



This “Annex VIII Romania” is implemented to the procurement agreements for supply, services and works regulated by Romanian law in force and concluded between a company member of Enel Group and a Contractor.

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## 1. SCOPE OF APPLICATION

This "Annex Romania" shall apply to all agreements for works/services/supply regulated by Romanian legislation, concluded between a company of Enel Group and the Contractor.

This document is part of the **General Conditions**.

**Notwithstanding the provisions of art.1.2 "Scope"** of the **General Part**, the Agreement includes the webpage where the **General Part** and this ANNEX Romania are available; under any circumstances, a copy shall be submitted to the Contractor.

**Understanding the provisions of art. 5.1 "Interpretation and hierarchy"** of the **General Part**, any waiver or modification of this ANNEX Romania proposed by the Contractor shall be valid only if it is made in writing and accepted in the same form by Enel and it shall be applied only to the Agreement which it was proposed for, excluding the possibility that the exception can be extended to other agreements in progress or which shall be eventually provided later by the same Contractor.

It is specified that if any discrepancy or inconsistency between the documents that are part of the Procurement Agreement occurs, reference shall be made to art. 5 "Interpretation and hierarchy" of the **General Part**, which specify that the prevalence is determined by sequentially order according to which the contractual documents are listed.

In case that a part of the clauses contained in the **General Part** shall be amended by agreement of the parties, this amendment shall be indicated in the Agreement/FA by way of derogation from Annex Romania.

The original version of this ANNEX Romania is in Romanian language. Please take into account that in case of discrepancy between the original version in Romanian language and translations into other languages, the original version in Romanian language shall prevail.

## 2. DEFINITIONS

**In addition to paragraph 2 of the GENERAL PART in this Annex Romania the following definitions shall be applicable.**

In this document the following terms shall construed as follows:

- a) **ENEL** – any company of Enel Group Romania;
- b) **Agreement** – written agreement concluded between Enel and the Contractor for the performance of a works services or products Agreement;
- c) **Framework Agreement (FA)** – written agreement concluded between Enel and one or several Contractors, aimed to establish the essential elements/ conditions that shall regulate the Procurement Agreements to be awarded in a given period, in particular regarding the price and, where appropriate, the quantities taken into account;
- d) **Subsequent contract** – the agreement is the act of will of the two parties concluded, based on an FA between "Enel" as the "Beneficiary/Purchaser", and one or several business operators as "Contractor";
- e) **Enel and Contractor** – the Contracting Parties, as they are listed in this document;



- f) **Price of the Agreement/FA** – the price payable by Enel to the Contractor, based on the Agreement/FA for the full and proper performance of all its obligations taken by this Agreement;
- g) **Force majeure** – an event beyond the control of the parties, which is not due to their error or fault, which could not have been foreseen when the agreement/FA was concluded and which makes impossible the execution and fulfilment of the Agreement/FA; such events are considered: wars, revolutions, fires, floods or other Acts of God, restrictions occurred following a quarantine, embargo, the list is not exhaustive, but declarative. It is not considered as a force majeure the event as those listed above that, without creating an impossibility of performance, makes the fulfilment of the obligations of one of the parties extremely expensive;
- h) **Day** – calendar day;
- i) **Year** – 365 days;
- j) **Annex Romania**: this document, an integral and substantial part of the **General Conditions** applicable to Enel Group, of which this is an Annex, which is supplemented by the Special conditions specific for each type of contract to be concluded by Enel with a Contractor
- k) **Object of the Agreement/FA**: The object of the Agreement/FA is that determined by the Agreement/FA and by the documents that are an integral part of it.

### 3. APPLICABILITY

The Agreement/FA shall enter into force on the date when it is signed by both parties.

### 4. LANGUAGE OF THE AGREEMENT

**Notwithstanding the provisions of art. 3.1 “Language of the Agreement” and of art. 5.3 “Interpretation and Hierarchy”** of the **General Part**, the original version of all contractual documents, including the **General Part**, will be Romanian language.

The Agreement/FA and any other document related to the Agreement/FA are concluded in Romanian language, as a compulsory condition.

### 5. COMMUNICATIONS

**In addition to the provisions of art. 6 “Notifications”** of the **General Part**, any communication between the parties in connection with the execution of the Agreement/FA, must be done in writing - by letter, fax, electronic means, by written confirmation of receipt of the communication.

Any written document must be registered both when sent and when received.

When the contractual documents refer to statements, - notifications, documents for which the signature is required, are admitted only on hard support (on paper).

Communications must be sent to the addresses (including e-mail address) specified in the Agreement/FA.

Any Contracting Party can change its contact information by submitting a communication to the other Party with a notification of five (5) business days.



The Contractor must observe and immediately execute any communication received from Enel, without any further formality, even in cases when it intends to express its own comments.

## 6. CONTRACTING CLAUSES CONCERNING THE PRICE

**6.1 In addition with art. 7.1 "Price" of the General Part**, for activities provided, payments due by Enel to the Contractor are those stated in the financial proposal, attached to the Agreement/FA. Prices remain fixed during the period of the Agreement/FA unless the Agreement/FA specifies otherwise.

**6.2 In addition to the provisions of art. 7.3 "Invoicing" of the General Part**, invoices will have attached the appropriate supporting documents, as the case may be. In the case of services, the invoices will be supported by supporting documents (e.g. activity annexes, reports, minutes, correspondence, etc.), that will attest to the effective performance of those services.

### 6.3 UPDATE OF THE CONTRACTUAL PRICE/FA (REGULATION OF PRICES)

In compliance with the provisions art. 7.1 "Price" of the General Part, the contracting prices can be adjusted only if this possibility is provided in the Agreement/FA and/or required by applicable law.

The adjusted prices are applicable exclusively to the activities ordered by Enel following the date of revision. The price adjustment is requested by the party interested and calculated in line with the modalities indicated in the Agreement/FA; if it is calculated by the Contract, Enel reserves the right to perform a verification.

### 6.4 Remuneration of price adjustment

The application of the price adjustment referred to in this section represents for the both parties the full recognition of all the related rights resulting from the changes of costs, which can consist in their increasing or decreasing.

The value of price adjustment does not contribute to the establishment or achievement of the contract value.

**6.5 Notwithstanding the provisions of art. 7.3 "Invoicing" of the General Part**, invoicing will be done in accordance with art. 7.3.2. B "Outside electronic systems.", unless stated otherwise by contract.

## 7. TAXES

**In addition to the provisions of art. 8 "TAXES" of the General Part**, the tax residence certificate as stipulated in Article 8.2 of the **General Part** will be provided by the Contractor every year along with the first invoice issued in that year, in order to be applied the provisions of the convention for the avoidance of double taxation in force between the two countries. Otherwise, ENEL will be able to make deductions in compliance with applicable legal provisions.

## 8. AMENDMENT OF THE AGREEMENT

**In addition to the provisions of art. 9.4. "Changes to contractual terms" of the General Part**, the Contracting Parties have the right, during the Agreement/FA, to agree on amendment of the provisions of the Agreement/FA, by written addendum concluded in compliance with applicable legal provisions.



## 9. SUBCONTRACTING

**9.1 In addition to the provisions of art. 10 “Contract Assignment and Subcontracting” of the General Part, the Contractor can use subcontractors after the Contract is signed by both Parties, therefore during the performance of the agreement, only with the Enel’s approval.**

The Contractor has the obligation to submit at the conclusion of the Agreement/FA, all the agreements concluded with subcontractors appointed which must indicate in detail all the activities they shall provide and the value threshold for each type of activity.

The List of Subcontractors, including their identification data and agreements concluded with them, are considered annexes to the Agreement/FA.

The Contractor can change any subcontractor only if it has not fulfilled its part of the Agreement/FA. Changing a Subcontractor shall not alter the price of the Agreement/FA and it shall be effective only if the approval of Enel was obtained in advance.

If during the performance of the Agreement/FA, the Contractor requires employment of subcontractors to fulfil the Agreement/FA, it will not have the permission to do so without prior consent of Enel and only up to a limit of 30% of the main activity, in case of works performance agreements and 30% of the contract value for service agreements and 30% of the value of installation/fitting services for supply contracts. In case it obtains this consent, the Contractor shall submit to Enel, the certified copy of the contract concluded with the subcontractor mentioned, which, thus, becomes an annex to the Agreement/FA.

According to the provisions of art. 10 “Contract Assignment and Subcontracting” of the General Part, the Contractor who will execute a contract, can use a self-employed worker to perform a certain part of that contract. The self-employed worker has the same rights and obligations as a Subcontractor, but is not included in the percentage of subcontracting (30%).

Subcontracting of the Agreement in cascades is strictly forbidden, only one subcontracting level is permitted.

The Contractor is not allowed, under any circumstances, to subcontract parts of the works under the scope of the agreement awarded to it, if it did not receive written consent of Enel. In case that, following the inspections carried out by authorized personnel of Enel, it is found out that the Contractor has provided works with subcontractors previously authorized by Enel or Subcontractors of the Subcontractors, Enel reserves the right to terminate the agreement and to claim damages.

The Contractor has the obligation to conclude agreements with the subcontractors appointed under the same terms according to which it signed the agreement with Enel.

The Contractor has the obligation to inform the Subcontractors regarding all the documents part of the agreement between the Contractor and Enel that have an influence on the execution of the agreement.

The Contractor is fully responsible to Enel on the modality the subcontractors fulfil their part of the Agreement/FA.

The Contractor has the obligation to submit to Enel the proof of payment regarding the invoices issued by the Subcontractor in connection to the performance of the Agreement/FA.



**9.2. In addition to the provisions of art. 18.4. "The Contractor's obligations concerning Subcontracting activities"** of the **General Part**, in the case of in public procurement procedures, the clause requirements will not exceed the legal framework that OUG 34/2006, art. 11 alin. (7) of GD. No. 925/2006, with subsequent amendments and completions: *"(7) The contracting authority does not have the right to impose the fulfilment of qualification criteria for potential subcontractor, but material and human resources of declared subcontractors do count for their involvement in the contract to be performed, if the relevant documents are submitted in this regard"*

## **10. CESSION**

**Notwithstanding the provisions of art. 11 "Assignment of rights and receivables"** of the **General Part**, during the execution of the Agreement/FA, only the assignment of claims arising from the Agreement/FA is permitted, the obligations undertaken still remaining the liability of the Contracting Parties, as they have been initially provided and assumed.

The assignment of debt shall not relieve the Contractor of any responsibility regarding the guarantee or any other obligation taken by the Agreement/FA.

## **11. PROVISIONS CONCERNING THE EARLY CESSATION/TERMINATION OF THE AGREEMENT/FA**

**Notwithstanding the provisions of art. 16.3 "Termination for reasons attributable to the Contractor"** of the **General Part**, termination can be decided only under the conditions provided in the Particular Conditions specific to each type of contract, an integral part thereof.

## **12. EARLY TERMINATION OF THE AGREEMENT ON OCCURRENCE OF CERTAIN UNFORESEEN CIRCUMSTANCES**

**In addition to the provisions of art. 16.2 "Withdrawal"** of the **General Part**, Enel reserves the right to terminate for convenience the Agreement/FA, without any compensation to the Contractor, by written notification to the Contractor within 30 days following the occurrence of circumstances which could not be foreseen at the conclusion of the Agreement/FA and which lead to amendment of the contracting terms to the extent that performance of the respective agreement would be contrary to its business interests. The termination for convenience of the Agreement/FA shall be effective from the date specified by Enel in the content of the notification.

In this case, the Contractor has the right to claim only the payment for the part of the Agreement/FA fulfilled until the termination for convenience of the Agreement/FA.

## **13. ORDINARY EARLY TERMINATION OF THE AGREEMENT**

**In addition to the provisions of art. 16.2 "Withdrawal"** of the **General Part**, Enel can terminate the Agreement/FA at any time and at any stage of the contract.

The termination shall be notified to the Contractor by a written notification with receipt acknowledgement and it shall produce effects upon receipt by the Contractor.



In case that Enel claims the termination of the Agreement/FA, the Contractor is entitled to claim damages, compensations of up to 10% (ten percent) of the contract value undelivered (i.e. of the minimum value undelivered of the FA).

Notwithstanding the provisions of art. 16.1 "Suspension" of the **General Part**, with the payment of the remuneration referred to in the preceding paragraph, the Contractor cannot raise other claims, regardless of their nature.

#### **14. TERMINATION IN SPECIAL CASES OF INSOLVENCY**

The Agreement/FA can be also terminated in advance, in case that the procedure of dissolution, reorganization or insolvency proceedings have been initiated on one of the parties, provided that it must be done in compliance with the procedures and provisions of the applicable law.

#### **15. FORCE MAJEURE**

**In addition to the provisions of art. 17 „FORCE MAJEURE” of the General Part**

Force majeure is established by a competent authority, at the request of any of the parties.

Force majeure exempts the contracting parties regarding the fulfilment of obligations taken in accordance with this Agreement/FA, during its occurrence.

The fulfilment of the Agreement/FA shall be suspended during the period of force majeure, but without any prejudice to the rights the parties were entitled to until its occurrence.

The contracting party invoking the force majeure event shall notify the other party immediately and completely, on the occurrence thereof and shall take all measures at its disposal to limit its consequences.

If the force majeure lasts or it is expected to last for more than 6 months, either party shall be entitled to notify the other party on the rightful termination of this Agreement/FA, without any right of either party to claim damages.

#### **16. GOOD PERFORMANCE BOND**

**In addition to the provisions of art. 19 “Financial Guarantee” of the General Part**, the amount of the Good Performance Bond of the Agreement is **10% (5% - IMM)** of the contract value, excluding VAT.

The Good Performance Bond shall be established as follows:

a) by an instrument of guarantee issued under the conditions of the law by a bank or an insurance company and it shall be considered as an annex of the agreement. The guarantee instrument shall be submitted in original at the headquarters of Enel and it shall include the following, as a compulsory condition:

- the Contracting Parties (Insurer/Bank - the issuer of the policy, Insured-Contractor, Beneficiary-Enel
- the obligation of the bank or of the insurance company to pay in favour of Enel, any amount up to the limit of the Good Performance Bond, unconditionally/conditioned, accompanied by a statement regarding the failure of the Contractor to fulfil its obligations, any eventual payments to be made within the term specified in the request, with no further formalities from Enel or the Contractor;





- the period of validity of the Good Performance Bond.

Good Performance Bonds shall be returned upon request, in writing, to the Contractor as follows:

- (1) In case of supply contract, Enel has the obligation to issue/return the Good Performance Bond within no more than 14 days following the date of the products acceptance report covered by the agreement and/or following payment of the final invoice, if, until that date, any claims were not raised concerning it.
- (2) In case of service contract, Enel has the obligation to issue/return the Good Performance Bond within no more than following the date of completion by the Contractor of its obligations taken by this agreement, if, until that date, any claims were not raised concerning it.
- (3) In case of Design Contracts, Enel has the obligation to issue/return the Good Performance Bond as follows:
  - a) the value of the Good Performance Bond related to pre-feasibility and/or feasibility surveys within 14 days following the date of delivery and receipt/approval of the respective technical and economic documentation, if, until that date, any claims were not raised concerning it;
  - b) the value of the Good Performance Bond related to the technical documentation and/or performance details, within 14 days following the conclusion of the report at the completion of works executed in accordance with the related project, if, until that date, any claims were not raised concerning it.
- (4) In case of works contracts, Enel has the obligation to issue/return the Good Performance Bond as follows:
  - a) 70% of the Good Performance Bond value, following the conclusion of the report at the completion of works executed and commissioning of such works, if the acceptance is performed without any reserves and the risk for latent defects is minimum;
  - b) the remaining of 30% of the Good Performance Bond value, at the expiry date of the works performed, based on the final acceptance report.

In case the Contractor chooses to establish the Good Performance Bond by a letter of guarantee, it shall be able to choose the following methods to establish the guarantee to indicate the two distinct periods mentioned above in par. (4) a) and b).

It shall either request the issuing bank the issuance of two letters of guarantee with different validity periods, but which together can cover the value and validity indicated above or it shall request a single letter of guarantee for the entire period of validity, and at the first instalment reimbursement, it shall request the bank to amendment thereto for the period and the amount remaining. Enel shall not deliver the original letter until the expiry of 24 months guarantee period for the works performed, thus the additions of the letter shall be requested to the bank without submitting of the original thereof.

Enel has the right to raise claims on the Good Performance Bond, within the limit of the damage caused if the Contractor fails to fulfil its obligations taken in accordance to this contract. Prior to issuing a claim on the Good Performance Bond, Enel has the obligation to communicate this to the Contractor, specifying the obligations which have not been observed.





## 17. OBLIGATIONS OF THE CONTRACTOR RELATED TO ENVIRONMENT, HEALTH AND SAFETY AT WORK

### In addition to the provisions of art. 18 of the General Part

#### 17.1 Provisions related to health and safety of workers

During the performance of the activities covered by this Agreement, the Contractor shall comply during the whole period of the agreement, with the provisions of law regarding the safety and health at work and internal regulations of Enel on safety and health at work:

- a) Law no. 319/2006 on safety and health at work,
- b) Government Decision no.955/2010 on the amending and supplementing the Methodological Norms on the implementation of Law on safety and health at work no.319/2006 approved by GD 1425/2006
- c) Government Decision no. 1425/2006 on the approval of the Methodological Norms for the implementation of Law 319/2006,
- d) Law no.971/2006 on minimum requirements on safety and/or health signs at work,
- e) Government Decision no.1146/2006 on the minimum safety and health requirements regarding the use of equipment at the work place,
- f) Government Decision no.1048/2006 on the minimum safety and health requirements regarding the use of personal protective equipment at the work place,
- g) Government Decision no.1091/2006 on the minimum safety and health requirements at work,
- h) Government Decision no.300/2006 on the minimum safety and health requirements for temporary or mobile construction sites,
- i) Government Decision 600/2007 on the protection of young people at work, the conditions related to: authorization, training, facilities appropriate for the works to be performed, personnel, organizational and technical conditions for the execution of works and other provisions of the regulations specific for work at height,
- j) Law 265/2006 on environment protection,
- k) Government Decision 856/2002 on waste management,
- l) Law 211/2011 on waste management,
- m) Law 307/2006 on emergency state,
- n) OMAI 163/2007 Decission Interior Ministry on approval methodological norms of Law 307/2006.

The list of the normative deeds is not exhaustive, the Contractor having the obligation to fulfil its obligations in accordance with the applicable law in force.

The Contractor shall remain fully responsible for all damages due to the non-compliance with the above mentioned laws.

Moreover, the Contractor must:

- to appoint from its personnel a person responsible with the safety and health at work under the conditions of GD 1425 /2006;
- to use properly trained personnel holding the qualifications and certificates appropriate for the activities to be delivered, provided by the regulations from Romania and procedures of Enel;



- to appoint for each activity a foreman who has an appropriate qualification and be properly trained to use the machines, equipment and devices in accordance with the law in force and technical standards, subjected to periodic checks, as provided by the rules;
- not to modify any temporary works or protection enclosures of Enel or of other companies;
- to use only the machines, equipment and devices on which Enel was informed in advance;
- not to use the machines, equipment and devices of Enel if they not previously authorized;
- to keep the workspace clean and tidy during activities falling into its responsibility;
- to participate into coordination meetings organized by Enel;
- to carry out controls among its employees in order to observe the compliance with the rules of health and safety at work;
- to communicate to Enel the results of controls carried out in the field, the conclusion of the report of any trainings and meetings regarding Health and Safety at work;
- to know, to acquire and correctly apply the provisions of Stop Work Policy, in order to promote and strengthen a culture of health and safety at work

## 18. PENALTIES FOR THE NONCOMPLIANCE WITH THE ENVIRONMENT, HEALTH AND SAFETY AT WORK

### In addition to the provisions of art. 18.2 of the General Part

18.1. The Contractor shall comply with environment, health and safety regulations at work and fire protection which fall within its responsibility, for his crew and works carried out. In case of failure to observe any of its obligations in compliance with the laws and guidelines on health and safety at work and fire protection, Enel shall have the right to apply penalties in the amount provided in the Special Conditions.

18.2 Upon the occurrence of an accident at work during the execution of the agreement, the Contractor holds the responsibility to register the near misses, environmental incidents and safety and health related accidents, except for the cases when the accident victim is an employee of Enel.

18.3 Contractor has the obligation to announce Enel within 12 hours after any type of event occurred during the course of work.

18.4 Under the conditions of art. 18.2 " Sanctions for violations of the rules regarding the protection of health and safety at work" of the **General Part**, for failure of the Contractor to observe the provisions on health and safety at work, Enel can apply, by a written notification to the Contractor by registered letter with acknowledgment of receipt, a pecuniary penalty equal to:

- €350,00 (expressed in RON considering EURO exchange rate displayed by [www.cursbnr.ro](http://www.cursbnr.ro) at the date of issue the written notification) for each " SEVERE" infringement;
- €700,00 (expressed in RON considering EURO exchange rate displayed by [www.cursbnr.ro](http://www.cursbnr.ro) at the date of issue the written notification) for each "VERY SEVERE"<sup>1</sup> infringement

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<sup>1</sup> As they were classified in the "List of sanctions for severe and very severe breaches" provided in art. 18.2 of the General Conditions



18.5 If by the “ SEVERE”, “VERY SEVERE” and “Extremely SEVERE” infringements, accidents or personal injuries occur, ENEL reserves the discretionary right to apply, depending on the seriousness of the infringement and/or injury and/or damage to a person - a fine of up 2% of the total contractual value and in any case not less than. €700,00 (expressed in RON considering EURO exchange rate displayed by [www.cursbnr.ro](http://www.cursbnr.ro) at the date of issue the written notification).

18.6. If the amount of the sanctions applied reach 5% of the Contract’s value, ENEL shall also have the right to terminate the Contract with immediate effect. The application of the sanctions provided for in this Clause will have an adverse effect on the Vendor Rating index.

## 19. INSURANCE

**Art. 20 "Insurance"** of the GENERAL PART will be completed by the conditions set out in the Particular Conditions specific to each type of contract, part of contract, or in the FA/Contract.

## 20. PROTECTION OF PERSONAL DATA

**In addition to the provisions of art. 23 “Processing of personal data”** of the **General Part**, both Enel and the Contractor shall be responsible for the compliance with the obligations imposed by Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (hereinafter referred to as the “Law 677/2001”).

Within this document, the terms below shall have the following meaning:

**personal data** - any information related to an individual identified or identifiable; a person identifiable is that person that can be identified, directly or indirectly, especially related to an identification number or to one or several factors specific to its physical, physiologic, psychical, economic, cultural or social identity;

**personal data processing** - any operation or set of operations which are performed on the personal data, by automate or non-automate means, such as collecting, registration, organization, storing, adoption or change, extraction, consultation, using, disclosure to third parties by transmittal, dissemination or by any other way, annexation or combining, deleting or destruction;

**storage** - preservation on any kind of support of personal data collected;

**personal data management system** - any structure organized (physically and/or electronically/stored on computer) of personal data, accessible in line to certain criteria, regardless if this structure is centralized or decentralized organized or it is distributed according to functional or geographical criteria;

**operator** - any individual or business entity, private or public, including public authorities, institutions and their territorial structures, which determine the purposes and means of personal data processing; if the purpose or means for processing personal data are determined by a normative or based on a normative, the operator is the individual or the business entity, public or private, which is appointed as operator by that normative or based on that normative;



**person empowered by the operator** - an individual or business entity, private or public, including public authorities, institutions or their territorial structures, which process personal data on behalf of the operator;

**third party** - any individual or business entity, private or public, including public authorities, institutions or their territorial structures, other than the person concerned, the operator or person empowered or person who, under the direct authority of the operator or the person empowered, are authorized to process data;

**anonymous data** - data which, due to the origins or specific processing modality, cannot be associated to the person identified or identifiable.

## 20.1. General provisions

**20.1.1** All the elements which the Enel shall make available for the Contractor to fulfil the object of the Contract, as well as the documents, information, knowledge, to which the Contractor or its employees shall have access to during the performance of the Contract, are strictly confidential, being, at the same time, protected by the provisions of Law no. 677/2001 for persons' protection related to processing of personal data and free travelling of such data (hereinafter referred to as the "Law"), can be used only for the performance of the Contract and shall not be disclosed to anyone, unless an express written authorization is received from the Enel.

**20.1.2** Processing personal data necessary for the fulfilment of the object of the Contract shall be attained by the Contractor, as the attorney-in-fact of the Enel, as the operator, within the meaning of the Law.

**20.1.3** Both the Enel and the Contractor are responsible to observe the obligations imposed by the legislation applicable to each of them related to the processing of personal data. Therefore, in case that the legislative frame incident related to the processing of personal data is changed and/or in case of a transfer of personal data outside Romania, the Parties declare and guarantee that they shall make every necessary effort - to procure/issue and deliver to each other, any documents available and which could be useful - to fulfil all the effects of the Contract and with the observance of the Law provisions.

**20.1.4** The Contractor shall process all personal data and shall act exclusively based on the instructions received from the Enel, under the conditions established by this deed, and also with the legislation in force.

**20.1.5** The Contractor shall not be able to use the personal data for any other purposes than that established by the Enel related to the service provisions established by the Contract or consequently to the written instructions received from the Enel.

**20.1.6** The Contractor shall be able to disclose personal data to third parties only with the written agreement of the Beneficiary and with the observance of legal provisions applicable.

**20.1.7** In case that the Contractor breaks any obligation related to the processing of personal data provided by Law, the Enel reserves the right to claim compensations/damages corresponding to the damage suffered. The Contractor shall be liable for all direct damages (including, but not limited to the image damage) produced to the Enel for failure to observe, in full or in part, of any and/or all obligations related to processing personal data.



## **20 2. Obligations of the Contractor related to processing personal data**

**20.2.1** In compliance with legal provisions in force and by reference to the Contract, if applicable, the Contractor shall act, as trustee of the Enel, based only on the instructions received from the latter as operator, and has the following obligations regarding the processing of personal data during the the entire period of the Contract:

- a) to process personal data in good faith and in compliance with legal provisions in force;
- b) to store personal data in a form that allows identification of the persons concerned strictly for the period necessary to accomplish the purposes for which the data are collected and when they will be subsequently processed.

**20.2.2** Considering the previous article, the Contractor is the sole responsible for the behaviour of its employees (any person that has concluded a labour agreement with the Contractor; at the same time, are assimilated to the Employees in the meaning of this Contract, the persons detached within the Contractor, as well as the persons that develop activities within the Contractor based on a staff leasing agreement, directors, managers, as they are defined by the Law no. 31/1990 on Companies) and/or of the attorneys-at-fact and undertake to observe the following rules related to the operations of personal data processing, as follows:

- a) to use personal data only for the purpose communicated by the Enel and within its interest;
- b) not to disclose personal data which they have access to or to which they had access as a consequence of computer systems vulnerability;
- c) not to disclose or to transfer personal data received for the performance of the contract or any other similar information used for authorization and identification;
- d) to report any vulnerability acknowledged in the personal data transmittal system related to the security of computer systems, as well as any event related to a possible misuse of such data, informing the Enel;
- e) not to access personal data for which they were not authorized first by the Enel, except for the personal data necessary to fulfil the scope of the Contract;
- f) not to make unauthorized copies or to distribute protected materials by laws on intellectual propriety and of copyright;
- g) not to send and/or not to receive documents or files that can prejudice the Enel and/or cause legal actions against the Enel;
- h) to submit on the 25<sup>th</sup> of each month, previous to that when the personal data processing is actually performed, the list of the personnel employed and/or of the attorneys-in-fact who have access to personal data.

**20.2.3** The Contractor will be able to transfer - both in Romania, as well as outside Romania - personal data to one of its attorneys-in-fact if the Contractor has the right to consider such a transfer necessary in order to provide services, but only with the previous agreement of the Enel and fulfilling the formalities provided by the Law, if applicable. In case of such transfer and before the transfer takes place, the Contractor will make sure that between it and its attorney-in-fact there is a valid contract, by which the attorney-in-fact undertakes to observe the same personal data processing protection conditions provided hereby.



### 20.3. Security measures

**20.3.1** The Parties declare and guarantee that they have implemented the technical and organizational measures provided by the Order of the Ombudsperson no. 52/2002 on the approval of the minimum security requirements of personal data processing (hereinafter referred to as the Order no. 52/2002).

**20.3.2** The Contractor represents and warrants that it will implement, on its own expense, any other additional technical and organizational measures requested by the Enel to protect personal data against accidental or illegal destruction, loss, change, unauthorized disclosure or access, as well as against any other illegal forms of processing, both related to its own activity, as well as related to the activity of direct and indirect attorneys-in-fact of the Contractor.

**20.3.3** Notwithstanding the provisions of Order no. 52/2002 and without the intention of superseding the civil liability of the Parties for failure to observe these provisions, the Contractor undertakes to observe the following supplementary rules related to processing of personal data, as follows:

- a) personal data which transit the communication networks of any kind will be encrypted, otherwise their transmittal will be done only by computer modalities/solutions which can allow their encrypting (SSL-HTTPS, IPsec etc.);
  - b) physical locations where personal data are processed and stored will be protected against unauthorized access;
  - c) the access to personal data must be restricted by reporting to the principle of the need to know. Unauthorized access to such data is forbidden. The Contractor will implement specific measures to control the access to personal data managed by it;
  - d) the personal data management system which processes or stores personal data must benefit of disaster and recovery environments. At the same time, personal data will be protected against alteration of any kind, by proper methods (backup etc.).
  - e) the operations carried out in the personal data management system which processes or stores personal data must be logged. Logs will be available for two (2) years as of the date of their preparation, following that, after this period, the personal data to be deleted or transformed into anonymous data. Enel reserves the right to request these logs for analysis in case of security incidents of personal data or to carry out investigations on security. Logs must contain enough information to uniquely identify: access time, the person who accessed, the system on which the access has been carried out and operations undertaken. A copy of these logs will be sent monthly to the Enel (preferably continuous replication) namely on the 10<sup>th</sup> of each month for the month following the one in progress.
  - f) the Contractor will implement internal measures by which it can control both the access of users, as well as the use of the computer resources and computer applications, both for its own employees, and for third parties,
- Therefore, the Contractor understands and accepts that it has the whole responsibility related to the implementation and/or observance of additional rules related to processing of personal data by its employees and/or its attorney-in-fact.

**20.3.4** The Contractor guarantees the integrity of all information and data which it has access to, as it is responsible for the behaviour of its employees too, as well as of the attorneys-in-fact within the development of the activities in the Contract, being understood that it will be able to use the information and data obtained, only within and for the performance of the Contract, with the observance of legal norms in force related to data protection. In this regard, the Contractor undertakes to arrange and ensure the measures of logistic and physical safety of data, which can guarantee their protection from destruction, handling, unauthorized access or copy.



**20.3.5** At the date of termination of the Contract's legal effects, the Contractor undertakes to return all data, documents and information provided by the Enel or which the Contractor owns for the performance of the Contract and to destroy all copies and registration, except for express authorization from the Enel.

The Contractor represents and guarantees that it shall apply the technical and organizational measures implemented and communicated properly by Enel to the Contractor, to protect personal data against accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access, and against all other forms unlawful processing.

## 21. ETHICAL CLAUSES

In addition to the provisions of art. 27 "ETHICAL CONDUCT RULES." of the General Part

### 21.1. General information

**21.1.1** In activities carried on and relationship management, Enel Group is guided by the principles contained in its Code of Ethics, Zero Tolerance Plan and the Organization Model, in line with the guidelines 231/2001, available at <http://www.enel.com>. In the course of its own business and in managing its relationships with third parties, the Contractor declares that it shall be governed by equivalent principles; otherwise, Enel reserves the right to terminate the agreement in compliance with the provisions of the Special Conditions.

The principles of health and safety vision of ENEL and of Stop Work Policy can be found at the following address: [www.enel.ro](http://www.enel.ro)

### 21.2. The Statement regarding the Conflict of interests

**21.2.1 Regarding the obligations taken in compliance with art. 27.2 "Conflict of interest"** of the **General Part**, the Contractor undertakes to provide Enel the statement referred to in **Attachment 1 to ANNEX ROMANIA** of this document, duly signed at the conclusion date of this agreement.

### 21.3 Confidentiality declaration and regulations regarding the use of information systems of Enel<sup>2</sup>

**21.3.1** The Contractor undertakes to comply with the obligations provided in **Attachment 2 of ANNEX ROMANIA** of this document. It also undertakes to provide Enel with the statements listed in Attachment, duly signed at the conclusion date of this agreement.

## 22. SETTLEMENT OF LITIGATION

**Referring to Article 29. "Jurisdiction"** of the **General Part**, Enel and the Contractor shall make every effort to resolve amicably by direct negotiations, any disagreement or dispute which may arise between them within or in connection with this Agreement/FA.

If, after 15 days from the commencement of these negotiations, Enel and the Contractor are unable to settle amicably a contract dispute, any of the parties can request that the dispute be settled by the competent court in

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<sup>2</sup> This provision applies to Agreements providing access to offices of Enel and/or access and processing of data and information of Enel Group, and the use by the Contractor, of the information systems of Enel.





Bucharest/Timișoara/Constanța (as the case may be) under the conditions of the law, in compliance with pre-court procedures, where appropriate.

### **23. INFORMATION AND DATA REGARDING THE PERFORMANCE OF THE AGREEMENT**

ENEL, at the request of the Contractor, shall provide all data necessary for the performance of the Agreement/FA. In case that data supplied by ENEL, are not sufficient or are incomplete, the Contractor has the obligation to request the necessary data in a timely manner. In the absence of such request, ENEL shall not be in any way responsible for the failure to comply with the provisions of the Agreement/FA.

### **24. PARTIAL INVALIDATION**

If one or several provisions of the Agreement/FA shall be considered by a court, government, regulatory or administrative entity or by any other competent jurisdiction, invalid or unenforceable, the invalidation or non-performance of that provision shall not affect the other provisions of the Agreement/FA and all provisions not affected by such invalidity or non-performance shall remain in full force and effect. The Parties agree to attempt to replace the invalid or unenforceable provision with a valid and enforceable provision to satisfy as much as possible the economic, legal and commercial aspects of the invalid or unenforceable provision.

### **25. LAW APPLICABLE TO THE AGREEMENT/FA**

**Taking into account the provisions of art. 28 “Law applicable” of the General Part**, the Agreement/FA shall be construed in accordance with the laws of Romania.

**STATEMENT<sup>1</sup>**  
**regarding conflict of interests**

The undersigned ..... true and lawful attorney of \_\_\_\_\_ ,

(denomination/name and location/ address) acting as ..... of the contract for ..... . declare that I do not have as members in the Board of Directors/management or supervisory body and/or shareholders or associates which are my husband/wife or close relatives to the fourth degree or in business relationships trade with people who hold decision-making positions within the contracting authority.

I, the undersigned, declare that the information provided are complete and true in every detail and I understand that Enel has the right to ask, for verification and confirmation of statements, any supporting documents I have.

I understand that if this statement is not consistent with reality I am liable for violation of criminal law regarding false statements.

This declaration is valid for the entire period of contract performance.

Date of filling in .....

(capacity of the signatory party),

\_\_\_\_\_

(authorized signature)

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<sup>1</sup> To be issued by the manager of the company/legal representative/ persons from the company's upper management

**ATTACHMENT NO. 2**

**REGARDING the SAFETY OF USING THE INFORMATION SYSTEMS OF ENEL**

**CONFIDENTIALITY STATEMENT<sup>1</sup>**

**AGREEMENT** no. .... **as of** .....

**OBJECT:** .....

The undersigned: \_\_\_\_\_

(name and surname of the informant)

Individual (check only if the respective Agreement is not concluded with a Company)

(to be filled in only if the respective Agreement is concluded with a Company)

Owner } of \_\_\_\_\_

(Name/Headquarters of the Company)

True and lawful attorney

**DECLARES:**

➤ the list of all authorized persons, who in connection with the Agreement, have the right to enter the premises of Enel and/or to access data and information on Enel Group is composed of:

1) Mr/Mrs.....  
(Name, Surname)

2) Mr/Mrs.....  
(Name, Surname)

➤ that each of the above persons signed the specific individual confidentiality clause, attached to this statement;

➤ that the person responsible to keep the list above updated is:

Mr/Mrs \_\_\_\_\_ email \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_

Attached no. \_\_\_ clauses of individual confidentiality

Date \_\_\_\_\_

Informant

.....

Signature and stamp

<sup>1</sup> To be issued by the manager of the company/legal representative/ persons from the company's upper management

**INDIVIDUAL CONFIDENTIALITY STATEMENT<sup>1</sup>**

**AGREEMENT no.** ..... **AS OF**

.....

**OBJECT:**

.....  
.....

The undersigned .....

Born in ..... ( ..... ), on

.....

<input type="checkbox"/> employee	}	(To be filled in only if the respective Agreement is concluded with a
<input type="checkbox"/> consultant		of Company .....

Regarding the related Agreement, he/she undertakes:

- not disseminate or disclose to third parties the information collected, opinions, studies, and other elements that could be provided by Enel to perform the related Agreement and use this information only for the purposes of this Agreement, except where the undersigned must comply with legal obligations or requirements of public authorities to which he/she cannot legally refuse to fulfil;
- regularly inspect and comply with the security requirements regarding the data provided in the Annex, in case he/she possibly uses the systems made available by Enel and store with maximum care all the documents on paper and/or electronically, obtained or produced during the performance of activities.

The information disclosed by Enel or resulting from public official documents are excluded from the scope of confidentiality obligations.

**The confidentiality obligations are fixed for a period of 5 years from the expiry of this commitment, even in the event of cessation and termination, direct or indirect of the contractual relationship with Enel.**

For acceptance

Signature

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Date: .....

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<sup>1</sup> To be issued by the persons mentioned in the Confidentiality Statement list, issued by the Company

## **Safety instructions for the use of information systems of Enel**

All data, information and information systems provided by the ENEL Group are the property of the company and their use will be made only with the approval of ENEL.

Access to data, information and information systems owned by ENEL Group and their use should be implemented in accordance with safety regulations below:

- access will be granted only after signing certain confidentiality clauses, strictly to fulfil the tasks and activities covered by the contract for a limited time. The limited period of time allowed for access will not exceed the contract's validity period.
- access is made by compliance with ENEL policies, rules and procedures, regarding information security, legal framework in force and the right to privacy of other colleagues;
- access is made by ensuring the principles of integrity, availability and confidentiality of data, information and information systems;
- the access key to ENEL information systems must be used exclusively used by the staff and only for the fulfilment of work tasks. The password must be kept confidential and changed at least every 60 days or whenever there is a suspicion of being compromised. If using other authentication mechanisms, they must be used and held in maximum security.
- the users of access rights are responsible for the use method of the information resources and for the actions which may damage the security of information resources;
- the users of access rights, by their actions, must not try to compromise the protection of information systems and must not perform actions affecting the privacy, integrity or availability of any type of information;
- depending on the risk degree, access to data, information and information systems is monitored. ENEL reserves the right to review daily, or from time to time, logs containing relevant security events of the information describing the actions of the users of access rights.
- when they provide or discover non-compliance with IT security measures, IT security breaches, possible vulnerabilities, risks or threats to information systems, users are required to report these to the Security Department, who will investigate and act accordingly.
- the level of the right of access to the information system should be limited to the components necessary for carrying out the activities covered by the contract. Even if the granted level of access allows access to other components that are not needed, access must be used in good faith;
- access rights, equipment and information systems should not be used to connect to the Internet or other open networks, other than those that may be provided by Enel;
- equipment not provided by ENEL and needed for the performance of contractual activities, may be connected in the ENEL network only if access is granted (at least by e-mail). The configuration of these devices must comply with the information security policy and have implemented updated IT security measures to prevent the programs such as virus, Trojan, worms and other malicious or illicit programs that can cause failures to ENEL computer service

- the users of access rights should not handle the data and information in electronic format which contravenes laws, which contain racist, abusive, discriminatory, pornographic, paedophile, racist content, content inciting to the use of prohibited substance, war crimes, crimes against humanity , rape, murder, violence, or pirated software or pirated media files that can harm the ENEL Group.

In compliance with the requirements above, Enel reserves the right to prohibit the improper use of its IT infrastructure, without prejudice the compliance with the provisions of legislation in force. Nevertheless, Enel also reserves the right to notify the competent judicial authorities on any possible infringement of regulations which might be considered an offense.