RECOMMENDATION OF THE JOINT COMMITTEE OF THE CENTRAL EUROPEAN FREE TRADE AGREEMENT

No. 1/2021

On CEFTA Model Agreement Provisions

Adopted on 2 July 2021

The Joint Committee,

Pursuant to Article 40.4 of Annex 1 to the Agreement on Amendment of and Accession to the Central European Free Trade Agreement;

Having regard to the commitments under the CEFTA 2006;

Having regard to the commitments under the CEFTA Additional Protocol 5 on trade facilitation ("AP 5");

Having regards to the commitments under the Additional Protocol 6 on Trade in Services ("AP 6"), adopted on 18 December 2019;

Acknowledging the importance of gathering data to monitor and evaluate the implementation of commitments by the CEFTA Parties;

Recognising that CEFTA Parties wish to maintain an adequate level of confidentiality, professional secrecy, and data protection;

Having regard to the Decision of the Joint Committee of the Central European Free Trade Agreement 2006 No. 2/2021 on the provision of data by the CEFTA Parties to the CEFTA Secretariat;

Has recommended the following:

In the context of their contractual relations with any Contractor, CEFTA Parties and the CEFTA Secretariat may use the model provisions provided in annexes to this Recommendation.

This recommendation shall take effect on the date of its adoption.

Adopted in in the meeting held on 2 July 2021 in the presence of representatives of all CEFTA Parties.

Annex 1 to Recommendation No. 1/2021

Model Text for an Agreement between the CEFTA Secretariat and the Contractor

Article 1
Definitions

(1) "*Data*" means any information, whether or not processed or analysed, and documents, reports and other communications in any format, including electronic, or certified or authenticated copies thereof, which is collected to prepare the aggregated statistical reports.

(2) "*Raw Data*" means any data directly collected from a source and not processed or aggregated.

(3) "*Aggregated Data*" means data combined from several measurements and where groups of observations are replaced with summary statistics based on those observations.

(4) "*Business-sensitive Data*" means any Raw Data that contains information that would pose a risk to a business operator if released to a competitor or the general public.

(5) "*Competent Authorities*" means the CEFTA Parties' relevant authorities, such as those responsible for Customs, services, food safety, animal and plant health, and quality.

(6) "*Contractor*" means any services provider contracted by the CEFTA Secretariat to support the CEFTA Parties' competent authorities to prepare and generate aggregated statistical reports for the CEFTA Secretariat.

(7) "*Confidential Information*" means any and all information which is disclosed directly or indirectly, electronically, visually, or in a written or other tangible form and that is marked or otherwise identified in writing as "*Confidential*" at the time of disclosure. Confidential Information includes, but is not limited to, technology, know-how, trade secrets, patented or copyrighted information, computer programs, software, software documentation, formulas, data, inventions, algorithms, techniques, processes, business information, marketing plans, strategies, financial information, forecasts, budgets, third party confidential information and customer and prospective customer lists and information.

(8) "*SEED*" means the system and platform for the Systematic Exchange of Electronic Data (SEED), the SEED+, or any future iterations thereof.

Article 2
Scope

The Contractor shall support the CEFTA Parties' Competent Authorities to prepare and generate aggregated multivariate statistical analyses based on non-Business-sensitive Data exchanged among CEFTA Parties' Customs Administrations for the CEFTA Secretariat.

Article 3
Provision of data and services

(1) For the purposes of providing technical support for the generation of statistical reports, the CEFTA Parties' Customs Administration may allow the Contractor to remotely access the SEED system through a Virtual Private Network (VPN) connection.

(2) The relationship between the Contractor and the CEFTA Parties' Customs Administration shall be governed by individual agreements between the Contractor and the CEFTA Parties' respective Customs Administrations.

Article 4
Type of reports

The following types of Aggregated Data reports shall be created from the Raw Data contained in the SEED system:

a) Number of trucks
Number of loaded and empty trucks (freight means of transport) crossing the Border Crossing Point(s) (BCP(s)) / Common Crossing Point(s) (CCP(s)) in CEFTA.

b) Number of Customs declarations/documents
Number of consignments in trucks (freight means of transport) crossing the Border Crossing Point(s) (BCP(s)) / Common Crossing Point(s) (CCP(s)) in CEFTA.

c) Waiting Time at Border Crossing Point(s) (BCP(s)) / Common Crossing Point(s) (CCP(s))
Average waiting times of the trucks (freight means of transport) at the Border Crossing Point(s) (BCP(s)) / Common Crossing Point(s) (CCP(s)) in CEFTA.

d) Risk management
Number of notifications per common risk profiles, percentage of customs controls of the consignments, and percentage of discrepancies.

e) Data on AEOs

Article 5
Data series

The Aggregated Data shall be provided as one or a combination of several of the following data series:

a) Type of goods series
Goods types are determined by tariff classification (HS code), up to HS8 level; and/or

b) Geographical series
Geographical series determined by the Border Crossing Point (BCP) / Common Crossing Point (CCP) or group of Border Crossing Points) (BCPs) / Common Crossing Points (CCPs);

c) Time series (determined the by following periods: week, month, year); and

d) Type of economic operators, such as AEOs.

Article 6
Use of data

(1) The Raw Data shall only be used in aggregated multivariate statistical analyses.

(2) The Aggregated Data reports shall be submitted to the CEFTA Secretariat.

Article 7
Confidentiality

(1) The Contractor shall keep any Raw Data confidential and shall not disclose or communicate any Confidential Information or any information derived from it to any third party except as permitted by this Agreement.

(2) Any staff of the Contractor shall sign a statement of confidentiality ahead of accessing the Data (Annex 1 to this Agreement).

(3) The Contractor may disclose the Confidential Information to its employees, attorneys, accountants and auditors, only to the extent that said persons have a need to know such information in connection with the permitted purposes, and only insofar as such persons are bound by a nondisclosure agreement including the same conditions of confidence and non-use required of the Contractor by this Agreement. The Contractor shall not use any part of the Confidential Information for any purpose other than for the permitted purposes. As part of this obligation, the Contractor shall not derive any commercial benefit, whether direct or indirect, from the Confidential Information.

(4) The Contractor shall promptly notify the CEFTA Secretariat of any unauthorised disclosure or use of Confidential Information by any recipient of the data and shall provide the CEFTA Secretariat all reasonable assistance in connection with any action by or on its behalf to prevent or stop such disclosure or use, and/or to obtain compensation for such disclosure or use.

(5) The Contractor shall not reverse engineer, decompile, copy, or export any Confidential Information.

(6) The Contractor shall take reasonable precautions to protect the Confidential Information.

(7) This Confidentiality Agreement imposes no obligation upon the Parties with respect to Confidential Information which either Party can establish by legally sufficient evidence: (a) was rightfully within the possession of the recipient of the data without restriction on disclosure prior to it being furnished to the recipient of the data by the Customs Administration or its agents; (b) is or has become in the public domain through no act or failure to act on the part of the Recipient; (c) is rightfully disclosed or made available to the recipient of the data on a non-confidential basis by a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by the recipient of the data without reference to any Confidential Information or the participation of any person who has had access to the Confidential Information.

(8) The Contractor may disclose Confidential Information to the extent necessary to comply with any applicable law, order, regulation, ruling, subpoena or order of a Party's authority or tribunal with competent jurisdiction, provided, however, that the CEFTA Secretariat is notified prior to any disclosure so that it may seek appropriate protection or limitation of the disclosure. The

Contractor shall provide reasonable cooperation to the CEFTA Secretariat and its legal counsel in seeking such protection or limitation of the disclosure.

(9) The data is provided "*as-is*" and the CEFTA Secretariat and the respective CEFTA Parties' Customs Administration make no representation or warranty of any kind with respect to the suitability, accuracy, or completeness of the Confidential Information, or with respect to non-infringement of third party rights.

(10) The CEFTA Secretariat and the respective CEFTA Parties' Customs Administration shall not be liable for any action or inaction in reliance upon any Confidential Information. The Contractor does not acquire any license, right, title or interest in the Confidential Information except the limited right to use the Confidential Information in accordance with the above provisions.

(11) All Confidential Information furnished under the above provisions shall remain the property of the respective CEFTA Parties' Customs Administration and shall be returned immediately upon a request by the respective CEFTA Parties' Customs Administration. Any summaries, compilations or extracts of Confidential Information prepared by the Contractor shall be deemed Confidential Information and shall be subject to the terms of this Agreement.

(12) The obligation to protect confidential information shall survive the expiration or termination of the agreements between the Competent Authorities, the Contractor, and the CEFTA Secretariat and continues indefinitely or until the confidential information no longer meets the requirements being confidential information under this Agreement.

Article 8
Settlement of disputes

All potential disputes arising from this Agreement shall be resolved in the spirit of good business practices by mutual agreement. If that does not yield results, this Agreement shall be treated according to the Laws of Belgium and the Courts of Brussels shall be competent to resolve any disputes under this Agreement.

Article 9
Termination of the Agreement

(1) In case any of the Contracting Parties does not fulfil its obligations, the other Contracting Party has the right to terminate this Agreement by delivering a notice within seven (7) days prior to the termination of the Agreement.

(2) The obligations regarding Confidential Information obtained prior the termination of this Agreement shall remain valid indefinitely.

Article 10
Penalties

In case of any unauthorized disclosure of any confidential information covered by this Agreement by one of the Contracting Parties, the Contracting Party at fault is by default obliged to provide

compensation of the damage to the other Contracting Party. The amount of damage is determined by an independent representative chosen and appointed by the Customs Administration.

Article 11
Final provisions

(1) Any future amendments to this Agreement shall be made by Annex to this Agreement, signed by authorised representatives of the Contracting Parties.

(2) The provisions of this Agreement shall enter into force on the day of its signing.

Annex 1 - Statement of Confidentiality

Statement of Confidentiality of Information

First Name: +++
Name: +++
Passport / Personal ID number: +++

I declare that I will treat all data made available by the CEFTA Party's Customs Administration confidential.

With respect to all information that I will have access to, I declare that I shall use it solely for the purposes of preparing and generating aggregated statistical reports for the CEFTA Secretariat.

Signature

Date: _____
Place: _____

Template for the Legal Agreements between the Competent Authorities and the Contractor

The Contracting Parties collaborate for the purposes of prepare and generate aggregated data reports for the CEFTA Secretariat and have agreed as follows:

Article 1
Definitions

(1) "*Data*" means any information, whether or not processed or analysed, and documents, reports and other communications in any format, including electronic, or certified or authenticated copies thereof, which is collected to prepare the aggregated statistical reports.

(2) "*Raw Data*" means any data directly collected from a source and not processed or aggregated.

(3) "*Aggregated Data*" means data combined from several measurements and where groups of observations are replaced with summary statistics based on those observations.

(4) "*Business-sensitive Data*" means any Raw Data that contains information that would pose a risk to a business operator if released to a competitor or the general public.

(5) "*Competent Authorities*" means the CEFTA Parties' relevant authorities, such as those responsible for Customs, services, food safety, animal and plant health, and quality.

(6) "*Contractor*" means any services provider contracted by the CEFTA Secretariat to support the CEFTA Parties' competent authorities to prepare and generate aggregated statistical reports for the CEFTA Secretariat.

(7) "*Confidential Information*" means any and all information which is disclosed directly or indirectly, electronically, visually, or in a written or other tangible form and that is marked or otherwise identified in writing as "*Confidential*" at the time of disclosure. Confidential Information includes, but is not limited to, technology, know-how, trade secrets, patented or copyrighted information, computer programs, software, software documentation, formulas, data, inventions, algorithms, techniques, processes, business information, marketing plans, strategies, financial information, forecasts, budgets, third party confidential information and customer and prospective customer lists and information.

(8) "*SEED System*" means the system and platform for the Systematic Exchange of Electronic Data (SEED), the SEED+, or any future iterations thereof.

Article 2
Scope

The Contractor shall support the CEFTA Parties' relevant Competent Authorities to prepare and generate aggregated multivariate statistical analyses based on non-Business-sensitive Data exchanged among CEFTA Parties' Customs Administrations for the CEFTA Secretariat.

Article 3
Provision of data and services

(1) For the purposes of providing technical support for the generation of the statistical reports, the CEFTA Parties' Customs Administration may allow the Contractor to remotely access the SEED system through a Virtual Private Network (VPN) connection and the Data provided therein.

Article 4
Type of reports

The following types of Aggregated Data reports shall be created from the Raw Data contained in the SEED system:

a) Number of trucks
Number of loaded and empty trucks (freight means of transport) crossing the Border Crossing Point(s) (BCP(s)) / Common Crossing Point(s) (CCP(s)) in CEFTA.

b) Number of Customs declarations/documents
Number of consignments in trucks (freight means of transport) crossing the Border Crossing Point(s) (BCP(s)) / Common Crossing Point(s) (CCP(s)) in CEFTA.

c) Waiting Time at Border Crossing Point(s) (BCP(s)) / Common Crossing Point(s) (CCP(s))
Average waiting times of the trucks (freight means of transport) at the Border Crossing Point(s) (BCP(s)) / Common Crossing Point(s) (CCP(s)) in CEFTA.

d) Risk management
Number of notifications per common risk profiles, percentage of customs controls of the consignments, and percentage of discrepancies.

e) Data on AEOs

Article 5
Data series

The Aggregated Data shall be provided as one or a combination of several of the following data series:

a) Type of goods series
Goods types are determined by tariff classification (HS code), up to HS8 level; and/or

b) Geographical series
Geographical series determined by the Border Crossing Point (BCP) / Common Crossing Point (CCP) or group of Border Crossing Points) (BCPs) / Common Crossing Points (CCPs);

c) Time series (determined the by following periods: week, month, year); and

d) Type of economic operators, such as AEOs.

Article 6

Use of data

(1) The Raw Data shall only be used to prepare aggregated multivariate statistical data analyses.

(2) The Aggregated Data reports shall be submitted by the Contractor to the CEFTA Secretariat.

Article 7
Data protection and confidentiality

(1) The Contractor shall keep any Raw Data confidential and shall not disclose or communicate any Confidential Information or any information derived from it to any third party except as permitted by this Agreement.

(2) Any staff of the Contractor shall sign a statement of confidentiality ahead of accessing the Raw Data (Annex 1 to this Agreement).

(3) The Contractor may disclose the Confidential Information to its employees, attorneys, accountants and auditors, only to the extent that said persons have a need to know such information in connection with the permitted purposes, and only insofar as such persons are bound by a nondisclosure agreement including the same conditions of confidence and non-use required of the Contractor by this Agreement. The Contractor shall not use any part of the Confidential Information for any purpose other than for the permitted purposes. As part of this obligation, the Contractor shall not derive any commercial benefit, whether direct or indirect, from the Confidential Information.

(4) The Contractor shall promptly notify the CEFTA Parties' Customs Administration of any unauthorised disclosure or use of Confidential Information by any recipient of the data and shall provide the CEFTA Parties' Customs Administration all reasonable assistance in connection with any action by or on its behalf to prevent or stop such disclosure or use, and/or to obtain compensation for such disclosure or use.

(5) The Contractor shall not reverse engineer, decompile, copy or export any Confidential Information.

(6) The Contractor shall take reasonable precautions to protect the Confidential Information.

(7) This Confidentiality Agreement imposes no obligation upon the Parties to this Agreement with respect to Confidential Information which either Party to this Agreement can establish by legally sufficient evidence: (a) was rightfully within the possession of the recipient of the data without restriction on disclosure prior to it being furnished to the recipient of the data by the Customs Administration or its agents; (b) is or has become in the public domain through no act or failure to act on the part of the Recipient; (c) is rightfully disclosed or made available to the recipient of the data on a non-confidential basis by a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by the recipient of the data without reference to any Confidential Information or the participation of any person who has had access to the Confidential Information.

(8) The Contractor may disclose Confidential Information to the extent necessary to comply with any applicable law, order, regulation, ruling, subpoena or order of a Party's authority or tribunal with competent jurisdiction, provided, however, that the CEFTA Parties' Customs Administration is notified prior to any disclosure so that it may seek appropriate protection or limitation of the

disclosure. The Contractor shall provide reasonable cooperation to the CEFTA Secretariat and its legal counsel in seeking such protection or limitation of the disclosure.

(9) The data is provided "*as-is*" and the CEFTA Secretariat and the respective CEFTA Parties' Customs Administration make no representation or warranty of any kind with respect to the suitability, accuracy, or completeness of the Confidential Information, or with respect to non-infringement of third party rights.

(10) The CEFTA Secretariat and the respective CEFTA Parties' Customs Administration shall not be liable for any action or inaction in reliance upon any Confidential Information. The Contractor does not acquire any license, right, title or interest in the Confidential Information except the limited right to use the Confidential Information in accordance with the above provisions.

(11) All Confidential Information furnished under the above provisions shall remain the property of the respective CEFTA Parties' Customs Administration and shall be returned immediately upon a request by the respective CEFTA Parties' Customs Administration. Any summaries, compilations or extracts of Confidential Information prepared by the Contractor shall be deemed Confidential Information and shall be subject to the terms of this Agreement.

(12) The obligation to protect confidential information shall survive the expiration or termination of the agreements between the Competent Authorities, the Contractor, and the CEFTA Secretariat and continues indefinitely or until the confidential information no longer meets the requirements being confidential information under this Agreement.

Article 8
Access to the ICT system of the Customs Administration

(1) For the purposes of preparing and generating aggregated statistical reports for the CEFTA Secretariat, the CEFTA Party's Customs Administration may allow remote access to the relevant databases through a Virtual Private Network (VPN) connection during the validity of this Agreement.

(2) The Contractor shall only use the remote access to the Customs Administration's databases for purposes of preparing and generating aggregated statistical reports for the CEFTA Secretariat.

(3) Access to the databases shall only be allowed to the Contractor's employees whose names and other information are listed in Annex 1, which is an integral part of this Agreement. Any modification of the list of employees, who have access to the system, shall be made in writing, by an Annex to this Agreement.

(4) Employees of the Contractor who have been allowed access to the databases shall sign a "*Statement of confidentiality of information*", provided in Annex 2, and which forms an integral part of this Agreement.

(5) Each employee of the Contractor, who has been allowed access to the databases, shall keep his or her username and password confidential.

(6) Before accessing the system, an employee of the Contractor shall submit a request for access to the CEFTA Party's databases via the form provided in Annex 3 to this Agreement.

(7) Following each access, the employee of the Contractor that accessed the databases shall submit an access report using the form provided in Annex 4 to this Agreement.

Article 9
Settlement of disputes

All potential disputes arising from this Agreement shall be resolved in the spirit of good business practices by mutual agreement. If that does not yield results, this Agreement shall be treated according to the Laws, regulations and administrative provisions of [+++], and the Courts of [+++] shall be competent to resolve any disputes under this Agreement.

Article 10
Termination of the Agreement

(1) In case any of the Parties to this Agreement does not fulfil its obligations, the other Party to this Agreement has the right to terminate this Agreement by delivering a notice within seven (7) days prior to the termination of the Agreement.

(2) The obligations regarding confidential information obtained prior the termination of this Agreement shall remain valid indefinitely.

Article 11
Penalties

In case of any unauthorised disclosure of any confidential information covered by this Agreement by one of the Parties to this Agreement, the Party to this Agreement at fault is by default obliged to provide compensation of the damage to the other Party to this Agreement. The amount of damage is determined by an independent representative chosen and appointed by the Customs Administration.

Article 12
Final provisions

(1) Any future amendments to this Agreement shall be made by Annex to this Agreement, signed by authorised representatives of the Parties to this Agreement.

(2) The provisions of this Agreement shall enter into force on the day of its signing.

Annex 1 – List of employees of the Contractor authorised to access the relevant databases of the CEFTA Party's Customs Administration

First Name and Last Name	Passport or Personal ID number	Position/ Role

Annex 2 - Statement of Confidentiality

Statement of Confidentiality of Information

First Name: +++
Name: +++
Passport / Personal ID number: +++

I declare that I will treat all data made available by the CEFTA Party's Customs Administration confidential.

With respect to all information that I will have access to, I declare that I shall use it solely for the purposes of preparing and generating aggregated statistical reports for the CEFTA Secretariat.

                                                                                          Signature

Date: _____
Place: _____

Annex 3 – Request for access

Request for Access to system _____

1.	Number		2.	Date	
3.	**Basis to submit a request**	Agreement for _____ Signed between Customs Administration and _____, (No. _____ from _____)			
4.	**Details for the accessing person** (First name and last name, username for remote access)				
5.	**Access time period** (date and time of access)				
6.	**Requested by**				
7.	**Approved**	☐ Yes ☐ No Comment: **Approved by**			
		☐ Yes ☐ No Comment: **Approved by**			

Note:

Fields with numbers 1 to 6 are completed by the employee of the Contractor.

Field number 7 is completed by authorized the CEFTA Party's Customs Administration.

Annex 4 - Report for accomplished access

Report for accomplished access to the system _____

1. Access granted under	Request No. _____
	Date: _____
2. Period for access accomplishing (exact access time and date – login and logout)	
3. Person that accessed (name surname, username used for remote access)	_____ _____
4. Report of access (detailed description for performed activities)	
5. Report submitted by (First name, last name, and signature)	_____ _____
6. Submission date	_____