

## **General conditions for the use of Banca d'Italia's Electronic Tendering Portal**

### RECITAL

BANCA D'ITALIA, an institution incorporated under public law, with registered office in Rome, at Via Nazionale, 91 (VAT number 00950501007), hereinafter also 'BdI', uses a technological platform to manage tenders for selecting contractors in accordance with the applicable law concerning public contracts for works, services and goods. Use of the Platform is subject to the express, full and unconditional acceptance of these 'General conditions for the use of Banca d'Italia's Electronic Tendering Portal', hereinafter also 'General Conditions', by Market Operators interested in participating in tenders called by BdI, hereinafter referred to as 'Events'.

### **1. OBJECT**

1. BdI has stipulated with the BravoSolution Group a contract to provide electronic tendering (e-tendering) services pursuant to Legislative Decree 50/2016 in its capacity as application service provider (ASP).
2. BdI is owner of a website accessible via the link <https://gareappalti.bancaditalia.it>, hereinafter referred to as the 'Portal'.
3. The Portal is built on the technological platform owned by the BravoSolution Group (hereinafter, the 'Platform') and made available to BdI so that it can hold the tenders referred to in the Recital, i.e. the Events.
4. The BravoSolution Group serves as the Systems Manager for BdI in accordance with applicable law and provides technical support (help desk) to the Market Operators that use the Portal.
5. BdI operates through the Portal as Contracting Authority.
6. The purpose of these General Conditions is to lay down the rules for Market Operators for using the Portal and participating in the Events.
7. The utilization of the Portal by the Market Operator and BdI is governed, among other things, by the following principles:
  - equal treatment of the Market Operators participating in each Event;
  - transparency of operations carried out;
  - good faith performance in accordance with Article 1375 of the Civil Code;
  - fair behaviour in accordance with Article 1175 of the Civil Code.
8. Any further conditions regarding the conduct of each Event are governed by the documentation published on the Portal, in addition to applicable law, in particular that concerning public contracts for works, services and goods pursuant to Legislative Decree 50/2016.

### **2. TECHNICAL REQUIREMENTS**

1. The technical requirements for using the Portal are set out on the webpage entitled 'Minimum hardware and software requirements' of the Portal. More specifically, in order to use the Portal, a Market Operator must use a personal computer with an Internet connection and a common browser installed.
2. Some functions may require that Java Virtual Machine (JVM) SUN 1.8 or a later update be installed.
3. In addition, when registering on the Portal, the Market Operator must provide a certified email (PEC) address, which will be treated as its elective domicile.

4. The Market Operator's legal representative (or an authorized signatory) must possess a valid digital signature certificate issued by:
  - a body included in the public list of qualified trust service providers maintained by the Agency for Digital Italy (*Agenzia per l'Italia Digitale*) (pursuant to Article 29 of Legislative Decree 82/2005), which generates certificates using a tool that creates secure signatures, in accordance with Article 38(2) of Presidential Decree 445/2000 and Article 65 of Legislative Decree 82/2005;
  - a trust service provider operating pursuant to a license or authorization issued by a European Union Member State or that satisfies the requirements set out in Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (eIDAS Regulation);
  - a trust service provider established in a non-EU country under the following conditions:
    - a) the provider meets the requirements set out in the eIDAS Regulation and is qualified in a Member State;
    - b) the qualified certificate is backed by a provider established in the European Union that meets the requirements set out in the eIDAS Regulation;
    - c) the qualified certificate or the provider is recognized pursuant to a bilateral or multilateral agreement between the European Union and third countries or international organizations.
5. The only digital signature formats acceptable are CAdES<sup>1</sup> and PAdES.<sup>2</sup>
6. For each electronic document signed digitally, the digital signature certificate must be valid on the date of signing.
7. If a Market Operator of another Member State or another country, not resident in Italy, is unable to obtain a certified email address, it can use an ordinary email address capable of receiving messages from certified accounts in order to register on the Portal. In this case, the information provided in accordance with Article 76 of Legislative Decree 50/2016 will be sent via registered letter with acknowledgement of receipt or by notification to the elected domicile, or by fax, if authorized, to the number provided.

### **3. REGISTRATION**

1. In order to participate in Events, Market Operators must register on the portal through the 'New registration' link.
2. When registering, the Market Operator, through its legal representative (or another authorized signatory), chooses a User ID and receives a Password, which is strictly personal and non-transferable. The registered Market Operator will then be able to designate other users who can access the portal; these users will be assigned their own User IDs and Passwords (i.e. 'user accounts', described in Paragraph 10 of this article).
3. The Market Operator must promptly notify BI of any change in the information provided at registration. Furthermore, the Market Operator must not divulge to third parties the credentials received and must safeguard them; it must notify BI, directly or through the Systems Manager, if they are stolen or lost. In the latter case, BI must block the use of the lost or stolen credentials and must provide new ones. It should be emphasized that neither BdI nor the Systems Manager knows the Market Operators' passwords and that none of their employees will ever ask for passwords.
4. The Market Operator is solely responsible for all operations performed via the Portal using the User ID and Password, even in the event of misuse by third parties, except in the case of

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<sup>1</sup> Digital signature format conforming to the ETSI TS 101 733 standard pursuant to the eIDAS Regulation (CAdES signature files generated usually have a .p7m extension).

<sup>2</sup> Digital signature format conforming to the ETSI TS 102 778 standard (PAdES signature files generated usually have a .pdf extension).

- force majeure.
5. The Market Operator must fill out the registration form on the Portal, indicating, among other things, its primary procurement category. Providing this information, which is used for merely operational purposes, does not constitute recordation in any product list maintained by BdI and does not prevent the Market Operator from participating in Events for other procurement categories.
  6. To complete the registration process to use the Portal, the Market Operator must also submit as attachments the 'Acceptance of the General Conditions for the Use of Banca d'Italia's Electronic Tendering Portal' (Form 1) and the 'Specific acceptance of onerous clauses in the General Conditions for the Use of Banca d'Italia's Electronic Tendering Portal' (Form 1-bis), which can be downloaded from the Portal. These forms, containing the express, full and unconditional acceptance of these General Conditions, must be digitally signed by the Market Operator's legal representative (or an authorized signatory). The registration is considered approved when authorization to use the Platform is given, within 16 working days, with prior confirmation. This time period will begin to run starting from the date of receipt of the documentation and/or the information requested to supplement any missing from the submitted registration application. If the Market Operator fails to respond within 3 months to requests for further information from BdI, its registration application will not be considered and it will have to submit a new application.
  7. Market Operators who are disqualified from taking part in tenders pursuant to an order in the electronic records of the National Anti-Corruption Authority (ANAC) will not be allowed to register and, therefore, will be denied authorization to access the Portal.
  8. The Market Operator declares that it is aware that this contract and the services it covers are directed towards persons who are included in the definitions laid down in Articles 45 and 46 of Legislative Decree 50/2016.
  9. BdI grants to the Market Operator, under the sole responsibility of the latter, the right to grant or revoke, or to confirm or not confirm, authorization to additional persons within its organization to use the Platform for purely operational purposes (i.e. user accounts).
  10. Persons holding user accounts shall not act on behalf of the Market Operator with respect to BdI and shall act under the sole responsibility of the person or persons, indicated by the Market Operator, with the relative powers of representation.
  11. The Market Operator must have persons with suitable powers of representation sign the tender documentation.

#### **4. PARTICIPATION IN EVENTS**

1. The technical procedures for participating in the Events are set out in Annex A - 'Instructions on the use of Banca d'Italia's Electronic Tendering Portal', hereinafter referred to as the 'Instructions'.
2. Given that the selection process will be conducted electronically, wherever the legal representative's signature is required, such signature must be in digital form.
3. Where, pursuant to Articles 19 and 19-bis of Legislative Decree 445/2000, it is possible to produce a copy of an original instrument or document certified by a person with power of representation, it must be digitally signed.
4. Where authentication by a notary or other public official is required, such notary or public official must digitally sign the document certifying the power of representation.
5. If the Market Operator of another EU Member state or non-EU country, not resident in Italy, finds it impossible to produce a notarized copy digitally signed by a notary or another public official, the Market Operator must declare, under its sole responsibility - in accordance with Paragraph 3 above - that the document conforms to the original. This provision applies only in cases in which, under Italian law, the Market Operator is required to produce, when presenting a bid, an authenticated copy of the requested document (for example, an authenticated copy of the contract for reliance on the capacities of other entities pursuant to

- Article 89(1) of Legislative Decree 50/2016, instead of the original copy of the contract).
6. Any document that is not digitally signed or that contains a digital signature whose certificate has been revoked, has expired or has been suspended will be treated as an unsigned document in accordance with Article 24, paragraph 4-bis, of Legislative Decree 82/2005.
  7. As for declarations in lieu of certificate, provided pursuant to Articles 46 and 47 of Presidential Decree 445/2000, for the purposes of Articles 80(1), (2) and (5)(1) of Legislative Decree 50/2016, the persons concerned can sign the documents in the traditional manner, as an alternative to affixing a digital signature, attaching a copy of the signers' identity documents. These declarations must be uploaded to the Portal along with the legal representative's declaration, made pursuant to Article 47 of Presidential Decree 445/2000, of conformity to the original, signed digitally.
  8. It should be noted that:
    - in case of participation in a joint tender comprised of undertakings that have joined together as provided by Articles 45(2)(d), (e), (f) and (g) of Legislative Decree 50/2016, the undertaking identified as the agent/lead partner will be the only one that can access the Portal, provided that the tender documentation is signed digitally, where required, by all the representatives of the undertakings in association;
    - in case of participation in the tender by entities referred to in Article 45(2)(b) and (c), of Legislative Decree 50/2016, the consortium will be the only entity authorized to access the Portal, provided that the tender documentation is signed digitally, where required, by each of the representatives of the consortium members on behalf of whom the consortium is participating in the tender.

## **5. CONDUCT OF EVENTS**

1. The Market Operator agrees that, for the entire duration of the Event, only those bids, communications, schedules and elapsed times entered on the Platform and the other recording and telecommunications devices connected to it are valid.
2. The Market Operator agrees that, for e-tenders, it is not possible to know the identity of the other participating Market Operators through the Platform while the Event is being conducted.
3. The Market Operator agrees that all communication concerning each Event (such as, for example, exclusion measures, the information provided for by Article 76 of Legislative Decree 50/2016) is to be made through the Portal as provided by Article 8 herein.
4. The tender documentation will contain any instructions concerning the specific Event and information on how it will be conducted.
5. By participating in the Event, the Market Operator is required to read and accept fully and unconditionally the Event rules set out on the Portal.

## **6. SUBMISSION OF BID BOND IN ACCORDANCE WITH ARTICLE 93 OF LEGISLATIVE DECREE 50/2016**

1. The bid bond provided for by Article 93 of Legislative Decree 50/2016, may, at the discretion of the bidder, take the form of:
  - a security deposit in cash, by wire transfer or by cashier's check, up to the limits indicated in Article 49(1) of Legislative Decree 231/2007. The bond can also consist of government securities guaranteed by the State on the day of deposit, with one of the provincial treasury offices or an authorized firm, pledged in favour of BdI;
  - a bank surety issued by a credit institution operating in accordance with the law on banking and credit activities (Legislative Decree 385/1993, as amended) or issued by financial intermediaries listed in the register maintained pursuant to Article 106 of

Legislative Decree 385/1993, whose business is exclusively or primarily that of issuing guarantees and who are subject to audit by an auditing firm listed in the register provided for by Article 161 of Legislative Decree 58/1998 and who satisfy the minimum solvency requirements laid down by applicable banking and insurance laws and regulations;

- an insurance policy issued, in accordance with Law 348/1982, as amended, by insurance companies duly authorized to provide bond insurance and operate in Italy under the right of establishment or the freedom to provide services.
2. With regard to security deposits made in cash, by wire transfer, cashier's cheque or State-guaranteed government security, the document showing that the pledge has been given must be submitted in digital format via the Portal, digitally signed by the legal representative/agent of the entity that holds it for safekeeping the security or deposit, or a scanned copy of the original document proving that the pledge has been given, signed by such legal representative/agent in the traditional manner, accompanied by a declaration certifying that the document conforms to the original, digitally signed by a notary or other public official. For deposits made with a branch of Banca d'Italia, a scanned copy of the original deposit receipt is sufficient.
  3. With regard to bank sureties or insurance policies, to show that the guarantee has been given, the Market Operator must submit the document showing the guarantee/insurance in digital format via the Portal, digitally signed by the legal representative/agent of the bank or insurance company or financial intermediary, or submit a scanned copy of the original guarantee/insurance policy signed by such legal representative/agent in the traditional manner, accompanied by a declaration certifying that the document conforms to the original, digitally signed by a notary or other public official.
  4. In the alternative, the bid bond can be sent in paper form in the manner indicated in the tendering rules for the specific Event. The provisions of this paragraph apply exclusively to the tenders published in the *Gazzetta Ufficiale della Repubblica Italiana* prior to 17 February 2020.
  5. At the conclusion of the selection process, BdI will release the bid bond in accordance with Article 93(6) and (9) of Legislative Decree 50/2016, in the manner indicated in the tendering rules for the specific Event.

## **7. SUBMISSION OF THE BID**

1. Due to BdI's operational requirements:
  - each document submitted must not exceed 30 MB in size and must have a name no longer than 20 characters, excluding the file extension;
  - it is not permitted to upload compressed (e.g. .zip) and/or uncompressed files containing one or more documents, even if they are digitally signed.

## **8. PROCEDURES**

1. The operations and communications carried out by BdI and the Market Operator, in each phase of the Event (including the preliminary phases, the evaluation of the tenders, and the awarding of the contract, as well as any suspensions, interruptions, reopenings or cancellations), can be done in two different ways, which can also be combined:
  - through the Portal;
  - off-Portal, limited to the cases laid out in the specific tendering rules and subject to Article 14 herein.
2. Under the 'through the Portal' process, communication is made through the functions available on the Platform. In particular, for cyber security reasons, all documents – including the measures adopted by – will be available solely on the Portal. The Market Operator will be notified when documents are uploaded and of their location by certified email sent to its

PEC address.

3. The 'off-Portal' procedures requires that the Market Operator communicate with BdI by sending and receiving information, as provided for in the specific tendering rules and in the cases indicated in Article 2(7), in the following ways:
  - by letter or fax;
  - by email;
  - by telephone.

## **9. OBLIGATIONS AND WARRANTIES OF THE MARKET OPERATOR AND OF BANCA D'ITALIA**

1. In using the Portal, BdI and the Market Operator must act with professional diligence, in accordance with Article 1176(2) of the Civil Code.
2. When using the Platform, the Market Operator must:
  - comply with the schedules and requirements laid out in these General Conditions and in the documentation on the Platform;
  - view and download the tender documentation prior to soliciting an invitation to participate in a restricted tender or submitting a bid in a public tender;
  - not engage in behaviours or practices that are anti-competitive and/or harmful to the rights of third parties, or that in any case violate the laws in force;
  - promptly update the PEC address in the event it changes for any reason (mergers, sales of business units, etc.), holding BdI harmless from and against any liability arising out of non-delivery of notifications relating to the tendering process;
  - keep the data and information concerning each Event strictly confidential and private.
3. BdI, including through the Systems Manager, must take all precautions and adopt all technical solutions to protect the security of the data and information exchanged during the Event and to prevent unauthorized third parties from accessing them. The Market Operator must use and configure its software and hardware in such a way as to not compromise the computer security of the Events.
4. In connection with the use of the Platform, the Market Operator represents and warrants that it fully owns or has access to the data, information and content that may be provided to BdI and that their use by BdI is in accordance with the applicable laws and does not violate the rights of third parties.
5. The Market Operator also represents that it is aware that the authentication credentials referred to in Article 3 (User-ID and Password) allow it to access the User Account area of the Portal and use the services offered by BdI; at the same time, it represents that it is aware that all the activity conducted online on the Portal using such credentials will be attributed solely to it, with all the relative legal consequences, for which it assumes all responsibility.
6. In particular, the Market Operator must utilize the services exclusively for legitimate purposes and, in any case, in accordance with the laws applicable to the protection of personal data and intellectual property, as well as indemnify and hold harmless BdI against any claims or demands of third parties arising from the use or abuse of the services in question.
7. The Market Operator must not insert content that violates applicable law, including in particular those on copyright and other intellectual or industrial property rights, or that violate or enable others to violate privacy protection laws and regulations.
8. The Market Operator is also expressly forbidden to transmit files of non-secure origin or that could in any case be considered dangerous (by way of example, but not limited to: files infected by viruses, spyware, malicious code, Trojan horses, etc.). In general, the Market Operator must not perform actions that could damage, deactivate or overload the Portal or in any way compromise its functioning, or interfere with its use by third parties.
9. BdI reserves the right to take any action necessary to safeguard the obligations undertaken

- by accepting these General Conditions.
10. The Market Operator must indemnify BdI against any claims for damages arising from violation of the laws for the protection of copyright and other intellectual and industrial property rights or for the protection of privacy, as well as breach of Paragraph 6 of this article. The Market Operator must also pay the legal expenses incurred by BdI to defend itself in actions brought against it as a consequence of such transgressions. In such case, both parties must diligently defend the position of the other.
  11. BdI and the Market Operator agree to promptly notify one another of any third-party claim or action of which they have knowledge.
  12. BdI and the Market Operator mutually agree that the Systems Manager is a third party to the agreement between them and therefore
    - a) these General Conditions and their acceptance will give rise to obligations solely between them;
    - b) the contract awarded through the Event will be signed between BdI and the winning Market Operator.
  13. BdI and the Market Operators acknowledge that the Systems Manager provides, autonomously and independently, exclusively help desk services and a license to use the Platform, but takes no part nor is directly involved in the acceptance of these General Conditions.
  14. The Market Operator agrees that the information provided upon registration, as well as data and information provided subsequently, are stored in a database owned solely by BdI and for which the Systems Manager provides technical management.
  15. The Market Operator is solely responsible for the obligations set down in these General Conditions and for the actions performed through the Portal on its own behalf by its employees and by its delegates.

## **10. DURATION**

1. These General Conditions will remain in effect until the termination of the contract signed between BdI and the Systems Manager, whether it naturally expires or is terminated for reasons provided by contract or law. Therefore, in these cases, the General Conditions will become ineffective, as will any amendments to them (see Article 12 infra) and acceptance of them, as a result of the unilateral contractual connection between these conditions and the contract to provide e-tendering services.

## **11. EXPRESS TERMINATION CLAUSE AND RIGHT OF WITHDRAWAL**

1. BdI can at any time terminate the contract signed with the Marker Operator following acceptance of these General Conditions with immediate effect, pursuant to Article 1456 of the Civil Code, if:
  - the Market Operator does not provide or has not provided up-to-date, complete, truthful and correct personal data;
  - during the conduct of individual tenders, an order, reported in ANAC's electronic records, is issued disqualifying the Market Operator from participating in the tender.
  - the Market Operator fails to meet its obligations under Articles 9 and 15 of these General Conditions.
2. In the case of termination through the fault of the Market Operator, it will nonetheless remain liable for any claim for damages that BdI may suffer as a result of the Market Operator's breach.
3. BdI also had the right to terminate if, in the performance of the activities, an event occurs or a measure is issued that alters the situation contemplated at the time the contract was signed and renders it impossible and/or impracticable to perform the contract, with at least five days'

written notice.

## **12. MODIFICATION OF TERMS AND CONDITIONS**

1. The Market Operator accepts that BdI may at any time modify these General Conditions for good reason. In such case, BdI will publish a notice on the Portal and will electronically communicate the change. Any modifications will take effect as of the date indicated in the aforementioned notice.

## **13. NO CHARGE FOR SERVICE**

1. The Market Operator does not owe any fee to use the Portal.
2. The costs to purchase, install and configure the hardware, software, digital signature certificates, certified email account and Internet connection are borne solely by the Market Operator.

## **14. LIMITATIONS ON LIABILITY AND NO WARRANTIES**

1. By agreeing to these General Conditions, the Market Operator accepts that BdI and the Systems Manager are not liable for any damages and/or harm suffered by it as a result of using the Portal in a way that does not comply with these General Conditions and its Annexes.
2. The Market Operator acknowledges that the activation of any email alerting services and RSS feeds does not relieve it of the obligation to consult the Portal and to keep itself informed about the procedures for tenders called by BdI (including any notices relating to such procedures).
3. BdI and the Systems Manager do not assume any liability for the loss of data, delays, malfunctions, suspensions and/or interruptions of the Portal during the conduct of the Event, caused by:
  - a force majeure event;
  - malfunctions in the Internet access equipment and technologies used by the Market Operator to connect to the Portal.
4. If the Portal malfunctions for reasons not due to defects in the Internet access equipment and technologies used by the individual Market Operator, or connected to force majeure events, BdI has the right to hold the tender in the traditional (paper-based) manner, notifying the participants of such decision at their elective domiciles or, if necessary, extending the deadlines for submissions of bids.
5. The Market Operator acknowledges and agrees that BdI:
  - has the right to limit the use of the Platform if using it could cause injury of any kind;
  - has the right to revoke, at any time, the authorization of users who are responsible for the improper and/or fraudulent use of the Portal, without prejudice to its right to compensation for any damages suffered;
  - does not guarantee access to the content of websites to which the Portal may contain links, nor is it responsible for the accuracy, completeness, legality and respect for third parties' rights of such linked websites.

## **15. INDUSTRIAL AND INTELLECTUAL PROPERTY RIGHTS**

1. All material published on the Portal is protected by intellectual property rights, in accordance with applicable law.
2. The content and information made available by BdI through the Portal are the property of BdI.
3. The Market Operator must not download, reproduce, transmit, sell or distribute, in whole or in part, in any way, the content and information collected through the Portal for purposes



other than those envisaged for the Portal or single Events.

## **16. PROTECTION OF PERSONAL DATA (Disclosure required under Article 13 of Legislative Decree 196/2003, as amended)**

1. The personal data provided by the Market Operator (referred to hereinafter in this article as the 'data subject', as provided by the laws on privacy) to perform the service will be processed in accordance with Legislative Decree 196/2003, as amended, containing the Personal Data Protection Code.
2. The personal data are provided electronically, through the Portal, directly by the data subject.
3. In the event that criminal records are obtained, the regulatory sources that authorize the processing of criminal records are Legislative Decree 196/2003 and the general authorization issued by the Italian Data Protection Authority.
4. The personal data provided by the data subject will be processed for the purposes of conducting the tender through the Portal.
5. The provision of data for the purposes above is mandatory and if the data subject refuses to provide such data, it will not be allowed to register on the Portal and will be unable to participate in e-tenders.
6. The data provided for such purposes are processed manually and/or electronically strictly in connection with the purposes stated to guarantee their security and confidentiality.
7. Notwithstanding the foregoing, BdI and the Systems Manager must put into place all physical and system-related organizational measures in accordance with Articles 31 to 36 of Legislative Decree 196/2003, as amended, and Annex B – 'Technical specifications on minimum security measures'.
8. The personal data of the data subject will be stored for the time required by law.
9. Data must not be disseminated externally. Data may be shared with third parties only as provided by law or, with regard to communications with public agencies, when necessary for the performance of institutional functions, after having notified the Italian Data Protection Authority.
10. In accordance with Legislative Decree 196/2003, the Systems Manager is the external data protection officer for persons whose data is managed through the Platform.
11. The data controller of the data referred to in the previous paragraph is Banca d'Italia (Organization Directorate), Via Nazionale 91 - 00184 Rome.
12. The internal data protection officer for any data processed outside of the Portal and relating to these General Conditions will be the Head of Tenders.
13. The data may be disclosed to the internal data protection officer and to the employees of the Systems Manager who are responsible for managing the Platform and to employees of BdI who handle the accounts payable.
14. To exercise its rights under Article 7 of Legislative Decree 196/2003, as amended, the data subject can contact the external data protection officer. Specifically, the data subject can request the cancellation of its personal data through the Portal or as otherwise instructed.

## **17. ELECTION OF DOMICILE**

1. For communications regarding these General Conditions and their acceptance, other than those provided for in Article 8, BdI elects to be domiciled at Via Nazionale 91 – 00184 Rome, at the certified email address [garetelematiche@pec.bancaditalia.it](mailto:garetelematiche@pec.bancaditalia.it).

## **18. GOVERNING LAW AND JURISDICTION**

1. These General Conditions have been drawn up in Italian and are governed by the applicable laws, to which reference is made for anything not expressly provided for herein.
2. The Court of Rome shall have exclusive jurisdiction over any dispute arising from these

General Conditions.

BANCA D'ITALIA  
ON BEHALF OF THE SENIOR DEPUTY  
GOVERNOR  
Head of Tenders

**Vincenzo Mesiano Laureani**