaded from CERA's website (https://www.cera.org.cy/Templates/00001/data/nomothesia/ethniki/hlektrismos/rythmistikes_apofaseis/2015_01%20en.pdf)

This high-level design was implemented by the Transmission System Operator (TSO) which is also the Market Operator (MO). The detailed Trading and Settlement Rules (TSR) version 2.0.0 was submitted to CERA and approved in May 2017. The TSO then issued a tender for the implementation of the Market Monitoring System in order to be able to implement the provisions of TSR v2.0.0. The tender was rewarded in April of 2020 and the TSR v2.0.0 are expected to enter into force sometime in July 2022.

After the approval of TSR v2.0.0 CERA approved TSR version 2.1.0 which incorporates demand response but will not enter into force from the beginning of the market but at a later stage when changes are made to the MMS to support demand response. All versions of the TSR can be found on TSOs website (<https://tsoc.org.cy/electricity-market/electricity-market-rules/>). TSR v 2.0.0 is also available in English as an unofficial translation.

During the operation of the competitive electricity market, according to the Electricity Market Rules, 2.0.0 (Annex III) CERA must:

1. Closely monitor the energy injection order submission pattern of the Dominant Participant in the Day Ahead market, in order to ensure the healthy operation of the wholesale electricity market and pinpoint possible illicit practices that could distort the Day Ahead Market Clearing Price (Ch. 7, Par. 5.2.2)
2. Closely monitor the health operation of the Integrated Scheduling Process in order to pinpoint possible offences or strategic behaviors that could distort the Real Time Balancing Mechanism (Ch. 8, Par. 11.1.1)

Moreover, according to the Law CERA has, amongst others the responsibility of ensuring «substantial competition in the electricity market», «to promote the development of an economically viable and efficient electricity market» and is responsible to «monitor the extent and effectiveness of market and competition at wholesale and retail level».

2. OBJECTIVE, PURPOSE AND EXPECTED RESULTS

2.1 Objective

The objectives of the consultancy services to be undertaken includes:

Objective 1

Listing the methods, processes and procedures through which points 1 and 2 above can be carried out, as well as monitoring all market participants in other markets, proposing the most suitable method for the forthcoming Cyprus Competitive Electricity Market. The consultant may consider and any other necessary methods that may be adopted by CERA based on other European regulatory practices for the purpose of the best market monitoring based on specificities of the Cyprus electricity market.

Objective 2

Identify and provide the technical details for the software and hardware required for the implementation of the proposed methods, processes and procedures in order to be used as part of a tendering procedure for getting the identified software and hardware.

Objective 3

Assessing the detailed Technical specifications of relevant Tenders and supervising the technical part of the tendering evaluation for the implementation of the relevant software and hardware tools (objective 2 above), in order that CERA can make a decision, and supervising the implementation of the decided solution.

2.2 Expected results

- **Result 1**

Detailed listing of the possible methods, processes, and procedures which can be used for monitoring the Cyprus Electricity Day Ahead Market and the Integrated Scheduling Process with utter purpose the pinpointing of possible malpractices. The consultant may consider any other necessary methods that may be adopted by CERA based on other European regulatory practices for the purpose of the best market monitoring based on specificities of the Cyprus electricity market

This expected result should be in the form of a report that will take into account the Cypriot legal and regulatory framework with regards to the electricity market including the detailed provisions of the TSR. The report could potentially include literature review of the methods used by corresponding Energy Regulatory authorities.

- **Result 2**

Based on Result 1 a detailed justified proposal for the most suitable method to be implemented in Cyprus, taking into account the characteristics of the forthcoming Cyprus Competitive Electricity Market, the Cypriot legal & regulatory framework and existing practices and/or methodologies and/or relevant software used by the Market Operator.

The proposal should also include a detailed design of the Cyprus Wholesale Market Monitoring procedure taking account the beforementioned paragraph and all the interaction and/or interface points and/or processes with the other stakeholders of the Market (not exhaustively, the Suppliers, the Market Operator, etc), as well as which data should be processed and in which way, in order to ensure an efficient monitoring of the market and to assure that there is no abuse of possible Market Power. This should include everyday processing as well as possible ad hoc cases.

- **Result 3**

Pinpointing the needs in software and hardware required for the implementation of the proposed method in detailed format, so that these needs can serve as the basis of a Tender for the provision of the relevant software and hardware and part of the technical specifications of the abovementioned tender

- **Result 4**

Provision of technical evaluation of the tenders and supervision of the implementation process of the selected solution as per the outcome of the abovementioned tender, in order to assure that technical, operational and other criteria are met. This should also include a final Report assessing the technical, operational and other criteria compatibility of the deliverable against the agreed specifications.

In reference to Paragraph 7.4, Part A, all results are required.

~~3. ASSUMPTIONS AND RISKS~~

~~3.1 Assumptions underlying the implementation of the Contract~~

~~3.2 Risks~~

4. CONTRACT SCOPE

4.1 Activity breakdown

The scope of the contract is the provision of Consultancy Services for *Establishing the Wholesale Electricity Market Monitoring procedures to be followed by CERA, the related Hardware & Software Needs and Supervision Services during the implementation process of the agreed procedures.* Specifically, the contractor will be asked to perform the following activities. Each Activity should be fulfilled by the submission of a relevant Deliverable:

1. Identification of possible options for the methods, processes, and procedures which can be used for monitoring the behaviour of the participants in the wholesale market in order to detect the exercise of Market Power. The monitoring should include the Day Ahead market and the Integrated Scheduling process as well as all other markets in the TSR. The activity could include a literature review of approaches taken by other Regulatory Authorities as well as industry practises. The relevant activity includes the submission of a Report with the results in including the characteristics, advantages, disadvantages and possible omissions of each method.
2. A detailed, fully justified proposal based on the Cypriot regulatory framework of the most suitable method, process, and procedure to be implemented, taking into account the characteristics of the forthcoming Cyprus Competitive Electricity Market as well as the existing practices and/or relevant software used by the Market Operator. The proposal should also include the data that should be requested from the TSO (as System Operator and as Market Operator respectively) as well as how this data should be processed in order for an efficient monitoring of the market is ensured.

The detailed design of the Cyprus Wholesale Market Monitoring procedure in the abovementioned paragraph, should include all the interaction and/or interface points and/or processes with the other stakeholders of the Market, as well as which data should be processed and how the will be processed, in order to ensure an efficient monitoring of the market and to assure that there is no abuse of possible Market Power. This should include

everyday processing as well as possible ad hoc cases. The proposed procedure should be documented in a detailed Report and be of such form that can be immediately applicable by CERA.

3. Identification of any software or hardware needed in order to implement the proposed procedure above. The identification of the needs should include the specifications of the software or hardware in such a form that it can serve as the basis of a Tender for the provision of a the relevant software and hardware and part of Technical Specifications of the abovementioned tender. The activity will result the delivery of a detailed report.
4. Provision of technical evaluation of the tenders and supervision of the implementation process of the solution, as per the outcome of the abovementioned tender, in order to assure that the technical, operational and other criteria are met.

The technical evaluation should of the submitted tenders aims to aid CERA in evaluating the technical offers of the suppliers. This should also include a final Report assessing the technical, operational and other criteria compatibility of the deliverable against the agreed specifications.

Moreover, supervision of the technical implementation process of when the tender is rewarded to the supplier in order to assure that technical, operational and other criteria are met and properly implemented.

4.2 Project Management

4.2.1 Organisational structure

Organisational structure of the Contracting Authority

The Contracting Authority will appoint a Project Manager and Steering Committee (SC) for the supervision and coordination of the overall progress in the implementation of the Contract Scope and of the relevant activities, sets priorities, provides guidance, and evaluates and approves the results (deliverables and reports).

The Contracting Authority shall provide the personnel necessary to manage and resolve issues related to the management of the Contract.

The Project Manager, shall be responsible for overall coordination of the implementation of the Contract Scope and for submission of all official contract documents for approval. Project Manager shall be the contact person for all communications with the Manager to be appointed by the Contractor.

Organisational structure of the Contractor

The Contractor shall be responsible for the performance of all phases of the Contract Scope, until final acceptance by the Contracting Authority. This includes management of the Project and ensuring the coordination of all Contract Scope activities.

The Contractor shall appoint a Project Manager who shall be available throughout the implementation of the Contract Scope. The Contractor's Project Manager shall be supported by the Contractor's team of experts and the other members of the Contractor's Project Team.

The duties of the Contractor's Project Manager shall be as follows:

- Definition of the work plan and of the critical points, so as to ensure the quality of the services provided and the timely implementation of the individual Contract Scope activities.
- Overall responsibility for delivery of the results (deliverables, services provided) of the Contract.
- Preparation of the inception, progress and completion Reports, with clear references to the results achieved.
- Coordination of the participation and responsibilities of the experts who will perform the Contract Scope.
- Maintaining close and ongoing cooperation with the Contracting Authority (and its competent bodies: Project Manager and SC), and provision to it of information updates on the implementation progress, the work carried out and the solutions or alternatives adopted.
- It is noted that all communication should be addressed at regulator.cy@cera.org.cy.

The Contractor shall bear all costs in connection with the implementation of the Contract Scope. More in particular, the Contractor shall bear the accommodation, subsistence and travel costs for the Project Team members. The Contractor shall ensure sufficient resources for translation, interpretation, printing etc., as required by the Contract Scope activities in each case.

4.2.2 Facilities to be provided by the Contracting Authority

The Contracting Authority will assure that the Contractor will have access in all the information that may be required from the Transmission System Operator and/or other market participants and will facilitate meetings with responsible personnel if required.

5. LOCATION AND DURATION OF CONTRACT SCOPE IMPLEMENTATION

5.1 Location of Contract Scope implementation

Completion of the scope of work will take place at the premises of the Contractor. If necessary, meetings can be held at the premises of the Contracting Authority or wherever else needed.

5.2 Duration of Contract Scope implementation

The period of implementation of the Contract Scope shall be **four** months from the date of commencement of the contract.

6. REQUIREMENTS

~~6.1 Office accommodation~~

~~The Contractor is required to maintain at its own expense an office at the premise(s) where the Contract is executed or in other locations as appropriate for the execution of the Contract.~~

~~Any accommodation costs are to be borne by the Contractor, and such costs shall not be additional costs but shall be included in the Contractor's financial offer.~~

6.2 Facilities to be provided by the Contractor

The Contractor should ensure that experts are adequately supported and equipped. In particular, its should ensure that there is sufficient administrative, secretarial and interpreting (if required) provision to enable the experts to concentrate on their primary responsibilities. The Contractor must also transfer funds as necessary to support its activities under the Contract and to ensure that its employees are paid regularly and in a timely fashion.

7. REPORTS

7.1 Reporting requirements

Relevant reports should be submitted to the Contracting Authority according to the provisions of paragraphs 4.1.

7.2 Submission and approval of Reports

All the Reports of the above paragraph should be submitted in three copies to the Contracting Authority, for the attention of the Project Manager.

Non - Disclosure Agreement

The **Cyprus Energy Regulatory Authority** (hereinafter referred to as **CERA**), represented for the purposes of signing this Agreement by

on the one part, and

..... (hereinafter referred to as), represented for the purposes of signing this Agreement by

on the other part,

individually hereinafter referred to as "the Party" and collectively as "the Parties",

Whereas this Agreement is concluded for the following purpose:

Consultancy Services for Establishing the Wholesale Electricity Market Monitoring procedures the related Hardware & Software Needs and Supervision Services during the implementation process of the agreed procedures

Therefore, this Agreement is concluded for the protection of confidential information exchanged in the course of the above (contract/ study/ project etc).

Whereas the Parties are in possession of valuable information, knowledge, experience and data in aggregated form and of confidential nature relating to the execution of the Contract between the Parties. The data might be related but not limited to:

- (a)
- (b)
- (c) any other data related to the scope of the Contract

Whereas the Parties are willing to disclose such information on a cost-free basis to each other under terms of strict confidentiality, non-disclosure to third-parties, and non-use in any manner not explicitly authorised;

The Parties have agreed to be bound by the following conditions and obligations:

1. DEFINITIONS

.1. "**Confidential Information**" means (a) any and all information, materials, drawings, know-how or data relating to the Field which is disclosed or given by either Party ("**Disclosing Party**") to the other Party ("**Receiving Party**") either directly or indirectly, whether in writing or by any other means, including, but not limited to, formulae, designs, simulations, processes, manufacturing methods; proprietary, technical, operational and financial data; information relating to the performance and output of research and development activities; cost and pricing data as well as business plans,

customer lists, studies, reports, quotations, offers; and any notes, analyses, compilations, interpretations, memoranda or other documents.

.2. **"Contract"** means the Contract signed between the Parties regarding Consultancy Services for Establishing the Wholesale Electricity Market Monitoring procedures the related Hardware & Software Needs and Supervision Services during the implementation process of the agreed procedures

.3. **"Relevant Authorities"** means any authority in the Republic of Cyprus authorized under the Cyprus Law to carry out specific tasks related to the Permitted Purpose including but not limited to Cyprus Energy Regulatory Authority, Transmission System Operator of Cyprus and Electricity Authority of Cyprus in its role as Distribution System Operator.

.4. **"Staff"** means any permanent or temporary employee, contractor, consultant, employees of Relevant Authorities, service provider, visiting researcher, seconded personnel, sub-contractor, or a person engaged under a formal arrangement with either Party to an extent such person's actions are attributable to that Party.

.5. **"Affiliate"** means any company or entity controlled by or under common control with the relevant Party where "control" means direct or indirect ownership of at least 50% of the voting stock or interest in a company or entity, or control of the composition of the board of directors.

.6. **"Representative"** means any legal person or physical person duly authorised or empowered by a Party to act, speak or sign on its behalf.

.7. **"Permitted Purpose"** means activities and work carried out for the execution of the Contract.

2. SCOPE

.1. Each Party shall treat the Confidential Information disclosed by the other Party as strictly confidential. Neither Party shall disclose, transfer or make available in any way to any third party, other than the Relevant Authorities, such Confidential Information or any portions thereof. Receiving Party shall make use of any such Confidential Information only and strictly limited to the Permitted Purpose.

.2. Parties may disclose Confidential Information to their Affiliates and Representatives on a need-to-know basis. Each Party agrees to be responsible for any breach of this Agreement committed by its Representatives or its Affiliates to the same extent as if such were a party to this Agreement.

.3. In the event of one Party's Staff visiting the premises of the other Party, any further Confidential Information which may come to the knowledge of the visiting Party as a result of such visit shall be subject to the terms of this Article, and shall be treated accordingly by the visiting Party.

3. CONFIDENTIALITY UNDERTAKINGS

.1. The Receiving Party agrees with and undertakes to the Disclosing Party that its Representatives shall:

- a. keep in strict confidence and in safe custody any Confidential Information disclosed to the Receiving Party by the Disclosing Party;

-
- b. not use or exploit any Confidential Information other than for the Permitted Purpose;
 - c. not copy or reproduce any or all the Confidential Information except as is reasonably necessary for the Permitted Purpose;
 - d. promptly comply with any reasonable directions of the Disclosing Party which are given for the protection of the security of the Information;
 - e. inform each such Representative of the restrictions as to confidentiality, use and disclosure of such Confidential Information contained in this Agreement and, to the extent that each such Representative is not already under an appropriate duty of confidentiality, impose upon each such Representative obligations of confidentiality at least equivalent to those set out in this Agreement.

.2. Subject to Article 4 below, each Party hereby undertakes that it shall not, without the prior consent in writing of the other Party, release any press statement or make any other announcement to any third party or make any public statement regarding the existence or content of the discussions contemplated by this Agreement or the identity of the parties to such discussions.

4. LIMITATIONS

.1. The obligations of confidence and non-use herein shall not apply to any part of the Confidential Information if:

- a. It can be evidenced in writing that such Confidential Information was already available to the Receiving Party before its disclosure by the Disclosing Party;
- b. Such Confidential Information was already in the public domain or was made available to the public before the date of disclosure by the Disclosing Party;
- c. Such Confidential Information enters the public domain or becomes available to the public after the date of disclosure by the Disclosing Party not as a consequence of an act or failure attributable to the Receiving Party;
- d. It can be evidenced in writing that such Confidential Information is obtained by the Receiving Party from a third party not bound by any confidentiality obligation to the Disclosing Party;
- e. It can be evidenced in writing that such Confidential Information has been developed, independently and without use of any part of the Confidential Information, by the Receiving Party after the date of disclosure by the Disclosing Party.

.2. Nothing in this Agreement shall prevent the disclosure of Confidential Information by the Receiving Party where such disclosure is required by law or regulation or by an order of a court of competent jurisdiction.

5. ACCESS OF STAFF

Each Party shall ensure that its Staff or the Staff of its Affiliates or the Staff of its Representatives in case of its Representatives being legal persons, who enjoys access to the Confidential Information is bound by a confidentiality agreement or a legally equivalent arrangement or provision which enables the effective implementation of the present Agreement, and that such Staff is notified that the terms and obligations set in

the present Agreement apply to any of their engagement with the Confidential Information.

6. ENTRY INTO FORCE, DURATION AND TERMINATION

This Agreement shall enter into force upon the signature of the last Party and shall stay in full force and effect for **XX years (depending on the nature of the Contract)**.

7. OWNERSHIP AND INTELLECTUAL PROPERTY

- .1. All Confidential Information, and any proprietary and related right contained therein, including any intellectual property right, shall continue to belong to their respective owners. Nothing contained in this Agreement shall be interpreted to imply any transfer of ownership from one Party to the other or to constitute a licence to use or exploit by one Party of the property of the other.
- .2. Parties will respect each other's proprietary and related rights, including intellectual property rights, which may have been disclosed by one Party to the other in the performance of this Agreement, and shall not misuse or claim any title to any such Confidential Information.
- .3. Articles 1 and 6 shall survive the expiration or termination of this Agreement.

8. WARRANTIES

The Receiving Party agrees that the Disclosing Party makes no representations or warranties, express or implied, including but not limited to, the accuracy, completeness, merchantability, or fitness for a particular purpose of the Confidential Information, as well as non-infringement of third-party rights.

9. RETURN OF INFORMATION

The Receiving Party shall, at request of the Disclosing Party, return all Confidential Information in its, its Affiliates' and its Representatives' possession.

10. APPLICABLE LAW

This Agreement shall be governed by, construed and interpreted in accordance with the laws of the Republic of Cyprus. In case any dispute, controversy or claim arising out of or relating to this Agreement cannot be settled amicably between the Parties, it shall be subject to the jurisdiction of the Courts of the Republic of Cyprus.

11. MISCELLANEOUS PROVISIONS

- .1. Neither Party can assign, waive, revoke or otherwise transfer its respective rights or obligations under this Agreement without prior written consent of the other Party.
- .2. This Agreement does not impose any obligation upon the Parties to disclose any Confidential Information or to continue such disclosure. The extent and frequency of any disclosure is at the discretion of each Disclosing Party.
- .3. If any provision or clause of this Agreement is held unenforceable by a competent court of law, or is precluded by the applicable law, the remaining provisions or clauses

shall continue to be in full force and effect to the extent that such invalidity does not fundamentally prevent the Parties from continuing to observe their rights or obligations under this Agreement.

.4. Any violation of any of the provisions of this Agreement will cause the Disclosing Party immediate and irreparable harm, which money damages alone cannot adequately remedy. Therefore, upon any actual or impending violation of this Agreement, the Receiving Party consents to the issuance by a court of competent jurisdiction, of a restraining order, preliminary and/or permanent injunction, restraining or enjoining such violation by the Receiving Party or any entity or person acting in concert with the Receiving Party. The Receiving Party understands that such orders are additional to and do not limit the availability to the Disclosing Party of any other remedy in law or in equity, including the recovery of damages. In any dispute between the parties arising under this Agreement, the prevailing party shall be entitled to the reimbursement of attorney fees and other costs of litigation in addition to all other remedies.

.5. The failure of a Party to enforce any rights resulting from breach by the other Party of any provision of this Agreement will not be deemed as a waiver of any right relating to a subsequent breach of such provision or of any other right hereunder.

.6. In the event of any conflict or discrepancy between the provisions of this Agreement and the provisions of any agreements and/or other binding documents between the Parties, the provisions of this Agreement shall prevail as far as Confidential Information is concerned.

.7. Any communication and correspondence with reference to this Agreement shall be made in writing and addressed to the following addresses:

For CERA:

For XXXX:

Cyprus Energy Regulatory Authority

20 Ayias Paraskevis, 2002 Strovolos,
Nicosia, Cyprus

P.O.Box 24936, 1355 Nicosia, Cyprus

To the attention of
XXXXXXXXXX

To the attention of
XXXXXXXXXX

.8. This is the entire Agreement between the Parties relating to the subject matter hereof and may only be modified by a written amendment signed by the authorised Representatives of each Party.

This Agreement is signed in Nicosia, Cyprus by the duly authorized representatives of the Parties on

Done in three originals in the English language,

For CERA,

For XXXXX,

Seal:

Seal:

Signature:

Signature:

XXXXXXXXXX

.....

Cyprus Energy Regulatory Authority

XXXXXXXXXX

.....

.....

<i>Witness 1. Signature</i>		<i>Witness 2. Signature</i>	
<i>Name</i>		<i>Name</i>	
<i>Title</i>		<i>Title</i>	

DATA PROCESSING AGREEMENT

BETWEEN:

CYPRUS ENERGY REGULATORY AUTHORITY, having its registered offices at Ayias Paraskevis 20, 2002, Strovolos, Nicosia, and represented by its

Hereinafter: **'CERA' or 'Data Controller'**;

AND:

....., having its registered offices at, represented by.....

Hereinafter: **'Data Processor'**

Hereinafter collectively referred to as 'Parties', separately referred to as 'Party';

WHEREAS,

- (A) In the framework of the Agreement, the Data Processor will on behalf of and on instructions from CERA use Data (as defined hereinafter) and/or will have (or can have) access to Data.
- (B) CERA is subject to the obligations in the Data Protection Legislation and its national implementing law.
- (C) CERA can only comply with these obligations provided it is assisted by the Data Processor.
- (D) The Data Protection Legislation also obliges the Data Controller to conclude a data processing agreement with the Data Processor.
- (E) Parties therefore enter into this Data Processing Agreement.

THE FOLLOWING IS SET FORTH:

Chapter 1 – Definitions

Agreement	means the agreement referred to in Annex 1;
Biometric Data	means Personal Data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data;
Data Breach	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to Data transmitted stored or otherwise processed Data;
Data Processing Agreement	means this agreement, including any possible modifications and all annexes, which may be modified from time to time;
Data Protection Legislation	means the GDPR as well as any legislation and/or regulation implementing or created pursuant to the GDPR and the e-Privacy Legislation, or which amends, replaces, re-enacts or consolidates any of them, and all other national applicable laws relating to processing of personal data and privacy that may exist under applicable law, including but not limited to the DP Act;
Data Subject(s)	means the identifiable or identified natural person(s) whose Personal Data is processed;
EEA	means the European Economic Area (i.e. the European Union and Liechtenstein, Iceland and Norway);
e-Privacy Legislation	means Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector, as well as any European or national legal framework which will replace such instruments in the future;
GDPR (the General Data Protection Regulation)	means the Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, and its European and national implementing laws;
Genetic Data	means Personal Data relating to the inherited or acquired genetic characteristics of a natural person

which result from the analysis of a biological sample from the natural person in question, in particular chromosomal, deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) analysis, or from the analysis of another element enabling equivalent information to be obtained;

Health Data

means Personal Data related to the physical or mental health status of a Data Subject, including patient number, health services provided, blood values, etc.;

Incident

means any event having an actual adverse effect on the security of network and information systems;

Judicial Data

means Personal Data relating to criminal convictions, suspicions and prosecutions relating to criminal offences, procedures pending before administrative authorities or judicial courts, administrative sanctions and security measures;

Model Contract

means standard contractual clauses for the Transfer of Personal Data to a (Sub)Processor established in a country outside the EEA, issued by the European Commission and attached to this Agreement as **Annex 9**, as these may be updated or replaced by the European Commission with standard data protection contractual clauses in accordance with Article 46, paragraphs 2(c) and 2(d) and Article 93 of the General Data Protection Regulation 2016/679;

Personal Data or Data

means all information which could directly or indirectly identify a Data Subject and that the Data Processor Processes on behalf of and on instructions from CERA and/or to which it has (or can have) access in the framework of the Agreement;

Privacy Shield Framework

means the EU-U.S. Privacy Shield legal framework, designed by the U.S. Department of Commerce and the European Commission and Swiss Administration to provide companies on both sides of the Atlantic with a mechanism to comply with data protection requirements when transferring personal data from the European Union and Switzerland to the United States in support of transatlantic commerce, which may be modified or replaced from time to time;

Processing (or Process)

means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of Personal Data;

Sensitive Data	means Personal Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and data concerning a natural person's sex life or sexual orientation;
Special Personal Data	means one or more of the following categories of Personal Data: Health Data, Sensitive Data, Genetic Data, Biometric Data or Judicial Data;
Subprocessor	means a processor engaged by the Data Processor to carry out certain processing activities on behalf of the Data Controller;
Transfer	means the communication, disclosure or otherwise making available of Personal Data with the knowledge or intention of the sender that the receiver(s) will gain access to it.

Chapter 1 – Personal Data Protection

Article 1.1 – Processing Personal Data

1.1.1 The Data Processor shall solely and always Process Personal Data on behalf of and on instructions from the Data Controller. The Data Processor may not in any form (not in the form of anonymous or anonymised Personal Data either) nor in any way Process Personal Data on its own behalf, nor on behalf of third parties. The Data Processor does not have any control over the purpose of the Processing of Personal Data, nor can it independently take decisions regarding the use, the storage or the communication of Personal Data, unless and to the extent determined in the Data Processing Agreement or instructed by the Data Controller.

1.1.2 The subject, the duration, the nature and the purpose of the Processing, as well as the type of Personal Data which is processed and the categories of Data Subjects, are listed in **Annex 1**. Any modification of one of the elements listed in **Annex 1**, shall give rise to an amendment by the Parties of **Annex 1**, in mutual consultation. If the Data Processor becomes aware that one of the elements of **Annex 1** is modified, it must immediately notify the Data Controller in writing.

1.1.3 The Data Processor shall make use of the Personal Data solely for the performance of its obligations under the Agreement, in accordance with the Data Processing Agreement and according to the written instructions of the Data Controller. Any other use of the Personal Data by the Data Processor, in any form (also in the form of anonymous or anonymised Personal Data) or in any way, is not allowed. The Data Processor may not perform or allow to be performed any Processing of or with the Personal Data (including but not limited to copying, printing, forwarding, enriching or modifying) unless and to the extent necessary for the performance of the Agreement and the Data Processing Agreement.

1.1.4 In case the Data Processor Processes one or multiple categories of Special Personal Data on behalf of and on instructions from the Data Controller, it shall commit to comply with the additional specific obligations under **Annex 2**. In the event of a contradiction or inconsistency between the provisions of this Agreement and **Annex 2**, the provisions of **Annex 2** shall prevail. If the Data Processor does not Process any Special Personal Data on behalf of and on instructions from the Data Controller, the present Article 3.1.4 and **Annex 2** are not applicable.

1.1.5 The Parties shall, each in their respective capacity, Process the Personal Data in accordance with the Data Protection Legislation and any other applicable legislation to which the Data Controller and/or the Data Processor are subject.

1.1.6 The Data Processor acknowledges it is subject to the rights and obligations under the Data Protection Legislation specifically directed towards the Data Processor. The Data Processor also acknowledges that the Data Controller is subject to the rights and obligations under the Data Protection Legislation specifically directed towards the Data Controller.

Article 1.2 – Assistance obligation regarding Personal Data

1.2.1 The Data Processor shall assist the Data Controller to meet obligations that may be incumbent on the Data Controller according to the Data Protection Legislation applicable to the Data Controller, including where the assistance of the Data Processor is implied and where the assistance of the Data Processor is necessary for the Data Controller to comply with its obligations, including the information to data subjects or the collection of data subjects' consent.

1.2.2 The Data Processor shall immediately communicate each request or question it receives from a Data Subject concerning the (Processing of) Personal Data to the Data Controller, who decides which response will be given thereto. The Data Processor shall assist and support the Data Controller with the responses the Data Controller gives to such requests. In particular, the Data Processor shall, if and to the extent that this falls within its technical capabilities and competences under the Agreement, within 7 calendar days, give effect to any request of the Data Controller regarding the response to or execution of requests of the Data Subjects.

1.2.3 The Data Processor shall, when a Data Subject whose Personal Data are subject to the Processing by the Data Processor on behalf of the Data Controller, exercises his or her right to data portability, provide the relevant Personal Data in a structured, commonly used and machine-readable format to the Data Controller or, at the request of the Data Controller, to the Data Subject.

1.2.4 To the extent that the Data Processor itself has communicated Personal Data to third parties, in accordance with the Agreement and the Data Processing Agreement, it shall immediately communicate to such third parties any modification, erasure or restriction of Personal Data it becomes aware of.

1.2.5 The Data Processor commits to assisting the Data Controller with the analysis of the question whether a data protection impact assessment is necessary for the Processing of Personal Data by the Data Controller. This for example implies that if the Processing by the Data Processor requires the use of new technologies, or if the Data Processor finds it plausible that the used technology can be qualified as "new", the Data Processor shall inform the Data Controller hereof prior to the Processing of the Personal Data.

1.2.6 When the Data Controller finds it necessary to conduct a data protection impact assessment, the Data Processor commits to assisting the Data Controller in the execution of the data protection impact assessment. In such case, the Data Processor shall provide the Data Controller with at least the information included in **Annex 3**, and shall only initiate the Processing after (evaluation of the) data protection impact assessment and written instructions in respect hereof by the Data Controller.

Article 1.3 – Transfer of Personal Data

1.3.1 The Data Processor may not Transfer any Personal Data outside the EEA unless the Data Controller has given prior written authorisation and one of the following conditions is fulfilled:

- The country the Personal Data is transferred to is recognised by the European Commission as ensuring an adequate level of personal data protection; or
- The company the Personal Data is transferred to, is located in the United States of America and has adhered to the Privacy Shield Framework; or
- CERA and the company the Personal Data is transferred to have entered into a Model Contract as included in **Annex 9**. For this purpose, the Data Controller located in the EEA will be referred to as the "Data Exporter" and the Data Processor, or Subprocessor in accordance with Article 3.4.3, will be referred to as the "Data Importer". The Parties agree to replace **Annex 9** with the latest version of the Model Contract as updated or replaced by the European Commission in accordance with Article 46, paragraphs 2(c) and 2(d) and Article 93 of the General Data Protection Regulation 2016/679.

1.3.2 The Data Controller authorises the Transfer of the Personal Data to the countries listed in **Annex 1**.

1.3.3 A Transfer to a country outside the EEA is allowed without the written authorisation of the Data Controller only if this Transfer is required on the basis of a regulation which is binding under European or law of the Republic of Cyprus. In such case, the Data Processor shall inform the Data Controller beforehand and in writing of the legal requirement on the basis of which the Data Processor is obliged to proceed to the Transfer of Personal Data, unless the law concerned prohibits such notification on important grounds of public interest.

Article 1.4 – Sub-processing of Personal Data

1.4.1 The Data Processor shall not employ any Subprocessor(s) unless the Data Controller has given its prior, written and specific authorisation. The Data Controller hereby consents to the Processing of Personal Data by the Subprocessor(s) listed in **Annex 6**. If the Data Controller consents to new Subprocessors during the duration of the Agreement, **Annex 6** shall be amended in mutual consultation.

1.4.2 If the Data Processor employs Subprocessors, it warrants that each Subprocessor is contractually subject to at least the same obligations as those the Data Processor is subject to toward CERA under this Data Processing Agreement. The Data Processor guarantees that each Subprocessor it relies on shall comply with these obligations.

1.4.3 If, following a Transfer of Personal Data by the Data Processor to a Subprocessor outside the EEA, the adequate level of protection is guaranteed by the signature of a Model Contract, Parties acknowledge that there is no Model Contract adopted by the European Commission for Transfers "data processor – subprocessor". To resolve the lack of such Model Contract, the Data Processor shall:

- ensure that the Subprocessor signs the Model Contract "data controller – data processor" directly with the Data Controller; or
- sign the Model Contract "data controller – data processor" with the Subprocessor on behalf of the Data Controller. For this purpose, the Data Processor is hereby authorised to sign the Model Contract "data controller – data processor" on behalf of the Data Controller with any Subprocessor approved in accordance with Article 3.4.1 and for any Transfer approved in accordance with Article 3.3.

1.4.4 In any event, the Data Processor shall indemnify the Data Controller for any damage and claims that may arise from the non-compliance by the Subprocessor with the Model Contract signed by the Subprocessor.

Chapter 2 – Security of Personal Data

Article 2.1 – Organisational and technical security measures

2.1.1 The Data Processor commits to implementing and respecting the appropriate technical and organisational security measures, which are necessary for the protection of the Data, including but not limited to Personal Data, against amongst others destruction, loss, alteration, unauthorised disclosure or unauthorised access. The Data Processor shall describe these measures in a security policy.

2.1.2 The Data Processor shall communicate its security policy mentioned in Article 4.1.1 without delay to CERA upon the latter's simple request.

2.1.3 When determining the appropriate technical and organisational security measures, the Data Processor shall take into account (i) the state of the art; (ii) the nature, scope, context and purposes of processing; (iii) the risks of the use as well as the Processing for the rights and freedoms of the Data Subjects, especially as a consequence of destruction, loss, alteration, unauthorised disclosure of, or unauthorised access to transferred, stored or otherwise used (Personal) Data, either by accident, or unlawfully; (iv) the likelihood that the Processing has an impact on the rights and freedoms of the Data Subjects; (v) the recommendations of supervisory authorities, the European Data Protection Board and the European Union Agency for Network and Information Security (ENISA); and (vi) the applicable norms and standards.

2.1.4 These measures shall be updated by the Data Processor at regular intervals based on the state of the art and any Incident(s).

2.1.5 The minimum appropriate technical and organisational security measures the Data Processor must take are set out in **Annex 5**.

Article 2.2 – Incident or Data Breach

2.2.1 In the event an Incident and/or a Data Breach occurs or has occurred, the Data Processor shall:

- immediately after having become aware, notify the contact person of CERA mentioned in **Annex 4** by telephone and by email; and
- immediately after having become aware and not later than 48 hours after having become aware, provide the contact person of CERA a detailed notification with the information included in **Annex 4**.

2.2.2 In the event the initial notification sent in accordance with Article 4.2.1. could not be entirely completed, the Data Processor shall provide the contact person of CERA with an updated notification without unreasonable delay following the initial notification.

2.2.3 Without prejudice to the legal obligations of the Data Processor, CERA shall be responsible for the notification of the Incident and/or the Data Breach to the competent authority(ies) and/or the Data Subject(s).

2.2.4 Without prejudice to the legal obligations of the Data Processor, the Data Processor shall assist CERA in the best possible way with the notification of the Incident and/or Data Breach to the competent authority(ies) and/or the Data Subject(s).

2.2.5 The Data Processor shall in any event treat all questions/requests of CERA concerning the Incident and/or Data Breach as a priority.

2.2.6 In the event of Incident or Data Breach, the Data Processor shall take all measures necessary and appropriate to restore the Data and/or to limit the negative impact of the Incident or the Data Breach as much as possible (including but not limited to the provision of forensic assistance to CERA), it being understood that the Data Processor shall, where reasonably possible, always consult CERA on the measures to be taken.

Chapter 3 – Generally applicable provisions

Article 3.1 – Assistance obligation

3.1.1 The Data Processor commits to assist CERA with the compliance of legal obligations imposed on CERA under the Data Protection Legislation, as well as any other applicable law. In this regard, the Data Processor shall reply within a reasonable period to each request for assistance of CERA. If, in its opinion, a request or instruction of CERA amounts to a violation of the Data Protection Legislation, as well as any other law to which CERA is subject, it shall immediately notify CERA hereof.

3.1.2 The Data Processor particularly commits to assist CERA in any cooperation with the competent authority(ies) in the performance of the tasks of the latter.

Article 3.2 – Audit rights

3.2.1 The Data Processor shall keep accurate and up-to-date records relating to the processing of the Personal Data by the Data Processor under this Data Processing Agreement and shall provide the Data Controller with such records at the request of the Data Controller.

3.2.2 The Data Processor shall provide to the Data Controller, its authorized representatives, and such independent inspection body as the Data Controller may appoint, on reasonable notice: i) access to the Data Processor's information, documentation, premises, systems, software, hardware, databases, installations, infrastructure and records referred to in Article 5.2.1; ii) reasonable assistance and cooperation of the Data Processor's relevant staff; and iii) reasonable facilities at the Data Processor's premises for the purpose of auditing the Data Processor's compliance with its obligations under this Data Processing Agreement.

3.2.3 Each Party will bear its own cost for the audit described in this Article 5.2.

Article 3.3 – Contact Persons

3.3.1 The Data Processor commits to appointing suitably qualified and capable employees as contact person for the Data Processor toward CERA concerning this Data Processing Agreement. These contact persons will be included in **Annex 8** of this Data Processing Agreement. The parties commit to keeping **Annex 8** up to date.

Article 3.4 – Liability

3.4.1 The Data Processor is liable for and indemnifies CERA against all damages and claims of third parties, including the Data Subject(s), which are the result of a breach by the Data Processor of the Data Processing Agreement and the obligations specifically addressed to the Data Processor by the Data

Protection Legislation and its national implementing laws as well as the recommendations of the supervisory authorities, the European Data Protection Board, the European Network and Information Security Agency (ENISA), and the applicable norms and standards.

3.4.2 The Data Processor shall indemnify CERA for all damage caused by third parties, including but not limited to employees and Subprocessors, appointed by the Data Processor.

Article 3.5 – Term and termination

3.5.1 The Data Processing Agreement enters into force on the date of its signature. In case the Data Processor has already used the Data in the framework of the Agreement prior to the signature of the Data Processing Agreement, the Data Processing Agreement shall be retroactively applicable as from the start of the use of the Data by the Data Processor on behalf of CERA.

3.5.2 The Data Processing Agreement remains in force during the term of the Agreement. If the Agreement comes to an end, the Data Processing Agreement shall end automatically.

3.5.3 After the termination of this Data Processing Agreement, the Articles which by nature survive the termination, including the provisions in Chapter 2, Article 5.3 and this Article 5.4.3, shall remain in full force and effect. The termination or end of this Data Processing Agreement shall have no effect on the rights and obligations of Parties arisen before the termination or the end of this Data Processing Agreement.

3.5.4 Upon termination of the Data Processing Agreement, all Data and any physical or electronic copies thereof must immediately be provided to CERA, or the Data Processor shall, at CERA's discretion, destroy all Data, unless the storage of Data is required on the basis of a rule under European or national law.

3.5.5 If the Data are destroyed in accordance with Article 5.4.4, the Data Processor shall provide CERA with a certificate of destruction.

Article 3.6 – Applicable law and competent court

3.6.1 Without prejudice to clauses 7 (Mediation and jurisdiction) and 9 (Governing law) of the Model Contract included in **Annex 9**, the Parties agree that:

- This Data Processing Agreement, and all non-contractual or other obligations arising out of or in relation to, are governed by the laws of the country stipulated in the Agreement; and
- The choice of jurisdiction stipulated in the Agreement applies with respect to any dispute or claims arising under this Data Processing Agreement, including disputes regarding its existence, validity or termination or the consequences of its nullity.

Article 3.7 – Miscellaneous

3.7.1 The Data Processing Agreement is severable. If one or more provisions that do not concern the essence of the Data Processing Agreement are declared entirely or partially invalid, null and void or unenforceable, this shall not affect the validity and enforceability of the remaining provisions. The Data Processing Agreement shall in such event continue to exist between the Parties, as if the provision declared invalid, null and void or unenforceable had never existed.

3.7.2 In that case, the Parties commit to renegotiate the Data Processing Agreement in good faith, to amend the provision declared (entirely or partially) null and void, invalid or unenforceable or replace it by a provision which lends itself as close as possible to the purpose of the provision declared invalid, null and void or unenforceable.

3.7.3 In the event of any conflict or inconsistency between this Data Processing Agreement and the Model Contract, the Model Contract shall prevail.

3.7.4 This Data Processing Agreement may be amended from time to time and in particular if the European Commission or the supervisory authority adopts Model Contract(s) pursuant to Article 28(7) and/or Article 28(8) of the GDPR. The amendments and additions to the Data Processing Agreement are only valid if explicitly agreed upon by the Parties in writing.

3.7.5 All terms, conditions, restrictions and general terms of the Data Processor are hereby excluded. If a provision of the Data Processing Agreement is contrary to or incompatible with a provision of the Agreement, the Data Processing Agreement shall prevail.

3.7.6 Notion in this Data Processing Agreement reduces the Data Processor's obligations under the Agreement in relation to the protection of Personal Data or permits the Data Processors to Process Personal Data in a manner which is prohibited by the Agreement.

3.7.7 If the Data or the relationship between Parties becomes subject to new (European) legislation or jurisprudence, the Parties agree to renegotiate the Data Processing Agreement in good faith, and to bring it into conformity with such legislation or jurisprudence.

3.7.8 The compliance by each Party with its obligations under the Data Processing Agreement is without cost and cannot be made conditional upon the payment of compensation.

3.7.9 The Parties may agree that the Data Processor must undertake the necessary steps to adhere to a code of conduct, to be certified, or to acquire data protection seals and/or marks, and comply with these and maintain these for the duration of the Data Processing Agreement. Said codes of conduct, certifications and data protection seals and marks shall be included in Annex 7.

Done at _____ on/..../2020 in two original copies, of which each Party acknowledges having received its original signed copy.

For CERA

For

[NAME]

[NAME]

[FUNCTION]

[FUNCTION]

Annex 1: Overview of the Agreement and the Processing

A. Name and date of the Agreement	[Insert name and date of the Agreement]
B. Subject matter of the Agreement	[Insert subject matter of the Agreement]
C. Duration of the Processing	[Insert the duration of the processing by the Data Processor here. In principle, the duration is equal to the duration of the underlying commercial agreement.]
D. Nature and purpose of the Processing	[Insert nature and purpose of the processing]
E. Type of Personal Data Processed	[Insert type of Personal Data processed for the execution of the Agreement]
F. Categories of Data Subjects	[Insert categories of Data Subjects]
G. Location(s) of the Processing of Personal Data	[Insert all locations where Personal Data are processed]
H. Third Countries to which Personal Data are Transferred	There is no Transfer of Personal Data to third countries, unless to: [Fill in third countries]

Annex 2: Special Personal Data

If the Data Processor Processes one or multiple categories of Special Personal Data, it additionally commits to comply with the following obligations. When the Data Processor does not Process Special Personal Data, this **Annex 2** is not applicable.

1. List of persons having access to the Special Personal Data

The Data Processor shall keep a list of categories of persons who have access to the Special Personal Data. The capacity of these (categories of) persons must also be included in this list.

This list must be kept available to the Data Controller and the supervisory authority.

2. Data protection impact assessment

If the Data Processor Processes Special Personal Data on a large scale, it shall not initiate Processing prior to the carrying-out of a data protection impact assessment. In that case, the Data Processor commits to communicate the information laid out in **Annex 3** to the Data Controller.

3. Technical and organisational measures

Considering the sensitive nature of Special Personal Data, the Data Processor commits to implement the most safe, technical and very extensive organisational measures. It shall thereby take into account the most recent recommendations, guidelines and referential measures of the supervisory authority, the European Data Protection Board and the European Union Agency for Network and Information Security (ENISA).

Annex 3: Data protection impact assessment

In case a data protection impact assessment must be carried out, the Data Processor shall provide the Data Controller with the following information as soon as possible:

- (i) A systematic description of the envisaged Processing;
- (ii) An assessment of the necessity and proportionality of the Processing operations in relation to the purposes listed in the Agreement;
- (iii) An assessment of the risks to the rights and freedoms of the Data Subject(s);
- (iv) The measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data and to demonstrate compliance with the GDPR. In this respect, the rights and legitimate interests of the Data Subject(s) and other persons concerned must be taken into account.

Annex 4: Notification form in case of an Incident and/or Data Breach

Please contact CERA via the following contact persons, unless explicitly communicated otherwise. If the first contact person does not respond within the hour, please contact one of the other contact persons.

[NAME CONTACT PERSON] [FUNCTION]	Email address [EMAIL ADDRESS] Telephone number: [TELEPHONE NUMBER]
[NAME CONTACT PERSON] [FUNCTION]	Email address [EMAIL ADDRESS] Telephone number: [TELEPHONE NUMBER]
[NAME CONTACT PERSON] [FUNCTION]	Email address [EMAIL ADDRESS] Telephone number: [TELEPHONE NUMBER]

Please take into account that this notification form can be modified over time and that the most recent version will be communicated by CERA.

1. Which company does this form concern?

Name	
Street + house number	
Postal code	
City	

2. Who may CERA contact for further information concerning this notification and the Incident and/or the Data Breach?

Name	
Function	
Email address	
Telephone number	

3. Please give a summary of the Incident and/or the Data Breach.

--

--

4. How many Data Subjects are affected by the Data Breach, if applicable?

Minimum:	
Maximum:	

5. Which categories of Data Subjects are affected by the Data Breach, if applicable?

--

6. How many Data and/or Personal Data are involved in the Incident and/or Data Breach?

Minimum:	
Maximum:	

7. Which category/categories of Data and/or Personal Data is/are involved in the Incident and/or Data Breach?

--

8. When did the Incident and/or Data Breach occur?

On (date) / Between (start date) and (end date) / As yet unknown

9. What is the nature of the Incident and/or the Data Breach?

- *Reading (confidentiality)*
- *Copied*
- *Modification (integrity)*
- *Erasure or destruction (availability)*
- *Theft*
- *As yet unknown*
- *...*

10. What are the likely consequences and risks of the Incident and/or the Data Breach, including the likely consequences and risks for the Data Subjects?

- *Stigmatisation or exclusion*
- *Exposure to theft (of identity)*
- *Exposure to spam or phishing*
- *Other, i.e. [complete]*

11. Which technical and organisational measures, including the measures to restrict any possible disadvantageous consequences and risks have you taken to address the Incident and/or Data Breach?

12. Have you notified the Incident and/or Data Breach to other persons or third parties or do you intend to do so?

13. Were the Data encrypted, hashed or otherwise made unintelligible or inaccessible to unauthorised persons?

Yes / No / Partly, namely:

14. If the Data were partly or entirely made unintelligible or inaccessible, in which way was this done? If you have used encryption, please explain the way of encryption.

15. In your opinion, is this notification complete?

- Yes, the required information was provided and no further notification will be necessary
- No, a further notification will be made with additional information about the Incident and/or the Data Breach

Annex 5: Minimum organisational and technical security measures

Organisational measures	<p>Security policy and procedures for the protection of Data:</p> <p>The security policy is a high level document that sets the basic principles for the security and protection of Data in an organisation. It, thus, forms the basis for the implementation of all specific technical and organisational measures.</p>	<p>The Data Processor shall define its policy with regard to the use of Data as part of its information security policy.</p>
		<p>The security policy shall be reviewed and revised, if necessary, on a semester basis.</p>
		<p>The policy shall be approved by management and communicated to all employees and relevant external parties.</p>
		<p>The security policy shall at least define the following: (i) the roles and responsibilities of personnel; (ii) the Subprocessors or other third parties involved in the use of Data; (iii) the technical and organisational measures adopted for the security of Data; and (iv) the Data Processor's data retention policy, including deletion/disposal of the Data.</p>
		<p>An inventory of specific policies/procedures related to the security of Data shall be created and maintained, based on the general security policy. All policies/procedures shall be documented in a central repository.</p>
	<p>Roles and responsibilities</p>	<p>Roles and responsibilities related to the use of Data shall be clearly defined and allocated in accordance with the security policy.</p>
		<p>During internal reorganisations or terminations and change of employment, revocation of rights and responsibilities with respective handover procedures shall be clearly defined.</p>
		<p>Clear appointment of persons in charge of specific security tasks shall be performed, including the appointment of a security officer.</p>
		<p>The security officer shall be formally appointed (appointment shall be documented). The tasks and responsibilities of the security officer shall also be clearly set and documented.</p>
		<p>Conflicting duties and areas of responsibility shall be segregated in order to reduce opportunities for unauthorised or unintentional modification or</p>

		misuse of personal data. The segregation of the roles of security officer, security auditor and data protection officer shall be considered.
<p>Access control policy:</p> <p>Following the definition of roles and responsibilities, it is essential to determine an access control policy to the systems used for the processing of Data. This should be based on the 'need to know' principle, i.e. each role/user should only have the level of access to Data that is strictly necessary for the performance of its relevant tasks.</p>		Specific access control rights shall be allocated to each role (involved in the use of Data) following the 'need to know' principle.
		An access control policy shall be detailed and documented. The Data Processor shall determine in this document the appropriate access control rules, access rights and restrictions for specific user roles towards the processes and procedures related to Data.
		Segregation of access control roles (e.g. access request, access authorization, access administration) shall be clearly defined and documented.
		Roles with excessive access rights shall be clearly defined and assigned to limited specific members of staff.
<p>Resource/asset management</p>		The Data Processor shall have a register of the IT resources used for the processing of Data (hardware, software, and network). The register shall include at least the following information: IT resource, type (e.g. server, workstation), location (physical or electronic). A specific person shall be assigned the task of maintaining and updating the register (e.g. IT officer). The maintenance/update of the register must reflect changes.
		IT resources shall be reviewed and updated on a regular basis.
		Roles having access to certain resources shall be defined and documented.
		IT resources management processes shall be reviewed and updated on an annual basis.
<p>Change management</p>		The Data Processor shall make sure that all changes to the IT system are registered and monitored by a specific person (e.g. IT or security officer). Regular monitoring of this process shall take place.
		Software development shall be performed in a special environment that is not connected to the IT system used for the processing of Data. When testing is needed, dummy data shall be used (not real data). In cases where

		<p>this is not possible, specific procedures shall be put in place for the protection of Data used in testing.</p> <p>A detailed and documented change policy shall be in place. It shall include: a process for introducing changes, the roles/users that have change rights, and timelines for introducing changes. The change policy shall be regularly updated.</p>
	Subprocessors	<p>Formal guidelines and procedures covering the use of Data by Subprocessors (contractors/outourcing) shall be defined, documented and agreed through a Data Processing Agreement.</p> <p>Formal requirements and obligations shall be formally agreed between the Data Processor and the Subprocessor. The Subprocessor shall provide sufficient documented evidence of compliance.</p> <p>The Data Processor shall regularly audit the compliance of the Subprocessor with the agreed level of requirements and obligations.</p> <p>The employees of the Subprocessor who are using Data shall be subject to specific documented confidentiality/non-disclosure agreements.</p>
	<p>Handling of Incidents / Data Breaches:</p> <p>In the event of a Data security breach, the Data Processor shall assess if this leads to an accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Data transmitted, stored or otherwise processed (Art. 4(12) GDPR).</p>	<p>An incident response plan with detailed procedures shall be defined to ensure effective and orderly response to incidents pertaining Data.</p> <p>Data Breaches shall be reported immediately to the management. Notification procedures for the reporting of the breaches to competent authorities and Data Subjects shall be in place, following Articles 33 and 34 GDPR.</p> <p>The incident response plan shall be documented, including a list of possible mitigation actions and clear assignment of roles.</p> <p>Incidents and Data Breaches shall be recorded along with details regarding the event and subsequent mitigation actions performed.</p>
	<p>Business Continuity:</p> <p>A business continuity plan (BCP) is essential for determining the processes and technical measures that the Data Processor shall follow in case of an</p>	<p>The Data Processor shall establish the main procedures and controls to be followed in order to ensure the required level of continuity and availability of the IT system using Data (in the event of an Incident/Data Breach).</p>

	<p>Incident/Data Breach. As such it complements the security policy of the Data Processor, as well as its incident response plan.</p>	<p>A BCP shall be detailed and documented (following the general security policy). It shall include clear actions and assignment of roles.</p>
		<p>A level of guaranteed service quality shall be defined in the BCP for the core business processes that provide for Data security.</p>
		<p>An alternative facility shall be considered, depending on the type of organisation and the acceptable downtime of the IT system.</p>
	<p>Confidentiality of Personnel:</p> <p>In order to ensure confidentiality of Data, the Data Processor shall ensure that its employees also provide sufficient confidentiality guarantees, both in terms of technical expertise and personal integrity. To this end, specific measures shall be in place to ensure that the personnel involved in the use of Data is properly informed about its duty to confidentiality, as well as to guarantee that this duty is sufficiently stipulated in the Data Processor's human resources policies.</p>	<p>Prior to taking up their duties employees shall be asked to review and agree on the security policy of the Data Processor and sign respective confidentiality and non-disclosure agreements.</p>
		<p>The Data Processor shall ensure that all employees understand their responsibilities and obligations related to the use of Data. Roles and responsibilities shall be clearly communicated during the pre-employment and/or induction process.</p>
		<p>Employees involved in high risk use of Data shall be bound to specific confidentiality clauses (under their employment contract or other legal act). Disciplinary action is set by the Data Processor against its employees in case of non-compliance with the confidentiality clauses and the information security policies / procedures.</p>
<p>Training</p>		<p>The Data Processor shall ensure that all employees are adequately informed about the security controls of the IT system that relate to their everyday work. Employees involved in the use of Data shall also be properly informed about relevant Data protection requirements and legal obligations through regular awareness campaigns.</p>
		<p>The Data Processor shall have structured and regular training programmes for staff, including specific programmes for the induction (to Data protection matters) of newcomers.</p>
		<p>A training plan with defined goals and objectives shall be prepared and executed on an annual basis.</p>

Technical measures	Access control and authentication	An access control system applicable to all users accessing the IT system shall be implemented. The system shall allow creating, approving, reviewing and deleting user accounts.
		The use of common user accounts shall be avoided. In cases where this is necessary, it shall be ensured that all users of the common account have the same roles and responsibilities.
		An authentication mechanism shall be in place, allowing access to the IT system (based on the access control policy and system). As a minimum a username/password combination shall be used. Passwords shall respect a certain (configurable) level of complexity.
		The access control system shall have the ability to detect and not allow the usage of passwords that do not respect a certain (configurable) level of complexity.
		A specific password policy shall be defined and documented. The policy shall include at least password length, complexity, validity period, as well as number of acceptable unsuccessful login attempts.
		User passwords must be stored in a “hashed” form.
		Two-factor authentication shall preferably be used for accessing systems that use Data. The authentication factors could be passwords, security tokens, USB sticks with a secret token, etc.
		Device authentication shall be used to guarantee that the use of Data is performed only through specific resources in the network.
	Logging and monitoring	Log files shall be activated for each system/application used for the processing of Data. They shall include all types of access to Data (view, modification, deletion).
		Log files shall be timestamped and adequately protected against tampering and unauthorised access. Clocks shall be synchronised to a single reference time source.

		Actions of the system administrators and system operators, including addition/deletion/change of user rights shall be logged.
		There shall be no possibility of deletion or modification of log files content. Access to the log files shall also be logged in addition to monitoring for detecting unusual activity.
		A monitoring system shall process the log files and produce reports on the status of the system and notify for potential alerts.
	<p>Security of Data at rest:</p> <p>Data at rest is Data that is not actively moving from device to device or network to network such as Data stored on a hard drive, laptop, flash drive, or archived/stored in some other way. Therefore, this category of measures is mainly related to the use of Data in databases or other relevant systems (including cloud storage). It also relates to the use of Data by employees by means of specific workstations or other devices.</p>	Database and applications servers shall be configured to run using a separate account, with minimum operating system privileges to function correctly.
		Database and applications servers shall only use the Data that are actually needed in order to achieve its purposes of use of the Data.
		Encryption solutions shall be considered on specific files or records through software or hardware implementation.
		Encrypting storage drives shall be considered.
		Pseudonymisation techniques shall be applied through separation of data from direct identifiers to avoid linking to the Data Subject without additional information.
		Techniques supporting privacy at the database level, such as authorised queries, privacy preserving data base querying, searchable encryption, etc., shall be considered.
	Workstation security	Users shall not be able to deactivate or bypass security settings.
		Users shall not have privileges to install or deactivate unauthorised software applications.
		The system shall have session time-outs when the user has not been active for a certain time period.

		Critical security updates released by the operating system developer shall be checked regularly and installed as soon as possible.
	Anti-virus applications and detection signatures shall be configured on a daily basis.	
	It shall not be allowed to transfer Data from workstations to external storage devices (e.g. USB, DVD, external hard drives).	
	Workstations used for the processing of Data shall preferably not be connected to the Internet unless security measures are in place to prevent unauthorised use, copying and transfer of Data on store.	
	Full disk software encryption shall be enabled on the workstation operating system drives.	
	Network/communication security	Whenever access is performed through the Internet, communication shall be encrypted through cryptographic protocols (TLS/SSL).
	Wireless access to the IT system shall be allowed only for specific users and processes. It shall be protected by encryption mechanisms.	
	Remote access to the IT system shall in general be avoided. In cases where this is absolutely necessary, it shall be performed only under the control and monitoring of a specific person from the Data Processor (e.g. IT administrator/security officer) through pre-defined devices.	
	Traffic to and from the IT system shall be monitored and controlled through Firewalls and Intrusion Detection Systems.	
	The segregation of the network of the information system from the other networks of the organisation shall be considered.	
	Access to the IT system shall be performed only by pre-authorised devices and terminals using techniques such as MAC filtering or Network Access Control (NAC).	
Backups:	Backup and Data restore procedures shall be defined, documented and clearly linked to roles and responsibilities.	

	<p>A backup system is an essential means of recovering from the loss or destruction of Data. While some system shall be in place, the frequency and nature of backup will depend, amongst other factors, on the type of organisation and the nature of Data being used.</p>	<p>Backups shall be given an appropriate level of physical and environmental protection consistent with the standards applied on the originating Data.</p> <p>Execution of backups shall be monitored to ensure completeness.</p> <p>Full backups shall be carried out regularly.</p> <p>Backup media shall be regularly tested to ensure that they can be relied upon for emergency use.</p> <p>Scheduled incremental backups shall be carried out at least on a daily basis.</p> <p>Copies of the backup shall be securely stored in different locations.</p> <p>In case a third party service for back up storage is used, the copy must be encrypted before being transmitted.</p> <p>Copies of backups shall be encrypted and securely stored offline as well.</p>
	<p>Mobile device security</p>	<p>Mobile and portable device management procedures shall be defined and documented establishing clear rules for their proper use.</p> <p>Mobile devices that are allowed to access the information system shall be pre-registered and pre-authorised.</p> <p>Mobile devices shall be subject to the same levels of access control procedures (to the Data processing system) as other terminal equipment.</p> <p>Specific roles and responsibilities regarding mobile and portable device management shall be clearly defined.</p> <p>The Data Processor shall be able to remotely erase Data (related to its Data processing operation) on a mobile device that has been compromised.</p> <p>Mobile devices shall support separation of private and business use of the device through secure software containers.</p>

		Mobile devices shall be physically protected against theft when not in use.
		Two-factor authentication shall be considered for accessing mobile devices.
		Data stored on the mobile device (as part of the Data Processor's Data processing operation) shall be encrypted.
<p>Application lifecycle security:</p> <p>During all phases of application development lifecycle, the Data Processor must ensure that Data protection compliance, including Data security, is taken into consideration.</p>		During the development lifecycle best practices, state of the art and well acknowledged secure development practices, frameworks or standards shall be followed.
		Specific security / Data protection / privacy requirements shall be defined during the early stages of the development lifecycle ("Security by Design" and "Privacy by Design").
		Specific technologies and techniques designed for supporting Data security, privacy and Data protection shall be adopted in analogy to the security requirements.
		Secure coding standards and practises shall be followed.
		During the development, testing and validation against the implementation of the initial security requirements shall be performed.
		Vulnerability assessment, application and infrastructure penetration testing shall be performed by a trusted third party prior to the operational adoption. The application shall not be adopted unless the required level of security is achieved.
		Periodic penetration testing shall be carried out.
		Information about technical vulnerabilities of information systems being used shall be obtained.
		Software patches shall be tested and evaluated before they are installed in an operational environment.

	<p>Data deletion/disposal:</p> <p>The purpose of disposal/deletion is to irreversibly delete or destroy the Data so that it cannot be recovered. The method(s) used must, therefore, match with the type of storage technology, including paper based copies. When disposing obsolete or redundant equipment, the Data Processor must ensure that all Data previously stored on the devices has been removed prior to disposal.</p>	<p>Software-based overwriting shall be performed on all media prior to their disposal. In cases where this is not possible (CD's, DVD's, etc.) physical destruction shall be performed.</p> <p>Shredding of paper and portable media used to store Data shall be carried out.</p> <p>Multiple passes of software-based overwriting shall be performed on all media before being disposed.</p> <p>If a third party's services are used to securely dispose of media or paper based records, a service agreement shall be in place and a record of destruction of records shall be produced as appropriate.</p> <p>Following the software erasure, additional hardware based measures such as degaussing shall be performed. Depending on the case, physical destruction shall also be considered.</p> <p>If a third party is being used for destruction of media or paper based files, it shall be considered that the process takes place at the premises of the Data Processor (and avoid off-site transfer of Data).</p>
	<p>Physical security</p>	<p>The physical perimeter of the IT system infrastructure shall not be accessible by non-authorized personnel.</p> <p>Clear identification, through appropriate means e.g. ID Badges, for all personnel and visitors accessing the premises of the Data Processor shall be established, as appropriate.</p> <p>Secure zones shall be defined and be protected by appropriate entry controls. A physical log book or electronic audit trail of all access shall be securely maintained and monitored.</p> <p>Intruder detection systems shall be installed in all security zones.</p> <p>Physical barriers shall, where applicable, be built to prevent unauthorised physical access.</p> <p>Vacant secure areas shall be physically locked and periodically reviewed.</p>

		An automatic fire suppression system, closed control dedicated air conditioning system and uninterruptible power supply (UPS) shall be implemented at the server room.
		External party support service personnel shall be granted restricted access to secure areas.
	Data Subjects' rights	The Data Processor shall have the technical ability to support CERA in complying with the rights of the data subject (e.g. right of data portability, right of information, right of access, right to be forgotten, right to object, right of rectification, right to restriction of Processing).

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Annex 6: Subprocessor(s) approved by the Data Controller

Subprocessor(s)	Data Protection Officer(s) of the Subprocessor(s)
[Name + address of the Subprocessor the Data Controller agrees with]	[Insert name + email address + telephone number of the data protection officer per Subprocessor]

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Annex 7: Codes of conduct, certifications and data protection seals and marks

Codes of conduct

<u>Reference</u>	<u>Description</u>

Certifications

<u>Reference</u>	<u>Description</u>

Data protection seals

<u>Reference</u>	<u>Description</u>

Data protection marks

<u>Reference</u>	<u>Description</u>

Annex 8: Contact persons for the purposes of this Data Processing Agreement

	<u>CERA</u>	<u>Data Processor</u>
<u>General contact person</u>	[Insert name + email address + telephone number of general contact person]	[Insert name + email address + telephone number of general contact person]
<u>Data protection officer (if any)</u>	[Insert name + email address + telephone number of Data protection officer]	[Insert name + email address + telephone number of Data protection officer]
<u>Chief information security officer (CISO) or person with similar role</u>	[Insert name + email address + telephone number of the CISO]	[Insert name + email address + telephone number of the CISO]
...

Annex 9: Model Contract

Standard Contractual Clauses (based on EU Commission Decision C(2010)593)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Name of the data exporting organisation: **TO BE COMPLETED**

Address: TO BE COMPLETED

Tel.: TO BE COMPLETED; fax: TO BE COMPLETED; e-mail: TO BE COMPLETED

Other information needed to identify the organisation

TO BE COMPLETED IF APPROPRIATE
(the data **exporter**)

And

Name of the data importing organisation: **TO BE COMPLETED**

Address: TO BE COMPLETED

Tel.: TO BE COMPLETED; fax: TO BE COMPLETED; e-mail: TO BE COMPLETED

Other information needed to identify the organisation:

TO BE COMPLETED IF APPROPRIATE
(the data **importer**)

each a “party”; together “the parties”,

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Schedule 1.

Clause 1

Definitions

For the purposes of the Clauses:

- (a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹;
- (b) *'the data exporter'* means the controller who transfers the personal data;
- (c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Schedule 1 which forms an integral part of the Clauses.

Clause 3

Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which

¹ Parties may reproduce definitions and meanings contained in Directive 95/46/EC within this Clause if they considered it better for the contract to stand alone.

it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of the data exporter

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Schedule 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Schedule 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the data importer²

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Schedule 2 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
 - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
 - (ii) any accidental or unauthorised access, and
 - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Schedule 2

² Mandatory requirements of the national legislation applicable to the data importer which do not go beyond what is necessary in a democratic society on the basis of one of the interests listed in Article 13(1) of Directive 95/46/EC, that is, if they constitute a necessary measure to safeguard national security, defence, public security, the prevention, investigation, detection and prosecution of criminal offences or of breaches of ethics for the regulated professions, an important economic or financial interest of the State or the protection of the data subject or the rights and freedoms of others, are not in contradiction with the standard contractual clauses. Some examples of such mandatory requirements which do not go beyond what is necessary in a democratic society are, *inter alia*, internationally recognised sanctions, tax-reporting requirements or anti-money-laundering reporting requirements.

which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

Clause 7

Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
 - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
 - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9

Governing Law

The Clauses shall be governed by the law of the Member State in which the data exporter is established, namely [...]

Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Subprocessing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses³. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.
2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

³ This requirement may be satisfied by the subprocessor co-signing the contract entered into between the data exporter and the data importer under this Decision.

3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established, namely
.....
4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data processing services

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

On behalf of the data exporter:

Name (written out in full):

Position:

Address:

Other information necessary in order for the contract to be binding (if any):

Signature.....

(stamp of organisation)

On behalf of the data importer:

Name (written out in full):

Position:

Address:

Other information necessary in order for the contract to be binding (if any):

Signature.....

(stamp of organisation)

CONFIDENTIAL

SCHEDULE 1 TO THE STANDARD CONTRACTUAL CLAUSES (MODEL CONTRACT)

This Schedule forms part of the Clauses and must be completed and signed by the parties.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Schedule.

Data exporter

The data exporter is (please specify briefly your activities relevant to the transfer):

TO BE COMPLETED IF APPROPRIATE

Data importer

The data importer is (please specify briefly activities relevant to the transfer):

The data importer provides [TO BE COMPLETED].

Processor processes the Personal Data as set out below for or on behalf of the Controller:

Data subjects

The personal data transferred concern the following categories of data subjects (please specify):

Categories of data

The personal data transferred concern the following categories of data (please specify):

Special categories of data (if appropriate)

The personal data transferred concern the following special categories of data (please specify):

Processing operations

The personal data transferred will be subject to the following basic processing activities (please specify):

The Personal Data will be transferred for the purpose of assisting the Data Importer to:

TO BE COMPLETED.

DATA EXPORTER

Name:.....

Authorised Signature

DATA IMPORTER

Name:.....

Authorised Signature

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SCHEDULE 2 TO THE STANDARD CONTRACTUAL CLAUSES (MODEL CONTRACT)

This Schedule forms part of the Clauses and must be completed and signed by the parties.

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):

[add reference to Annex 5 of this Data Processing Agreement]

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DATA EXPORTER

Name:.....

Authorised Signature

DATA IMPORTER

Name:.....

Authorised Signature

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