



Funded by the  
European Union

EU4Moldova: Local communities

2021/427-494

With funding from

**TEINDEX**  
= Austrian  
Development  
Cooperation

Reference No.: **LOCOMO-035 VET-DD**

## **S E R V I C E   C O N T R A C T**

### **For Consultant Services and Similar Intellectual Services**

Project Number: 2021/427-494; ADA project number: 6550-00/2022 EU4Moldova: Local communities (LOCOMO)

Concluded by and between the **Austrian Development Agency** represented by the Head of the Coordination Office for Technical Cooperation of the Austrian Embassy Chisinau EU Multi-Partner Contribution Agreement 2021/427-494, Project "EU4Moldova Local communities", having its address at MD-2009, Str. Alexei Mateevici nr. 23 A, Chişinău as contracting authority (hereinafter "ADA"),

and

**"TENDEX CONSULTING" SRL**, an enterprise with the legal form of limited liability company, registered in the register of companies in Republic of Moldova under number 115318, registered with business address at MD-2045, str. Miron Costin 25, of.103, Chisinau, Moldova, IDNO – 1019600027996, as contractor (hereinafter "Contractor").

#### **Article 1. Services to be performed**

- 1.1 ADA commissions and the Contractor accepts the order pursuant to the Terms of Reference (Section II of the Tender document) and the Last and Best Offer, both attached hereto.
- 1.2 The Contractor acknowledges that this service contract (hereinafter "Contract") is concluded in the framework of the project "2021/427-494; ADA project number: 6550-00/2022 EU4Moldova: Local communities (LOCOMO)" (co-)financed by the European Union (EU). In performing its tasks, the Contractor therefore shall take into consideration the relevant terms and conditions of the General Conditions to the European Union Multi-Partner Contribution Agreement 2021/427-494 (hereinafter "Contribution Agreement"), concluded between ADA and the EU and attached hereto.

1.3 All communications to ADA in connection with the Contract and any documents resulting from performance of this Contract shall be in English language. Where the language specified is not English and if so requested by ADA, they shall be accompanied by a translation or a summary in English, at ADA's choice.

## Article 2. Time schedule and place of performance

2.1 The agreed services shall be performed in accordance with the below time schedule. The contract is concluded with effect from the date of its award and shall run until 31 May 2024.

#	Deliverables	VET institution	Type	Time for completion
1	Final <b>Detailed Design #1</b> (approved by all relevant authorities) and <b>cost estimates</b> per type.	Medical Veterinary and Agricultural Economy, Edinet, Bratuseni College	Roofs renovation	90 calendar days from the contract signature date
2	Final <b>Detailed Design #2</b> (approved by all relevant authorities) and <b>cost estimates</b> per type.		Classroom renovation	90 calendar days from the contract signature date
			Shower rooms renovation	
			Walls renovation	
3	Final <b>Detailed Design #3</b> (approved by all relevant authorities) and <b>cost estimates</b> per type.		Solar Photovoltaic (SPV) systems Installation	90 calendar days from the contract signature date
4	Final <b>Detailed Design #4</b> (approved by all relevant authorities) and <b>cost estimates</b> per type.	Professional School from Edinet, Cupcini location	Roofs renovation	90 calendar days from the contract signature date
5	Final <b>Detailed Design #5</b> (approved by all relevant authorities) and <b>cost estimates</b> per type.		Dormitory basement	90 calendar days from the contract signature date
			Repair of four moisturized walls	
6	Final <b>Detailed Design #6</b> (approved by all relevant authorities) and <b>cost estimates</b> per type.		Solar Photovoltaic (SPV) systems Installation	90 calendar days from the contract signature date
7	Final <b>Detailed Design #7</b> (approved by all relevant authorities) and <b>cost estimates</b> per type.	Professional School from Leova	Roofs renovation	90 calendar days from the contract signature date
8	Final <b>Detailed Design #8</b> (approved by all relevant authorities) and <b>cost estimates</b> per type.		Solar Photovoltaic (SPV) systems Installation	90 calendar days from the contract signature date

The draft cost estimates shall be submitted latest 70 calendar days after the contract signature date.

ADA reserves the right to request the Designer to re-scale Solar Photovoltaic (SPV) array for the final version of the Detailed Design.

2.2 The place of performance shall be Republic of Moldova.

### Article 3. Compensation for the services rendered

3.1 The compensation for the services rendered (the remuneration) shall cover the entire work and all efforts made by the Contractor under this Contract, including the costs incurred thereby, such as office costs and cost of materials, costs for the required number of copies, travel expenses as well as costs for staff to be employed by the Contractor and to be used for carrying out the agreed tasks, including the resulting taxes and social security charges.

3.2 If the Contractor is liable to pay value added tax (VAT), the compensation for the services rendered (remuneration and reimbursement of expenses, if any) is increased by the amount of VAT paid by the Contractor to the tax authority, on the condition that the Contractor proves that such VAT is not recoverable by any means, and it is established that they are effectively borne by the Contractor. Expenses shall be reimbursed exclusive of VAT in case the Contractor is entitled to input tax deduction. The project is VAT exempted according to the Annex 1 of the GoM Decision no. 246 dated 08 April 2010. Project ID on Aid Management Platform (AMP) is 8721174017168.

3.3 The Contractor shall receive a fixed lump-sum of **EUR 61,204.00** (sixty-one thousand two hundred-four euros) including any applicable VAT as an all-inclusive sum for remuneration and expenses.

3.4 Payment schedule:

No.	Service	Institution	Description	Quantity	Unit Price,	Total Price,
					EUR, VAT 0%	EUR, VAT 0%
1	Final Detailed Design #1 and cost estimates.	Medical Veterinary and Agricultural Economy, Edinet, <b>Bratuseni</b> College	Roofs renovation	1	16,220.00	16,220.00
2	Final Detailed Design #2 and cost estimates.	Medical Veterinary and Agricultural Economy, Edinet, <b>Bratuseni</b> College	Classroom renovation Shower rooms renovation Walls renovation	1	5,200.00	5,200.00
3	Final Detailed Design #3 and cost estimates	Medical Veterinary and Agricultural Economy, Edinet, <b>Bratuseni</b> College	Solar Photovoltaic (SPV) systems Installation	1	3,800.00	3,800.00
4	Final Detailed Design #4 and cost estimates.	Professional School from Edinet, <b>Cupcini</b> location	Roofs renovation	1	10,984.00	10,984.00

5	Final Detailed Design #5 and cost estimates.	Professional School from Edinet, <b>Cupcini</b> location	Dormitory basement & Repair of four moisturized walls	1	9,100.00	9,100.00
6	Final Detailed Design #6 and cost estimates.	Professional School from Edinet, <b>Cupcini</b> location	Solar Photovoltaic (SPV) systems Installation	1	3,800.00	3,800.00
7	Final Detailed Design #7 and cost estimates	Professional School from <b>Leova</b>	Roof renovation	1	8,300.00	8,300.00
8	Final Detailed Design #8 and cost estimates	Professional School from <b>Leova</b>	Solar Photovoltaic (SPV) systems Installation	1	3,800.00	3,800.00
<b>TOTAL</b>						<b>61,204.00</b>

#### Article 4. Travel expenses

- 4.1 For the purposes of this Contract, travel expenses shall mean transportation costs as well as costs of accommodation and meals.
- 4.2 Travel that is not expressly foreseen in the Terms of Reference requires prior written authorization by ADA. Otherwise, the Contractor shall not be entitled to reimbursement of travel expenses.
- 4.3 Applications for reimbursement of travel expenses must be presented in the course of financial statements and/or the final financial statement. For the reimbursement of travel expenses, see section 2 of the ADA General Terms and Conditions.

#### Article 5. Terms of payment

- 5.1 The remuneration and reimbursement of expenses shall be paid to the Contractor's account at:

BIC (S.W.I.F.T):                      MOBBMD22  
IBAN:                                      MD50MO2224ASV45854557100  
Name of bank:                            OTP Bank S.A.

Payment shall be made corresponding to the progress of performance on the basis of duly substantiated interim financial statements, after proper submission of deliverables as defined in Article 1 and Article 2, and submission of an invoice within thirty (30) days of ADA's approval of their substantive and financial accuracy. If an hourly/daily remuneration has been agreed, a list of hours/days as well as the expense vouchers, if any, shall be enclosed to the financial statement. If a final report must be submitted, payment shall be effected only after presentation of the proper final report including an auditable final financial statement (as defined in section 3 of ADA General Terms and Conditions) within thirty (30) days of ADA's approval of their substantive and financial accuracy.



ADA shall transfer the invoiced amount converted in MDL (Moldovan leu currency) based on the exchange rate of the National Bank of Moldova on the day of payment.

5.2 Acceptance of the final payment based on the final financial statement shall exclude subsequent claims unless a reservation to that effect is included in the financial statement or such a claim is raised within one month of receipt of the payment. Reasons for such reservation must be given in writing.

#### **Article 6. Subcontractors**

6.1 The Contractor may subcontract only upon ADA's prior written consent.

#### **Article 7. Social security contributions and taxes**

7.1 The Contractor shall be solely responsible for paying taxes on all compensation received in connection with the Contract.

7.2 The Contractor shall comply with the relevant provisions of the Agreements No. 29, 87, 94, 95, 98, 100, 105, 111 and 138 of the International Labour Organisation, BGBl. [Austrian Federal Law Gazette] No. 228/1950, No. 20/1952, No. 39/1954, No. 81/1958, No. 86/1961, No. 111/1973 and BGBl. III No. 200/2001, each in its currently applicable version.

7.3 The performance of the Contract must be carried out in such a way that the legal rules governing labour and social law in force at the place at which the services are to be performed are complied with. Where the Contract is to be performed in Austria, the Contractor hereby undertakes to comply with the relevant legal rules in Austria. These legal rules are available for inspection by interested bidders and applicants at the local branch of the statutory representatives of employers and employees with jurisdiction over performance of the Contract.

#### **Article 8. Documents, equipment**

8.1 ADA shall provide the Contractor with the following documents and/or equipment: N/A.

8.2 The Contractor undertakes to return such documents and/or equipment in a proper condition immediately after fulfilment of the Contract, in the case of early termination of the contractual relationship immediately after the date of termination.

8.3 With regards to equipment, vehicles and remaining major supplies that the Contractor purchased in performance of the Contract, the following shall apply: In accordance with Article 9 of the General Conditions to the Contribution Agreement, title to and possession of such equipment, vehicles and remaining supplies shall be transferred, free of charge

and as determined by ADA, to local authorities, local Co-Beneficiaries, local Grant Beneficiaries, Final Beneficiaries or ADA.

## **Article 9. Processing of personal data**

9.1 The Contractor acknowledges:

- a) to have taken note of the ADA Privacy Notice, <https://www.entwicklung.at/en/media-centre/privacy-notice> ("ADA Privacy Notice");
- b) that ADA may transfer personal data to the European Commission. Processing of personal data by the European Commission takes place pursuant to Regulation 2018/1725 (Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC Text with EEA relevance, OJ L 295, 21.11.2018, p.39.) and in accordance with the European Commission's privacy statement.

9.2 The Contractor shall:

- a) promptly bring the ADA Privacy Notice to the attention (or ensure it is brought to the attention) of all natural persons, whose personal data are directly or indirectly transferred or disclosed to ADA during initiation or performance of this Contract;
- b) ensure that personal data referred to in Section 9.2a) is transferred or disclosed to ADA in accordance with applicable data protection law;

9.3 The Contractor shall comply with applicable data protection law and ensure an appropriate protection of personal data. The Contractor shall

- a) process personal data lawfully, fairly and in a transparent manner;
- b) collect personal data only for specified, explicit and legitimate purposes;
- c) process personal data only as far as it is adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;
- d) ensure that personal data processed is accurate and up-to-date;
- e) keep personal data in a form that permits identification of data subjects for no longer than is necessary for the purposes for which it is processed; and
- f) process personal data in a manner that ensures appropriate security of the personal data.

9.4 The Contractor acknowledges that transparency is an important guiding principle of ADA's work as the operational unit of Austrian Development Cooperation. The Contractor therefore acknowledges that ADA may publish, in particular on ADA's website, information about the Contract and documents created pursuant to this Contract (see section 12.2 of the ADA General Terms and Conditions).

#### **Article 10. Place of jurisdiction and applicable law**

10.1 Any disputes arising out of this Contract shall be referred to the competent Austrian court. Place of jurisdiction is 1010 Vienna.

10.2 Notwithstanding Section 10.1, ADA shall have the option to submit disputes or claims arising out of or in connection with this Contract, including disputes relating to its validity, breach, termination or nullity, to arbitration in accordance with the UNCITRAL Arbitration Rules valid at the effective date of this Contract. The appointing authority shall be the Secretary-General of the Permanent Court of Arbitration at The Hague. The number of arbitrators shall be one. The place of arbitration shall be Vienna and the language to be used in the arbitral proceedings shall be English. ADA may exercise this option also if litigation is brought against ADA in the court of law pursuant to Section 10.1, by objecting to the court's jurisdiction.

10.3 Disputes arising from or in connection with this Contract shall be governed exclusively by Austrian Law, under exclusion of any conflict of law rules or referrals to foreign law.

#### **Article 11. Supplementary provisions**

Not applicable

#### **Article 12. Final provisions**

12.1 Correspondence under this Contract shall be sent to:

**LOCOMO Water Management Expert**

To: [victor.gaina@ada.gv.at](mailto:victor.gaina@ada.gv.at)

Cc: [locomo@ada.gv.at](mailto:locomo@ada.gv.at);

[artur.profire@ada.gv.at](mailto:artur.profire@ada.gv.at)

Any change of the contact details must be communicated to the other party without delay.

- 12.2 This Contract constitutes the entire and only agreement between the parties regarding its subject matter and supersedes all other prior representations, agreements, and understandings between the parties. No modification of or amendment to this Contract shall be effective unless made in writing, including any renouncement of this formal requirement.
- 12.3 The waiver from time to time by a party of any of its rights or its failure to exercise any right or remedy shall not operate or be construed as a continuing waiver of same or of any other of such party's rights or remedies provided in this Contract. No waiver by a party of a particular provision, right or remedy shall be effective unless in writing and signed by that party.
- 12.4 ADA may at any time assign or otherwise transfer this Contract or any of the rights or obligations under this Contract to the EU, the European Commission or the Contracting Authority (as defined in the Contribution Agreement).
- 12.5 The Contractor is not permitted to dispose of claims arising from the Contract, whether by assignment, instruction or pledge; dispositions made in breach of this Section 12.5 shall not have any legal validity *vis-à-vis* ADA. Thus, no direct transfers to creditors of the Contractor may be made.
- 12.6 The EU, European Commission and Contracting Authority shall be third-party beneficiaries to this Contract and shall be entitled to directly enforce, and rely upon, any right conferred to them under this Contract.
- 12.7 All Annexes shall form integral parts of this Contract. In the case of any conflict, the Contract shall take precedence, followed by the ADA General Terms and Conditions, the Terms of References and the Binding offer in that order.
- 12.8 By signing this Contract, the Contractor confirms to have received all stated parts of the Contract and to have acknowledged the contents of the same. The Contractor furthermore represents to have taken note of the General Conditions to the Contribution Agreement and shall consider the terms and conditions set forth therein in performance of the Contract.
- 12.9 This Contract may be executed in counterparts, each of which, when signed, shall be deemed to be an original and all of which together shall constitute one and the same instrument. This Contract shall enter into force on the date when the second of the two parties signs.



<p><b>"TENDEX CONSULTING" SRL,</b> MD-2045, str. Miron Costin 25, of.103, Chisinau, IDNO – 1019600027996</p> <p>Administrator</p> <p><b>Chisnenco Radion</b></p> <p>DATE: _____</p>  	<p><b>Austrian Development Agency</b> represented by the Head of the Coordination Office for Technical Cooperation of the Austrian Embassy Chisinau EU project number: 2021/427-494; ADA project number: 6550-00/2022 "EU4Moldova Local communities" MD-2009, Str. Alexei Mateevici nr. 23 A, Chişinău E-mail: chisinau@ada.gv.at ; locomo@ada.gv.at Fiscal Code: 42370016 Bank details: SWIFT (BIC) CODE: MOBBMD22 IBAN MDL: MD70MO2251ASV88757087100 <b>Gunther Zimmer</b>, Counsellor &amp; Head of Coordination Office for Technical Cooperation, Austrian Embassy in the Republic of Moldova <b>Austrian Embassy</b> <b>Technical Cooperation</b></p> <p>DATE: <u>07/07/23</u></p> <p><b>Artur Profire</b>, Team Leader of the LOCOMO-Project <b>Coordination Office</b> <b>for Technical Cooperation</b> <b>Austrian Embassy Chisinau</b> <b>Block B 23, Mateevici Str</b> <b>MD-2009 Chisinau</b> <b>Republic of Moldova</b></p> <p>DATE: <u>04.09.2023</u></p>
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- Annex A: ADA General Terms and Conditions of Contract for Consultant Services and Similar Intellectual Services
- Annex B: Contract Data Protection Notice Direct Award
- Annex C: Binding offer dated July 27, 2023
- Annex D: General Conditions to the European Union Contribution Agreement
- Annex E: Confirmation Transmission of the Information Sheet Code of Conduct and Information Points
- Annex F: Information Sheet Code of Conduct and Information Points
- Annex G: Terms of References

Annex C: Binding offer dated July 27, 2023



**TENDEX CONSULTING SRL**  
 Adresa: MD-2068, mun.Chişinău, str.Miron Costin 25, of.103  
 Mob. 069486583; E-mail: tendexconsulting@gmail.com

## Financial Offer

**Title:** Detailed Design (DD) services for Small Scale Renovation works and for Solar Photovoltaic (SPV) systems installation in 3 VET institutions  
**ADA Contract Number:** Procurement no. 035-DD VET

No.	Service	Institution	Description	Quantity	Unit Price,	Total Price,
					EUR, VAT 0%	EUR, VAT 0%
1	Final Detailed Design #1 and cost estimates.	Medical Veterinary and Agricultural Economy, Edinet. <b>Bratuseni</b> College	Roofs renovation	1	16.220,00	16.220,00
2	Final Detailed Design #2 and cost estimates.	Medical Veterinary and Agricultural Economy, Edinet. <b>Bratuseni</b> College	Classroom renovation Shower rooms renovation Walls renovation	1	5.200,00	5.200,00
3	Final Detailed Design #3 and cost estimates.	Medical Veterinary and Agricultural Economy, Edinet. <b>Bratuseni</b> College	Solar Photovoltaic (SPV) systems installation	1	3.800,00	3.800,00
4	Final Detailed Design #4 and cost estimates.	Professional School from Edinet. <b>Cupcini</b> location	Roofs renovation	1	10.984,00	10.984,00
5	Final Detailed Design #5 and cost estimates.	Professional School from Edinet. <b>Cupcini</b> location	Dormitory basement & Repair of four moisturized walls	1	9.100,00	9.100,00
6	Final Detailed Design #6 and cost estimates.	Professional School from Edinet. <b>Cupcini</b> location	Solar Photovoltaic (SPV) systems installation	1	3.800,00	3.800,00
7	Final Detailed Design #7 and cost estimates.	Professional School from <b>Leova</b>	Roofs renovation	1	8.300,00	8.300,00
8	Final Detailed Design #8 and cost estimates.	Professional School from <b>Leova</b>	Solar Photovoltaic (SPV) systems installation	1	3.800,00	3.800,00
<b>TOTAL</b>						<b>61.204,00</b>

## 1. Terms of Reference

The subject of this assignment is to develop **Detailed Design** for 3 (three) VET institutions Small-Scale renovation works:

- Medical Veterinary and Agricultural Economy Bratuseni College, Edinet rayon
- Professional School from Cupcini, Edinet rayon
- Professional School from Leova town, Leova rayon

### RELEVANT DOCUMENTS

The selected Bidder shall get familiar with all documents related to the Project.

The documents include but are not limited to the following:

- EU Action Document "EU4Moldova: Local Communities".
- Environmental, Gender and Social Impact Assessment (EGSIA) (if applicable).

Any additional documents (if available) for design will be provided by respective Beneficiaries (upon request of the winning bidder).

### 1.1. Purpose and objectives of the assignment

The objective of the present procurement consists in developing of the **complete detailed design documentation for rehabilitation works and for Solar Photovoltaic (SPV) systems installation for 3 (three) VET institutions** located in the rayons of Leova and Edinet with required approvals and endorsement "Avize" from all relevant central/local authorities and operators.

The design services will identify and provide the best opportunities/options for sustainable use, operation and functioning of the rehabilitated infrastructure, proposing modern environmentally friendly and sustainable materials, equipment, technologies, according to the international construction standards (and legally allowed in Moldova).

List of the projects (with estimated scope of works):

VET institution	Rayon	Municipality	Design#	Type	Title	Estimated score of works
Medical Veterinary and Agricultural Economy Bratuseni College	Edinet	Bratuseni village	1	Roofs renovation	Full renovation of three roofs	Three roofs: - Canteen – appr. 660 m <sup>2</sup> and - Block A – appr. 740m <sup>2</sup> , - Dormitory – appr. 350 m <sup>2</sup> (see the annexed photos)
	Edinet	Bratuseni village	2	Classroom renovation	Classroom renovation for continuous education of adults	One classroom of 85m <sup>2</sup> in study block D
	Edinet	Bratuseni village		Shower rooms renovation	Shower rooms renovation in the dormitory	Eight shower rooms (one per floor) of appr. 4m <sup>2</sup> in the dormitory
	Edinet	Bratuseni village		Walls renovation	Repair of three moisturized walls	Three walls of the dormitory; appr. 756 m <sup>2</sup> , X 2 appr. 425 m <sup>2</sup>
	Edinet	Bratuseni village	3	Solar Photovoltaic (SPV) systems supply and installation	Rooftop / ground mount SPV installation	SPV – 50-100 KW depending on the available area for installation
Professional School from Cupcini	Edinet	Cupcini village	4	Roofs renovation	Two roofs	Two sloped wooden ridge roofs - Dormitory – appr. 330 m <sup>2</sup>

						- Canteen - appr. 450 m2
	Edinet	Cupcini village	5	Dormitory basement	Dormitory basement renovation	Dormitory basement 330m2
	Edinet	Cupcini village		Walls renovation	Repair of four moisturized walls	Four walls of the dormitory: appr. 656 m2, X 2 appr. 425 m2 X 2
	Edinet	Cupcini village	6	Solar Photovoltaic (SPV) systems supply and installation	Rooftop / ground mounted SPV installation	SPV – 50-100 KW depending on the available area for installation
Professional School from Leova	Leova	Leova town	7	Full roofs renovation	One roof	One flat roof - study block3 – appr. 922 m2
	Leova	Leova town	8	Solar Photovoltaic (SPV) systems Installation	Rooftop / ground mounted SPV installation	SPV – 50-100 KW depending on the available area for installation

## 1.2. Scope of the assignment

The **assignment** consists of:

- TASK 1: Immediately after signing the Contract the winning company will be invited to a kick-off meeting and ADA representative joint on-site consultations in all 3 (three) locations and development of concepts of roof renovation, civil works and photovoltaic systems supply and installation and coordinate them with the VET schools.
- TASK 2: Support the institutions in obtaining all required design approvals "Avize" etc. (where applicable) from local and central (if needed) authorities and operators, Premier Energy/ANRE/Environmental Agency etc.
- TASK 3: Submission of complete (approved) detailed design verified by relevant authorities according to the Moldovan law.

## 1.3. Deliverables requirements and timeline

### A. DESIGN REQUIREMENTS:

The content of design documentation shall be set up in correspondence with national building codes and relevant Moldovan standards, according to Annex 7 but not limited to (depending on Moldovan design and construction norms).

Detailed design documentation shall comprise (but not limited to):

- Drawings and Statement of Works (SOW) (CAD and PDF).
- BoQ (detailed cost estimation and tender forms) in **Excel** and WinSmeta/Devize-online/Devize.md formats.
- Materials and equipment full specifications (in Excel and/or Word).
- Approvals from all relevant authorities ("Aviz Sanitar, Aviz Ecologic, Aviz Anti-incendiar, Aviz de racordare Premier Energy if required).
- All other relevant documents.



- **Technical expertise of the Detailed Designs and Bill of Quantities by independent Authorized / Licensed Experts or State Service for Verification and Expertise of Projects and Constructions.**

Author's Supervision of the Design during the construction period (the local **Author Design Supervision shall be included in the cost** of this assignment without any further claim from the local or international designers).

## B. DESIGN STRUCTURE

1. **Statement of Works (SOW)** with narrative description of designed technological solutions, units of the main equipment and materials, technical systems/utilities and specification.
  - *Important: The drawings should be entirely presented (in English and Romanian).*
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2. **Drawings:** Complete detailed construction drawings of all works in sufficient detail for tendering, contractual and construction purposes (including the topographic surveys if required for the detailed design). All drawings shall be presented in electronic (**CAD and PDF**) format and on appropriate paper support. All drawings should be clear, sharp, and accurate. Symbols and abbreviations should be defined in a legend. Isometric drawings for the internal heating, water supply and sewerage systems will be also part of the design assignment.
  - *Important: The drawings should be entirely presented (in English and Romanian).*
  -
3. **Bill of quantities (BOQ):** Complete for all items of work with adequate description for each item. The quantities for all work items should be based on actual take-off calculation and not based on estimates. All BOQs shall be presented in a spreadsheet format, **MS Excel**;
  - *Important: The BoQs – **Form 1 should be entirely presented in English and Romanian, in Excel** (with proper data formatting) and additionally Romanian version of the forms: Form 7, Form 5, and Form 3 (according to "Deviz on-line, devize.md" or "WinSmeta").*
4. **Specifications:** Comprehensive and up to date, in accordance with current best practices, general and Technical Specifications for all works and equipment based on internationally accepted standards and sufficient for procurement, installation and construction works.
  - *Important: The Specifications should be entirely presented (in English and Romanian).*
5. **Documentation** of all design literature and design calculations for all civil, planning, connections to utilities, structural, electrical, automation and mechanical works. All set of Design documentation shall be elaborated in 4 copies, including 3 copies on paper.
  - *Important: Documentation with detailed recommendations and measures for protection of environment will be also part of the design assignment.*
  -
6. **Cost estimations:** comprehensive estimation of involved costs (in **MS Excel** format) considering all necessary labor and materials based on current prices available on the local market and manpower remuneration, which shall not be below the minimum required by the Moldovan Legislation.
  - *Important: The cost estimates should be entirely presented per each design project (in English and Romanian).*
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7. **All design permits/approvals** (Avize/Certificate de Urbanisms etc.) and verification documents ("Avize de verificare") etc.
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8. **Estimated work plan**
- Estimated Work (implementation) plan (duration) for construction for all 8 designs.
  - 
  - The documents, the Drawings and Specifications, shall be of sufficient detail to enable construction works to proceed without need for on-site instructions and selection of materials, construction assembly, layout or location of any element or feature.
  - The designs should comply with the local legislation State building norms and regulations, standards and specifications, local building regulations and shall also ensure:
    1. reliable and safe operation of recommended equipment, materials, and engineering systems.
    2. electrical, drainage and civil performance requirements.
    3. optimal energy efficiency measures of rehabilitated facilities and systems.
    4. **cost and energy efficiency** in terms on construction, operation, and maintenance.
    5. compliance with health and safety requirements.
    6. compliance with environmental protection requirements.
9. During elaboration of the **Photovoltaic System Designs** should be taken in to account the following criteria's:
- Full designs of the solar PV system according to applicable local and international standards. The plant has to be also aesthetically pleasing;
  - Perform necessary analysis and estimate annual power generation;
  - Ensure the roof area or other installation site is capable of handling the desired system size;
  - Locate the array to minimize shading from foliage, vent pipes, and adjacent structures;
  - Design the system in compliance with all applicable building and electrical codes;
  - Design the system with a minimum of electrical losses due to wiring, fuses, switches, and inverters;
  - Ensure the design meets local utility interconnection requirements
  - PV modules, inverter(s), mounting structure, cabling, mounting hardware, grid connection works. PV modules must meet the **Tier-1 standard**.
  - Inverters must meet the requirements of the standard **EN 61547 / EN 61000-4-2, -3, -4, -5, -6, -8, -11; EN 55015: 2014** Electromagnetic compatibility
  - All installations shall be designed to facilitate **safe** inspection, cleaning and maintenance and to ensure continued operation under conditions at the roof or on ground.
  - Submission of preliminary and final design documentation, including the string design and wiring.
  - Obtaining the necessary permissions (**Aviz de racordare**), connections from the competent institutions in the specific field (Premier Energy, RED-Nord, ANRE etc.).
10. **Legal context**
- Law no. 163 (09.07.2010) on the authorisation of construction works (privind autorizarea executării lucrărilor de construcție);
  - Law No. 139 (19.07.2018) on Energy Efficiency;
  - Law No. 10 (26.02.2016) on promotion of Renewable Energy Sources;
  - Law No. 128 (11.07.2014) regulating EE performance in buildings;

- Government Decision No. 896 (21.07.2016) including rules and norms for certification of energy performance in buildings;
- NCM A.07.02-2012 – "Procedure for developing, endorsing, approving and the framework-content of the design documentation for constructions.
- NCM L 01.01-2012 "Rules for determining the value of construction sites"
- CP L 01.01 – 2012 "Guidelines for concluding bill of quantities for construction-assembling works using the resources method"
- Government Decision No. 936 from 16.08.2006 - Technical expertise of the buildings
- Government Decision No.884 from 27.11.2012 – Energy Audit.

### Deliverables Schedule

#	Deliverables	VET institution	Type	Time for completion (from the contract signature date)
1	Final <b>Detailed Design #1</b> (approved by all relevant authorities) and <b>cost estimates</b> per type.	Medical Veterinary and Agricultural Economy, Edinet, Bratuseni College	Roofs renovation	90 calendar days from the contract signature date
2	Final <b>Detailed Design #2</b> (approved by all relevant authorities) and <b>cost estimates</b> per type.		Classroom renovation	90 calendar days from the contract signature date
			Shower rooms renovation	
			Walls renovation	
3	Final <b>Detailed Design #3</b> (approved by all relevant authorities) and <b>cost estimates</b> per type.	Solar Photovoltaic (SPV) systems Installation	90 calendar days from the contract signature date	
4	Final <b>Detailed Design #4</b> (approved by all relevant authorities) and <b>cost estimates</b> per type.	Professional School from Edinet, Cupcini location	Roofs renovation	90 calendar days from the contract signature date
5	Final <b>Detailed Design #5</b> (approved by all relevant authorities) and <b>cost estimates</b> per type.		Dormitory basement	90 calendar days from the contract signature date
			Repair of four moisturized walls	
6	Final <b>Detailed Design #6</b> (approved by all relevant authorities) and <b>cost estimates</b> per type.	Solar Photovoltaic (SPV) systems Installation	90 calendar days from the contract signature date	
7	Final <b>Detailed Design #7</b> (approved by all relevant authorities) and <b>cost estimates</b> per type.	Professional School from Leova	Roof renovation	90 calendar days from the contract signature date
8	Final <b>Detailed Design #8</b> (approved by all relevant authorities) and <b>cost estimates</b> per type.		Solar Photovoltaic (SPV) systems Installation	90 calendar days from the contract signature date

#### IMPORTANT:

- A. The draft cost estimates shall be submitted latest 70 calendar days after the contract signature date.

- B. ADA reserves the right to request the Designer to re-scale Solar Photovoltaic (SPV) array for the final Detailed Design.

#### **1.4. Management and coordination**

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**Contracting Authority:** ADA

The internal management is up to the contracting party.

The main contact person for the assignment deliverables will be Victor Gaina (LOCOMO Water Management Expert) [victor.gaina@ada.gv.at](mailto:victor.gaina@ada.gv.at) and Veronica Midari (VET Expert) [veronica.midari@ada.gv.at](mailto:veronica.midari@ada.gv.at) and for the contract Artur Profire (LOCOMO Team Leader) [artur.profire@ada.gv.at](mailto:artur.profire@ada.gv.at).

All questions must be addressed only to [leonid.mazilu@ada.gv.at](mailto:leonid.mazilu@ada.gv.at) (LOCOMO Procurement and Project Officer).

The bidder shall submit the deliverables and invoices to: [artur.profire@ada.gv.at](mailto:artur.profire@ada.gv.at) with cc to [locomo@ada.gv.at](mailto:locomo@ada.gv.at) and [victor.gaina@ada.gv.at](mailto:victor.gaina@ada.gv.at) and [leonid.mazilu@ada.gv.at](mailto:leonid.mazilu@ada.gv.at) and [ana.pascari@ada.gv.at](mailto:ana.pascari@ada.gv.at).

##### **1.4.1. Duration and Location**

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**Duty station:** Chisinau, rayons of Straseni, Edinet and Leova, Moldova and home office

**Duration of the assignment:** 90 calendar days for the Detailed Design delivery



WITH FUNDING BY  
THE EUROPEAN UNION



IMPLEMENTED BY  
= Austrian  
Development  
Agency

Ref.: [reference number]

# ADA GENERAL TERMS AND CONDITIONS OF CONTRACT

## For Consultant Services and Similar Intellectual Services

### 1. GENERAL OBLIGATIONS

#### 1.1. Due Diligence

1.1.1. The Contractor shall exercise the due diligence of a prudent entrepreneur, and hereby confirms that it possesses the specialist knowledge required for performance of this Contract. The Contractor hereby undertakes to comply with the legal rules and regulations applicable at the place of performance and to procure any necessary permits and authorisations.

#### 1.2. Duty of confidentiality and statements to third parties

1.2.1. The Contractor hereby undertakes that it shall comply with all statutory duties of confidentiality, and in particular, that it shall keep secret all information obtained in the course of performing this Contract, unless ADA relieves the Contractor therefrom in writing in a particular case. The foregoing shall survive the term of this Contract. Moreover, the Contractor shall ensure that all of the persons employed or commissioned by it for the performance of this Contract, including staff and vicarious agents ([Translator's note:] *Erfüllungsgehilfen*), are bound by a statutory or contractual confidentiality obligation at least as stringent as Contractor's obligation hereunder. Where the Contractor fails to do so, it shall be subject to strict liability in damages.

1.2.2. The Contractor shall refrain from making any statements which might be considered to constitute a promise of additional aid in connection with the development cooperation between the Republic of Austria or the European Union and the country of assignment.

#### 1.3. Duties of notification

1.3.1. The Contractor shall immediately notify ADA of all events that are apt to delay proper implementation of this Contract or of the underlying services or render them impossible, or which would require amendment of this Contract. Any such notification must be provided in writing. There are further duties of notification in connection with conflicts of interest (see section 9).

#### 1.4. Awarding of contracts (service, works, supply contracts)

##### 1.4.1. General requirements

- a) The Contractor may not charge higher prices or remunerations for the works, supplies and services to be procured under the Project than those customary in the specific sector or local market. The Contractor shall make use of rebates, cash discounts and the like and shall pass them on to ADA in its accounting.
- b) The Contractor must comply with the basic procurement principles of equal treatment of all bidders, non-discrimination, transparency, free, fair and equitable competition,

reasonableness of prices, economy and efficiency, best value for money, and proportionality in all awards.

- c) The Contractor must calculate the contract value diligently and competently. Related services are to be combined in one contract (prohibition of contract splitting for the purpose of circumventing threshold values).

1.4.2. **For procurements (service, works, supply contracts) in developing countries** as per DAC list of ODA recipients<sup>1</sup>, the Contractor must apply **local procurement law**. Notwithstanding the regulations set forth therein, the Contractor shall demonstrably obtain three offers for comparison purposes if the estimated contract value is equal or above **EUR 5,000** (net). If not at least two offers are received, additional offers shall be solicited until at least two offers are received. The solicitation of offers as well as the award decision must be documented by the Contractor. If the estimated contract value is **equal or above EUR 20,000** (net) the following applies: The Contractor must provide Terms of Reference (TOR). The TOR must define quality criteria and the criterion of price. Four offers must be obtained based on the TOR. If not at least two offers are received, additional offers shall be solicited until at least two offers are received. The offers are evaluated by an independent evaluation commission based on predefined quality criteria. The Contractor must identify the best bidder and verify its eligibility (legal authorization, professional reliability, technical and financial capability). The Contractor must document the entire procurement process, including the determination of the best bidder, in writing. If the estimated contract value is **equal or above EUR 50,000** (net), the Contractor must issue a public invitation to tender in accordance with local procurement law (analogous application) and document the entire procurement process.

1.4.3. The **application of local procurement law is excluded** if the requirements of **§ 4 para 2 of the Austrian Federal Public Procurement Act (PPA)** are met (procurement of certain construction works or related services above threshold). In this case, the Contractor, when procuring works and associated services, is obliged to apply the PPA.

1.4.4. **For procurements (service, works, supply contracts) in any other country or in Austria** the Contractor must apply **the PPA** in its currently applicable version. Notwithstanding the thresholds set forth therein, the Contractor shall demonstrably obtain three offers for comparison purposes if the estimated contract value is equal or above **EUR 10,000** (net). If not at least two offers are received, additional offers shall be solicited until at least two offers are received. The solicitation of offers as well as the award decision must be documented by the Contractor. If the estimated contract value is equal or above **EUR 50,000** (net) the following applies: The Contractor must provide Terms of Reference (TOR). The TOR must define quality criteria and the criterion of price. Four offers must be obtained based on the TOR. If not at least two offers are received, additional offers shall be solicited until at least two offers are received. The offers are evaluated by an independent evaluation commission based on the predefined quality criteria. The Contractor must identify the best bidder and verify its eligibility (legal authorization, professional reliability, technical and financial capability). The Contractor must document the entire procurement process, including the determination of the best bidder, in writing. If the estimated contract value is **equal or above EUR 100,000** (net), the Contractor must issue a public invitation to tender in accordance with the PPA (analogous application) and document the entire procurement process.

1.4.5. The Contractor may be exempted from the application of the provisions under 1.4.2 and 1.4.4 in **justified exceptional cases**. The following requirements must be cumulatively met for this:

- a) The Contractor shall provide a plausible written justification for the deviation from the provisions.
- b) The Contractor shall submit the offer which he deems reasonable to accept.
- c) The Contractor shall prove that the prices offered are reasonable and customary in the specific sector or local market (e.g. by submitting price information obtained, market price research, price lists).
- d) The Contractor shall obtain prior written consent of ADA (based on the explanations under a)-c). Before making its decision, ADA may, if necessary, request additional evidence and information and/or make its approval subject to the fulfillment of additional conditions.

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<sup>1</sup> The DAC list of ODA recipients is based on gross national income per capita as published by the World Bank and includes all low- and middle-income countries. Excluded from the list are G8 member states, EU member states and states with a fixed date for EU accession. The list is revised by the DAC every three years.



1.4.6. Where, in the course of performance of this Contract, services become necessary that this Contract does not envisage, the Contractor shall reach agreement with ADA thereon prior to executing such services. Where the necessity or appropriateness of such services is ascertained by mutual agreement, the parties shall simultaneously reach agreement on the corresponding amount of remuneration, to the extent permitted under the provisions of the Austrian Federal Procurement Act 2018, as amended. Where the Contractor performs services which are not subject to a prior written agreement on remuneration, ADA shall have no obligation to pay any remuneration for them.

## **1.5. Employment contracts and subcontracts**

1.5.1. Where the Contractor employs staff or enters into contracts with third parties in order to perform this Contract, the Contractor shall conclude such contracts in its own name and for its own account. The Contractor shall be liable to ADA for the fault of any and all persons employed or contracted by the Contractor in order to perform its obligations under this Contract to the same extent as for the Contractor's own fault.

## **1.6. Cooperation with other organisations**

1.6.1. The Contractor undertakes to reasonably cooperate with other persons and organisations that are engaged in the field of Austrian and European Union development cooperation in the developing country that is the place of performance of this Contract, or within which the latter is situated, in particular those engaged in performance of the Contribution Agreement. In the interest of good coordination, the Contractor shall take part in an exchange of experience with those persons and organisations and with ADA.

## **1.7. Compliance with all agreements relating to this Contract and cooperation with the Austrian Coordination Office and Project Office**

1.7.1. The Contractor shall comply with the international treaties concluded between the Republic of Austria and the country of assignment and, if applicable, with agreements on execution of this Contract. The Contractor shall collaborate in an appropriate way with the Austrian Coordination Office and ADA Project Office.

## **1.8. European Union restrictive measures**

1.8.1. The Contractor shall ensure that no support or economic resources are made available, directly or indirectly, to or for the benefit of entities, individuals or groups of individuals, designated by the EU as subject to restrictive measures.

1.8.2. Before authorizing any payment, the Contractor shall check the payment recipient and any other third party that may directly or indirectly benefit from such payment – whether entities, individuals or groups of individuals – against the EU restrictive measures database provided at [www.sanctionsmap.eu](http://www.sanctionsmap.eu).

1.8.3. In case the Contractor identifies a payment recipient or other third party falling under the scope of EU restrictive measures, the Contractor shall promptly inform ADA and suspend or cancel any outstanding payment. The Contractor shall consult with ADA with a view to jointly determining remedial measures in accordance with their respective applicable legal framework.

## **1.9. Exclusion from access to funding**

1.9.1. The Contractor shall adopt reasonable measures to ensure that potential candidates or tenderers and applicants shall be excluded from the participation in a procurement or grant award procedure and from the award of a procurement contract or grant, if the Contractor becomes aware that these entities

- a) or persons having powers of representation, decision making or control over them, have been the subject of a final judgement or of a final administrative decision for fraud, corruption, involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings;
- b) or persons having powers of representation, decision making or control over them have been the subject of a final judgement or of a final administrative decision for an irregularity affecting the EU's financial interest;

- c) are guilty of misrepresentation in supplying the information required as a condition of participation in the procedure or if they fail to supply this information;
  - d) have been the subject of a final judgment or of a final administrative decision establishing that the entities have created an entity under a different jurisdiction with the intention to circumvent fiscal, social or any other legal obligations of mandatory application in the jurisdiction of its registered office, central administration or principal place of business; or
  - e) have been created with the intention described in section 1.9.1 d) as established by a final judgment or a final administrative decision.
- 1.9.2. ADA may inform the European Commission of any situation of exclusion pursuant to section 1.9.1 **Error! Reference source not found.**, whether by the Contractor or any entity mentioned in that section. In this case, such entity may be included in the Early Detection and Exclusion System operated by the European Commission.

## 1.10. Flow-down obligations

- 1.10.1. The Contractor shall ensure that the obligations stated under sections 1.9 **Error! Reference source not found.**, 9.2.6, 3.2.1, **Error! Reference source not found.**, section 8, section 12, and section 12.2, as well as Article 9 of the Service Contract (on the processing of personal data) are imposed on and binding upon all third parties that the Contractor contracts for the performance of or in relation to this Contract, or that the Contractor transfers funds received under this Contract to, including subcontractors.

## 2. REIMBURSEMENT OF TRAVEL EXPENSES

### 2.1. Amounts of reimbursements

- 2.1.1. Notwithstanding allocations made in the Calculations of Costs, the maximum amount of travel expenses to be reimbursed shall be as follows:

In respect of accommodation and catering expenses abroad, the rates set forth in Section 25c of the Federal Regulations for Austrian Civil Servants (*Reisegebührenvorschrift für Bundesbedienstete*), Federal Law Gazette I No. 133/1955 in its currently applicable version, shall govern, at a maximum of fee level 2b. Air fares shall only be reimbursed up to a maximum of the cheapest air fare in economy class on the most convenient itinerary, upon production of documentation. Only the original ticket used shall be deemed documentation of travel expenses; in the case of air travel, the ticket/a print-out of the electronic receipt in connection with the related boarding pass and the receipted invoice of the travel agency shall be required. Any discounts, rebates, cash discounts, refunds and any other price reductions on air fares must be claimed, and shall be passed on to ADA.

### 2.2. Business travel abroad

- 2.2.1. Travel undertaken shall be considered business travel abroad where the travel takes longer than eight hours and the distance from the place of performance (as indicated in Article 2 of the Service Contract) is more than 100 km one-way. In respect of accommodation and catering expenses incurred during business travel abroad, the rates set forth in Section 25c of the Federal Regulations for Austrian Civil Servants (*Reisegebührenvorschrift für Bundesbedienstete*), as amended, shall govern, at a maximum of fee level 2b.
- 2.2.2. Transportation expenses shall be refunded upon presentation of the corresponding receipted original receipts; for rail travel in developing countries, tickets up to first-class may be reimbursed. Air fares shall only be reimbursed up to a maximum of the cheapest air fare in economy class on the most convenient itinerary, upon production of documentation. Only the original ticket used shall be deemed documentation of travel expenses; in the case of air travel, the ticket/a print-out of the electronic receipt in connection with the related boarding pass and the receipted invoice of the travel agency shall be required. Any discounts on air fares must be taken, and must be passed on to ADA; the same shall apply in respect of rebates, cash discounts, refunds and any other price reductions. Where a private vehicle is used, not more than the official mileage allowance in the local currency at the relevant daily exchange rate may be reimbursed. In addition, expenses will only be reimbursed if execution of the services cannot be properly achieved without the use of a personal vehicle.



### **2.3. Lump-sum**

- 2.3.1. Section 2.1 shall not apply where the financial bid has quoted these as a lump-sum. No reimbursement in excess of such lump-sum shall apply.

## **3. ACCOUNTING**

### **3.1. Financial statements**

- 3.1.1. Accounting for the total services shall be carried out by means of an auditable final financial statement; contractual penalties, if any, shall be taken into account and the disbursed instalments indicated. If the final financial statement is so defective that ADA is neither able to examine, nor correct the same, ADA shall return it to the Contractor for remediation. If this Contract envisages accounting for parts of the performed services (*Teilleistungen*) by means of interim financial statements, this section 3.1 shall apply analogously to such interim financial statements.
- 3.1.2. The originals of all receipts serving as evidence must be submitted. Only receipts issued in the name of the Contractor and which clearly demonstrate a direct relation to the execution of this Contract shall be acceptable as evidence. ADA reserves the right to mark the original receipts accordingly.
- 3.1.3. Costs incurred in a foreign currency shall be invoiced at the exchange rate resulting from the relevant foreign exchange purchase receipts, which shall in any case be enclosed together with the Contractor's financial statements. If no such receipt is presented, ADA shall be entitled to use the rate defined by the Austrian Federal Ministry of Finance for the relevant foreign currency (*Kassenwert*) which applies to the month in which the relevant transaction occurred, less a 25 % deduction.

### **3.2. Records**

- 3.2.1. The Contractor shall keep accurate and regular records and accounts regarding the performance of this Contract. The Contractor shall apply accounting rules and regulations that conform to internationally accepted standards, ensuring accurate, complete, reliable and timely information.
- 3.2.2. The Contractor shall safeguard all relevant financial information, receipts and work product in orderly files for at least ten years or such longer period as required for the conclusion of any on-going audit, verification, appeal, litigation or pursuit of claim or investigation by ADA, the European Union and its institutions, including the European Commission, European Court of Auditors and the European Anti-Fraud Office (OLAF) (together the "EU Oversight Institutions"). The retention period shall commence upon ADA's notice to the Contractor that it has approved the Contractor's final financial statement as submitted. During the retention period, the Contractor shall make available access to these records and accounts for audit and oversight purposes in accordance with section 8.

## **4. WARRANTY**

### **4.1. Scope of warranty**

- 4.1.1. The Contractor hereby warrants that the services performed shall be in compliance with this Contract. The Contractor hereby warrants that all services shall have the characteristics expressly stipulated in this Contract and which are the usual standard qualities, shall comport with the legal rules and regulations in effect at the place of performance and, where the services pertain to technical services – shall comport with the acknowledged state-of-the-art.

### **4.2. Warranty remedies**

- 4.2.1. Primary warranty remedies: The Contractor hereby undertakes that, following delivery of the services to ADA or (if no delivery takes place) following completion of its services, the Contractor shall, upon demand of ADA, eliminate any defects which may be present (remediation by making repairs or by supplemental services through the supply of items which are lacking) or shall

replace the work product without delay and without asserting any additional claims for remuneration, within a reasonable time, and with the least possible inconvenience to ADA.

4.2.2. Secondary warranty remedies: If the remediation or replacement is impossible or gives rise to disproportionately high costs for the Contractor as compared with the other mode of remediation, or if the Contractor fails to remediate the defect requested at all, or fails to do so in time or fails to fully remediate, and where such remediation would result in considerable inconvenience to ADA or is unreasonable to ADA for well-founded reasons relating to the identity of the Contractor, the following shall apply, without prejudice to ADA's right to assert additional claims based on any legal grounds whatsoever:

- a) Where the defect is not of a *de minimis* nature (Section 932 (4) Austrian General Civil Code [ABGB]), the Contractor shall forfeit its entitlement to the Contract remuneration and shall repay any amounts previously received plus interest thereon at a rate of 4 % (four per cent) p.a. over the currently applicable base rate, as calculated from the date of receipt of the amounts.
- b) Where the defect is of a *de minimis* nature, ADA shall be entitled to apply an appropriate reduction to the Contract remuneration.
- c) Where in cases covered by (a) or (b), it is possible for the remediation of defects to be performed by a third party, ADA shall have a claim against the Contractor (notwithstanding its claims under (a) or (b)) in addition for damages equal to the costs of remediation of defects actually incurred, to the extent they, in cases covered by (a), exceed the Contract remuneration, and in cases covered by (b) exceed the abatement of the price.

### **4.3. Warranty period**

- 4.3.1. Warranty claims relating to immovable property may be asserted by legal action within three years from the date of delivery to ADA, and in the case of moveable property, within two years from the date of delivery of the services to ADA.
- 4.3.2. The time between the despatch for a demand for remediation and the expiry of the remediation period stated shall not be included as a part of the warranty period.
- 4.3.3. The warranty period shall in no case end before expiry of the period provided to the Contractor for its own warranty claims against subcontractors. ADA may demand assignment of such claims.

### **4.4. Statutory rights**

- 4.4.1. ADA's right to assert further legal claims in addition to warranty claims, in particular claims for damages, shall remain unaffected. Unless stated otherwise under this section 4, Sections 922 to 933 b ABGB shall apply.

### **4.5. Interest**

- 4.5.1. To the extent the Contractor is required to refund remuneration including cost reimbursements previously received due to warranty claims, or is required to pay compensation for damages, such claims shall be subject to interest at a rate of 4 percentage points p.a. over the base rate, calculated from the date of receipt of the amounts.

## **5. INDEMNIFICATION AGAINST THIRD-PARTY CLAIMS, LIMITATION OF LIABILITY**

### **5.1. Indemnification**

- 5.1.1. The Contractor shall indemnify and hold harmless ADA, the European Union, the European Commission, and the Contracting Authority (as defined in the Contribution Agreement) from and against any and all claims of third parties in connection with the performance of this Contract. This obligation shall also include reimbursement of all costs of any legal proceedings and other expenses incurred by ADA, the European Union, the European Commission, or the Contracting Authority in this regard. In case that a legal action is brought against ADA, the Contractor undertakes to join the proceedings on the side of ADA, the European Union, the European Commission or the Contracting Authority as an intervening party upon request.

## **5.2. Limitation of liability**

- 5.2.1. Neither ADA nor the European Union, nor the European Commission, nor the Contracting Authority may under any circumstances or for any reason whatsoever be held liable for damage or injury sustained by the staff or property of the Contractor arising out of or connected to the performance of this Contract. Neither ADA nor the European Union, nor the European Commission, nor the Contracting Authority accept any claim for compensation or increases in payment in connection with such damage or injury.

## **6. INTELLECTUAL PROPERTY RIGHTS**

### **6.1. No infringement**

- 6.1.1. The Contractor warrants that no copyright or intellectual property rights shall be infringed by its performance of the services.

### **6.2. Right of use**

- 6.2.1. The Contractor may use or exploit information or data furnished by ADA or prepared by the Contractor for unrelated purpose only with ADA's prior written consent.
- 6.2.2. The Contractor hereby transfers and assigns to ADA the exclusive, irrevocable, unrestricted as to place, and assignable and transferable right of use, covering all types of use, in respect of all domestic or foreign intellectual property rights, intellectual property applications, inventions, design documents, methods, documents, and results of work created or procured in performance of this Contract. The Contractor hereby transfers and assigns to ADA, the European Union, the Contracting Authority and the European Commission the same right of use in respect of any pre-existing industrial or intellectual property rights of the Contractor as necessary for the exercise of such right of use. Where the Contractor cannot warrant such right of use in respect of pre-existing intellectual property rights, the Contractor shall inform ADA accordingly in writing.

## **7. TERMINATION OF THIS CONTRACT**

### **7.1. Cancellation**

- 7.1.1. ADA shall be entitled to cancel this Contract at any time in whole or in part. Where grounds for rescission as defined in section 7.2 are not present, the following shall apply: With regards to services not yet performed, the Contractor shall be entitled to reimbursement of all costs as have been incurred and documented up to the date of service of the notice of cancellation, to remuneration in such amount as corresponds to the services performed to-date as well as to a cancellation fee of 10 % corresponding to the portion of the remuneration attributable to the services which have not yet been carried out. The Contractor shall be entitled to no Contract remuneration for services not performed.

### **7.2. Rescission**

- 7.2.1. ADA shall be entitled to rescind this Contract for good cause with immediate effect. Good cause shall include, but not be limited to, the following situations:
- a) the opening of insolvency proceedings against the Contractor is rejected due to a lack of assets covering costs. The right to rescind this Contract may be asserted without limitation in time until this Contract has been fully executed;
  - b) the Contractor is in default in performing this Contract [delay]; if, pursuant to this Contract, the services are to be rendered in parts and the Contractor is in default with only one part of the services, rescission may be declared only with regard to that portion of the services or with regard to all outstanding portions of services, unless those portions of the services already rendered are of no or practically no value to ADA. ADA's declaration of rescission shall include a reasonable grace period and shall only remain legally effective if the Contractor fails, within such grace period, to render the outstanding services (portions of services);



- c) circumstances are present which manifestly render the timely execution of this Contract impossible, unless ADA itself bears responsibility for such circumstances;
- d) the Contractor enters into a subcontract without prior approval of ADA, as required pursuant to Article 6 of the Service Contract;
- e) if any person or institution is offered, promised or granted a gift or other benefit in connection with the grant of this Contract or if any non-declared connection of a personal or financial type exists between a person who is employed or engaged by ADA who was involved in carrying out the specific contracting procedures, and with the Contractor or any of the Contractor's employees at the time this Contract was awarded;
- f) if, in the event of a conflict of interest, the Contractor and ADA are unable to reach agreement on further action. ADA shall not refuse any proposal of the Contractor which eliminates the conflict of interest whilst still performing the services in the same manner (such as by replacing the individuals in question by staff of equal merit);
- g) if the Contractor fails to promptly remedy a case of sexual exploitation, harassment or sexual abuse (section 9.2.2) or fails to immediately report a (suspected) case to ADA;
- h) the Contractor takes action which is aimed at causing harm to ADA, in particular, where the Contractor has made arrangements with other enterprises to the disadvantage of ADA, which violate public policy or which contravene the principle of competition;
- i) breach of the confidentiality undertakings pursuant to section 1.2 by the Contractor or by the persons employed by the Contractor or engaged to perform this Contract;
- j) the acts of the Contractor are detrimental to the interests of the Republic of Austria or ADA or where complaints are made by the government of the country of assignment or by the project sponsor in the country of assignment; the same shall apply with respect to acts of agents of the Contractor and family members travelling with the Contractor, where the Contractor fails to immediately comply with ADA's request to recall such persons;
- k) the Contractor fails to comply with, impedes or prevents the audit and oversight measures pursuant to section 8;
- l) the Contractor breaches the restraint on dispositions (Article 12.5 of the Service Contract);
- m) the Contractor fails to promptly report any events which would delay or render the execution of a contract impossible or would require modification thereof;
- n) in the event of any other material breach of Contract such as, in particular, any breach of contractual duties, where such breach is a sustained breach and continues or is repeated despite a written warning;
- o) in the event of the death, loss of legal capacity or dissolution of the legal entity of the Contractor or of one of multiple Contractors;
- p) where political grounds or crises require discontinuation of the execution of this Contract;
- q) where the Contractor's business activities or its business is discontinued or closed down;
- r) where a transfer of the business or a change in the shareholder structure or the ratio of shareholdings occurs (e.g. withdrawal of shareholders, accession of new shareholders);
- s) where the Contractor's business parts of the business or significant assets, facilities or rights of the Contractor are sold, transferred and/or conveyed, leased, rented or otherwise assigned, hived-off or otherwise spun-off in any way, whether for consideration or on a gratuitous basis;
- t) where the Contribution Agreement is terminated or suspended in whole or in part.

7.2.2. Where ADA declared rescission of this Contract in line with the foregoing provisions, the Contractor shall be deemed to lose any entitlement to remuneration and reimbursement of costs (Article 3 of the Service Contract) unless the Contractor has already performed parts of the agreed services which are useable as such. Where the Contractor has no entitlement to remuneration as defined in Article 3 of the Service Contract, the Contractor shall immediately refund any payments previously received from ADA, together with interest from the date of receipt of the payment at a rate of four percentage points (4 %) p.a. over the currently applicable base interest rate.

7.2.3. In derogation from the foregoing, in the event of a rescission pursuant to section 7.2.1.p) (political grounds or crises) or section 7.2.1.t) (Contribution Agreement), the Contractor shall have a claim to the portion of fees corresponding to the Contractor's previous services and (if reimbursement of costs has been agreed) to reimbursement of all such costs as have been incurred in line with this Contract up to the date of service of the notice of rescission.



- 7.2.4. Where the Contractor bears fault for the occurrence of the grounds of rescission, it shall compensate ADA for the additional costs incurred by any transfer of this Contract to a third party as well as the audit costs which may arise in connection with ADA's investigation of the grounds of rescission (engagement of third-party auditors, travel expenses of officers and directors of ADA), unless such costs are already covered by a sum of liquidated damages. ADA's further legal claims, if any, shall remain unaffected hereby.
- 7.2.5. In the event of rescission of this Contract, the Contractor shall immediately discontinue work and shall render a final narrative report and final financial statement on the services performed.

## **8. AUDIT AND OVERSIGHT**

### **8.1. Oversight by ADA and the EU**

- 8.1.1. For purposes of overseeing the execution of this Contract in compliance with the terms and conditions of this Contract and the Contribution Agreement, and for purposes of exercising oversight of proper accounting, ADA and the EU Oversight Institutions shall be entitled at all times to inspect the status and results of the services, including at the sites and premises of the Contractor. The Contractor undertakes to grant to ADA and the EU Oversight Institutions as well as their respective officials, officers, authorised representatives and agents access to all written or electronic receipts, correspondence and any other records related to this Contract, including through on-site audits and inspections. The Contractor furthermore agrees to facilitate audit and oversight activities and to provide ADA and the EU Oversight Institutions with all such information as is necessary in connection with this Contract, including by placing suitable informants at their disposal. The decision as to whether such a connection with this Contract exists, is vested in the auditing body. The confidential nature of a document shall not prevent it from being accessed, nor from being disclosed and communicated to third parties on a confidential basis. The EU Oversight Bodies treat confidential information in accordance with EU confidentiality rules. ADA shall inform the Contractor of any planned on-the-spot inspections in due time.

### **8.2. Audit by the Austrian Court of Audit**

- 8.2.1. The Contractor is aware that use of the compensation is subject to audit by the Austrian Court of Audit pursuant to Section 12 (3) of the Austrian Court of Audit Act (*Rechnungshofgesetz*), 1948, Federal Law Gazette. No. 144/1948 in its currently applicable version. The Contractor undertakes that, in the event of such an audit by the Austrian Court of Audit, it shall provide the relevant information and assist accordingly.

## **9. CODE OF CONDUCT AND COMPLIANCE**

### **9.1. Code of Conduct**

- 9.1.1. The Contractor's own interests/those of its staff members or partners engaged to perform the services may have an adverse impact on the objective and substantive performance of the project in the interests of ADA. Such conflicts of interest may, for example, arise due to personal or commercial connections or links of the Contractor and/or of its staff members or partners with target groups or other parties contracting with ADA. The Contractor is obliged to notify ADA promptly each and every existing or potential conflicts of interest and to consult with ADA with respect to further action. The Contractor shall in any case refrain from any action which may give rise to a conflict of interest.
- 9.1.2. The Contractor and/or its staff members or partners must, in performing the services, refrain from demanding gifts or other personal benefits from third parties. In connection with the performance of the services, Contractors may only accept from third parties and/or grant to third parties low-value gratuities to the extent that this is local custom and customary in the sector. Gifts or other personal benefits may never be granted or accepted with a view to an action or omission in breach of an obligation, or the exercise of undue influence on the decision-making process of a third party.

## **9.2. Compliance**

- 9.2.1. The Contractor shall, in performing the services, promote the respect of human rights and comply with its due diligence obligations under human rights law<sup>2</sup> and shall comply with the social and environmental standards which are stipulated by local law or international agreements. These include, in particular, the provisions of employment and social law listed in Section 7.4 of the Service Contract, as well as the OECD Guidelines for Multinational Enterprises.
- 9.2.2. Within the performance of the Contract, the Contractor shall take immediate corrective measures in any case of sexual exploitation or harassment, or sexual abuse, including any case of sexual contact with minors. The Contractor shall inform ADA (egsim@ada.gv.at) immediately of any case or suspicion and the corrective measures taken. This information must not contain any details that allow the identification of an individual person involved.
- 9.2.3. The Contractor must comply with the Austrian Federal Act on Gender Equality [German acronym: GIBG], Federal Law Gazette I No. 66/2004, the EU Equal Treatment Directive, the Austrian Federal Disabled Equality Act, Federal Law Gazette No. 82/2005, and the ban on discrimination under Section 7b of the Austrian Employment of the Disabled Act, Federal Law Gazette No. 22/1970.
- 9.2.4. The Contractor shall comply with the statutes, rules and regulations on combatting money laundering and terrorism financing and shall take all reasonable efforts to prevent any violations of these provisions when performing the services.
- 9.2.5. The Contractor shall inform ADA immediately of any case or suspicion of fraud or corruption in connection with the performance of the services, as well as proposed proceeding in this regard.
- 9.2.6. The Contractor shall ensure that all partners engaged in the context of this Contract observe the requirements listed under sections 9.1 and 9.2. The Contractor must confirm in writing the transmission of the Information Sheet Code of Conduct and Information Points.

## **10. MULTIPLE CONTRACTORS**

- 10.1.1. Where there are multiple Contractors, such multiple Contractors shall bear joint and several liabilities to ADA for performance of all obligations under this Contract.

## **11. CONTRACTUAL PENALTY**

### **11.1. Failure to meet prescribed deadlines**

- 11.1.1. Unless otherwise provided in the Service Contract, the Contractor shall, upon demand by ADA, pay a contractual penalty equal to at least one-thousandth of the agreed remuneration plus expense reimbursements for each calendar day by which the period of performance is exceeded; proof of actual damages is not required. ADA's right to claim documented damages exceeding the amount of the contractual penalty shall remain unaffected hereby.
- 11.1.2. The contractual penalty shall fall due as soon as the Contractor is in default and is unable to prove that it is not responsible for the delay.
- 11.1.3. The contractual penalty shall be payable for the time by which the performance period is exceeded until all contractual obligations have been fully performed; however, if this Contract is terminated by rescission prior to this and if the Contractor is responsible for the circumstances leading to such rescission, then the contractual penalty shall be calculated only for the period until service on the Contractor of the declaration of rescission, notwithstanding the other consequences thereof. Where the contractual penalty is not set in days but rather in weeks or months, in calculating such penalty one calendar day shall be equated to 1/7th of a week or 1/30th of a month.

### **11.2. Breach of contract**

- 11.2.1. Where the Contractor has culpably breached its obligations in a manner as described in sections 7.2.1.d), 7.2.1.e), 7.2.1.i) or 7.2.1.k)7.2.1.k), ADA shall in any event be entitled to claim

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<sup>2</sup> "Due diligence obligations under human rights law" refers to the duty of Contractors to ensure that they do not directly or indirectly contribute to breaches of human rights as a result of their activities.

liquidated damages equal to 50 % (fifty per cent) of the agreed remuneration, without prejudice to its right to claim compensation for any damages beyond such amount.

## **12. DONOR VISIBILITY AND PUBLICATIONS**

### **12.1. Donor visibility**

- 12.1.1. Unless ADA requests or agrees otherwise, the Contractor shall take all appropriate measures to publicise the fact that the services are funded by funds from ADA and the European Union.
- 12.1.2. Any reports and publications shall acknowledge that this Contract was carried out "with funding by the European Union" and shall display the EU logo (twelve yellow stars on a blue background) and the ADA logo in an appropriate way. Publications by the Contractor pertaining to this Contract, in whatever form and whatever medium, including the internet, shall carry the following disclaimer: "This document was produced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union". Such measures shall be carried out in accordance with the applicable "Communication and Visibility Requirements for EU External Actions" published by the European Commission as amended from time to time.
- 12.1.3. If the Contractor, in performance of this Contract, purchases equipment, vehicles or major supplies using the compensation as defined in Article 3 of the Service Contract, the Contractor shall display appropriate acknowledgement on such vehicles, equipment or major supplies, including the display of the EU logo (twelve yellow stars on a blue background). Where such display could jeopardise the safety of the Contractor or the Contractor's staff, the Contractor shall propose appropriate alternative arrangements. The acknowledgement and the EU logo shall be of such a size and prominence as to be clearly visible in a manner that shall not create any confusion regarding the ownership of the equipment, vehicles or major supplies by the Contractor.
- 12.1.4. The Contractor must inform ADA as early as possible in advance about any planned public relations measures, such as publications and events, regarding this Contract and must comply with the ADA "Guidelines for the Visibility of Austrian Development Cooperation"<sup>3</sup>, in the currently applicable version. In accordance with said Guidelines, items such as PCs, laptops and vehicles purchased using the compensation as defined in Article 3 of the Service Contract must be labelled using logo stickers.
- 12.1.5. The parties will consult immediately and strive to remedy any detected shortcoming in implementing the visibility requirements set out in this section 12.

### **12.2. Publications**

- 12.2.1. The Contractor acknowledges and accepts that ADA, the European Union, the European Commission, and the Contracting Authority may publish in any form and medium, including on their internet sites, any results of work created or procured in performance of this Contract, the name and address of the Contractor, the purpose of this Contract and the Contract value. Upon a duly substantiated request by the Contractor, ADA, the European Union, the Contracting Authority and/or the European Commission may agree to forego such publicity if disclosure of the above information would risk threatening the Contractor's safety or harming its commercial interests.
- 12.2.2. The Contractor shall ensure that publication of the results of work created or procured in performance of this Contract does not violate copyright or other intellectual property rights of third parties, nor the rights of data subjects pursuant to the General Data Protection Regulation and applicable data protection law. If necessary, the Contractor shall provide to ADA separate versions of the documents in electronic format that are fit for publication, and in which personal data are removed (anonymised versions, e.g., by blanking out text or pixelating images).
- 12.2.3. If legal action is taken against ADA by third parties on account of a document published in accordance with this section 12.2, section 5.1.1 shall apply analogously.

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<sup>3</sup> Available for download at ADA's website: <https://www.entwicklung.at/en/media-centre/logos>.



## Notice on processing of personal data

The present notice on the processing of personal data ("notice") describes how Austrian Development Agency (ADA), a society with limited liability under Austrian law, registered in the Commercial Register at the Commercial Court in Vienna under register entry 243529g, with its seat in Vienna and its address of business in Zelinkagasse 2, A-1010 Wien, Austria, processes your personal data.

### **1. Purposes of processing, categories of data processed, legal base for processing**

#### **Purposes of processing**

We process your personal data

- to implement a procurement procedure with regards to awarding the tendered services, deliveries or works and
- related to concluding a contract with the bidder selected through the procurement procedure.

In order to comply with our legal obligation to publish tenders on behalf of ADA as a contracting authority under the Federal Procurement Act (Bundesvergabegesetz – BVergG) as amended.

ADA requires personal data in order to verify the fulfillment of eligibility requirements and requirements pertaining to the qualification of bidders/subcontractors/third parties related to the subject-matter of the procurement procedure and in order to examine and assess the request for participation and – subsequently – any submitted offers with regards to eligibility criteria, selection criteria and/or award criteria and their quality and to – ultimately – conclude a contract with the selected bidder and to implement such contract.

Unless provided for in a contract, providing personal data to ADA is voluntary. However, if you do not provide the required personal data, your request for participation / offer cannot be processed and examined and ADA will not be in a position to consider it during the procurement procedure.

#### **Categories of data processed by ADA**

ADA processes the following categories of data

- Contact data of bidders: first name, last name, title, address
- Contact data and function of staff/subcontractors of bidders: first name, last name, title, address
- CVs and contact data of staff, key experts, subcontractors (in particular: name, photograph, date of birth, data on education and proof of education, professional experience, citizenship), address
- Data on references and letters of references provided to staff and key experts, including e.g. first name, last name, contact data, function of the person nominated as contact person regarding the reference with the respective contracting authority or former employer
- Data on references and letters of references of bidders and subcontractors, including e.g. first name, last name, contact data, function of the person nominated as contact person regarding the reference with the respective contracting authority and data on the respective contracting authority and other contracting authorities
- Data on the financial viability of bidders/subcontractors/third parties
- Data on the fulfillment of economic and financial eligibility criteria by bidders/subcontractors



- Excerpts from the commercial register and/or a professional or trade register in which the bidder/subcontractor/third party is listed
- ID numbers related to the bidder/subcontractor/third party (e.g. UID number, ANKÖ number)
- Most recent accounting statement of the social security authorities competent for the bidder/sub-contractor/third party or equivalent document issued by the competent authority of the country of origin of the bidder/sub-contractor/third party that shows that the bidder/sub-contractor/third party have complied with their obligations according to the respective applicable legal provisions on the payment of social security contributions.
- Most recent accounting statement according to art. 229a Federal Tax Code (Bundesabgabenordnung) as amended, or equivalent document issued by the competent authority of the country of origin of the bidder/sub-contractor/third party that shows that the bidder/sub-contractor/third party have complied with their obligations according to the respective applicable legal provisions on the payment of taxes and dues.
- Extract from the criminal records registry (or an equivalent certificate issued by a court or an administrative authority of the country in which the bidder has its seat) on the bidder and its sub-contractors or – in case of a legal person, a registered business partnership or a consortium - all natural persons that form part of the management of the legal person, this includes – amongst others – members of the board and officers of the company authorized to sign on behalf of the company ("Prokuristen");
- Extract from the registry of administrative fines maintained by the Vienna Regional Health Insurance in its role as the Competence Center for Countering low-wage dumping and dumping of social rights ("Kompetenzzentrum LSDB") according to s. 34 of the Law on Countering Low-Wage dumping and dumping of social rights ("LSD-BG") as amended regarding the bidder and its subcontractors as to whether they have been punished with binding and final effect according to sections 28, 29 or 31 LSD-BG.
- Extract from the registry of administrative fines maintained by the Federal Ministry for Finance according to s. 28b of the Law on the Employment of Foreigners ("AuslBG") as amended regarding the bidders and its subcontractors on whether they have been punished with binding and final effect according to section 28 para. 1 ss. 1 AuslBG.
- Data on bank accounts (IBAN) of the bidder and its subcontractors;
- Excerpt from the trade register or presentation of the permits required to perform the respective services as issued in the country of origin of the bidder or the sub-contractor to carry out the respective services or a document regarding membership of the bidder or sub-contractor in an organization in which membership is mandatory in order to carry out the services in question

#### **Legal bases for the processing of personal data**

ADA processes your personal data on the basis of Art 6 ss 1 lit b, c and f of the GDPR.

ADA processes the following of your personal data on the basis of its legitimate interests (Art 6 ss 1 lit f GDPR) which consists in achieving the above-mentioned objectives:

In addition, personal data is processed on the basis of EU Directive 2014/24/EU on public procurement and the Federal Act on Public Procurement, in particular §§ 48, 49, 78ff., 90, 125ff., 134 ff. and Annex XI.

Contracting Authorities are legally obliged to conduct procurement procedures in line with the Federal Act on Public Procurement as amended. Data processing is carried out in fulfilling the tasks of a contracting authority on the basis of Austrian and EU legal provisions on public procurement. These form the basis for the processing of personal data (refer also to the section on purposes of processing).

## **2. Recipients or categories of recipients of personal data (including dissemination of the data to third countries or international organisations)**

ADA transmits personal data to:

- Members of selection/evaluation boards
- IT service providers (e.g. for internal processing of data)
- Official Journal of the EU;
- Wiener Zeitung (and other platforms for the publication of procurement procedures)
- Authorities that review public procurement procedures;
- Courts;
- Authorities;
- Advisors, including law firms, technical consulting firms, expert advisors and witnesses;
- Federal Ministry for Europe, Integration and External Affairs
- <https://www.data.gv.at/>
- Construction Site database (s 31a of the Law on Social Rights of Construction Workers - Bauarbeiter-Urlaubs- und Abfertigungsgesetz – BUAG, as amended)
- Other bidders in the course of informing them on the award of a tender

Furthermore, ADA makes use of an electronic public procurement platform in order to implement procurement procedures (Lieferanzeiger der Wiener Zeitung).

ADA may be obliged to provide personal data in particular to organs and other persons authorized by the Austrian Court of Auditors (in particular according to s. 3 para. 2, s. 4 para. 1 and s. 13 para. 3 of the Federal Law on the Court of Auditors 1948, as amended), to the Federal Ministry of Finance (in particular according to sections 57 to 61 and 47 of the Federal Law of Public Finances - BHG 2013, as amended and section 14 of the Federal General Framework Regulation on Grants 2014 - ARR 2014, as amended) and to institutions of the European Union according to provisions of EU law.

It can also occur that personal data must be provided to the registry of administrative fines maintained by the Federal Ministry of Finance (in particular according to s. 28b of the Law on the Employment of Foreigners "AuslBG") or to the registry of administrative fines maintained by the Vienna Regional Health Insurance in its role as the Competence Center for Countering low-wage dumping and dumping of social rights ("Kompetenzzentrum LSDB") according to s. 34 of the Law on Countering Low-Wage dumping and dumping of social rights ("LSD-BG") as amended.

## **3. Manner of collection of personal data**

ADA collects personal data using its server and on the basis of data provided to ADA by the bidder/sub-contractor/third party or by other contracting authorities. In addition, ADA uses data provided through public registries (e.g. register of firm authorized to carry out certain services, register of companies).

ADA obtains information on the bidder and – if applicable – its subcontractors, from the registry of administrative fines maintained by the Federal Ministry for Finance (in particular according to s. 28b of the Law on the Employment of Foreigners - "AuslBG" as amended) to verify whether they have been punished with binding and final effect according to section 28 para. 1 ss. 1 AuslBG.

In addition, ADA obtains information on the bidder and – if applicable – its subcontractors, from the registry of administrative fines maintained by the Vienna Regional Health Insurance in its role as the Competence Center for Countering low-wage dumping and dumping of social rights ("Kompetenzzentrum LSDB") according to s. 34 of the Law on Countering Low-Wage dumping and dumping of social rights ("LSD-BG") as amended regarding the bidder and its subcontractors as to whether they have been punished with binding and final effect according to sections 28, 29 or 31 LSD-BG.

#### **4. Duration of storage of personal data**

Your personal data is stored for the time required to achieve the purposes for which they are being processed taking account of legal obligations to maintain records. In any case, ADA stores your personal data at least for the period during which it is legally obliged to store such data (cf. s. 49 of the Federal Public Procurement Act), for which a contractual relationship between you and ADA exists (cf. s. 364 of the Federal Public Procurement Act) or during which potential legal claims are not yet barred by applicable statutes of limitations.

#### **5. Your rights as a data subject**

As a data subject, the GDPR grants you the following rights:

- If your personal data is being processed, you enjoy the right to information on personal data that is being processed (right of access by data subject as granted by art. 15 GDPR)
- If your personal data is inaccurate or incomplete, you enjoy the right to rectification (right of rectification by data subject as granted by art. 16 GDPR)
- If the conditions defined in the GDPR are met, you enjoy the right to erasure or the right to restriction of processing or right to object to the processing of your data (as granted by art. 17, 18 and 21 GDPR)
- If processing of your personal data is based upon your consent, you may revoke this consent at any time. Such withdrawal shall not affect the lawfulness of processing before consent was withdrawn (art. 7 GDPR)
- If processing of your personal data is based upon your consent or based upon a contract, and the processing of data is carried out by means of automated means, you may enjoy the right to data portability (art. 20 GDPR)

Should you exercise the above-mentioned rights, ADA will examine if the legal preconditions as defined in the GDPR are met.

Art. 77 s. 1 GDPR grants you the right to complain to the competent Supervisory Authority, the Austrian Data Protection Authority (Datenschutzbehörde, Wickenburggasse 8, A-1080 Wien, phone: +43-1-52-152-0, mail: dsb@dsb.gv.at).

#### **6. Contact data**

Please do not hesitate to contact us should you have any questions or concerns regarding the processing of your personal data:

##### **Name and contact data of the data controller:**

Austrian Development Agency, Zelinkagasse 2, A-1010 Wien, Austria  
Tel: + 43 (0)1 90399 - 0  
Fax: + 43 (0)1 90399 - 2290  
e-mail: office(at)ada.gv.at  
web: entwicklung.at

##### **Contact data of the data protection officer**

Austrian Development Agency, Data Protection Officer, Zelinkagasse 2, A-1010 Wien, Austria  
E-Mail: dpo(at)ada.gv.at

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## Article 1: Definitions

- Action:** the cooperation programme or project partly or wholly financed by the EU, which is carried out by the Organisation as described in Annex I. Where reference is made to the Action or part of the Action financed by the EU Contribution, this refers both (i) to activities exclusively financed by the EU Contribution and (ii) to activities jointly co-financed by the EU.
- Contractor:** a natural or legal person with whom a Procurement Contract has been signed.
- Days:** calendar days.
- Early Detection and Exclusion System:** a system set up by Regulation (EU, Euratom) No 2015/1929 of 28 October 2015 on the financial rules applicable to the general budget of the Union (OJ L 286/1, 30.10.2015), which includes information on the early detection of risks threatening the EU financial interests, on the cases of exclusion from EU funding of legal and natural persons and on the cases of imposition of financial penalties.
- End Date:** the date by which the Agreement ends, i.e. the moment of the payment of the balance by the Contracting Authority in accordance with Article 19 or when the Organisation repays any amounts paid in excess of the final amount due pursuant to Article 20. If any of the Parties invokes a dispute settlement procedure in accordance with Article 14, the End Date shall be postponed until the completion of such procedure.
- Final Administrative Decision:** a decision of an administrative authority having final and binding effect in accordance with the applicable law.
- Final Beneficiary:** a natural or legal person ultimately benefitting from the Action.
- Force Majeure:** any unforeseeable and exceptional situation or event beyond the Parties' control which prevents either of them from fulfilling any of their obligations under the Agreement, which may not be attributed to error or negligence on either part (or on the part of the Grant Beneficiaries, Partners, Contractors, agents or staff), and which could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making them available cannot be invoked as force majeure, unless they stem directly from a relevant case of force majeure. Labour disputes, strikes or financial problems of the Organisation cannot be invoked as force majeure by the defaulting Party.
- Grant:** a direct financial contribution by way of donation given by the Organisation or a Partner to finance third parties activities.
- Grant Beneficiary:** a natural or legal person to whom a Grant has been awarded. Grant Beneficiaries can sub-grant and procure for the implementation of their activities.

Grave Professional Misconduct:	<p>any of:</p> <ul style="list-style-type: none"> <li>a violation of applicable laws or regulations, in particular the Organisation's Regulations and Rules, or ethical standards of the profession to which a person or entity belongs, including any conduct leading to sexual or other exploitation or abuse, or</li> <li>any wrongful conduct of a person or entity which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence.</li> </ul>
Indicator:	the quantitative and/or qualitative factor or variable that provides a simple and reliable means to measure the achievement of the Results of an Action.
Internal Control System:	<p>a process applicable at all levels of management designed to provide reasonable assurance of achieving the following objectives:</p> <ul style="list-style-type: none"> <li>a) effectiveness, efficiency and economy of operations;</li> <li>b) reliability of reporting;</li> <li>c) safeguarding of assets and information;</li> <li>d) prevention, detection, correction and follow-up of fraud and irregularities;</li> <li>e) adequate management of the risks relating to the legality and regularity of the financial operations, taking into account the multiannual character of programmes as well as the nature of the payments concerned.</li> </ul>
International Organisation:	an international public-sector organisation set up by international agreement (including specialised agencies set up by such organisations), or an organisation assimilated to international organisations in accordance with the EU Financial Regulation.
Member State Organisation:	an entity established in a Member State of the European Union as a public law body or as a body governed by private law entrusted with a public service mission and provided with adequate financial guarantees from the Member State.
Multi-Donor Action:	an Action co-financed by the EU Contribution (whether or not earmarked) and other donor(s).
Outcome:	the likely or achieved short-term and medium-term effects of an Action's Outputs.
Output:	the products, capital goods and services which result from an Action's activities.
Partner:	an entity implementing part of the Action and being a party to the relevant Contribution Agreement together with the Organisation.
Procurement Contract:	a contract signed between the Contractor and either the Organisation or a Partner under which the Contractor provides services, supplies or works.
Regulations and Rules:	regulations, rules, organisational directives, instructions and other parts of the regulatory framework of the Organisation.
Result:	the Output or Outcome of an Action.

Sound Financial  
Management:

a principle overarching the implementation of this Agreement, namely economy, effectiveness and efficiency (including all aspects of internal control). The principle of economy requires that resources used in the pursuit of the implementation of the Action shall be made available in due time, in appropriate quantity and quality and at the best price. The principle of effectiveness concerns the attainment of the specific objectives and the achievement of the intended results. The principle of efficiency concerns the best relationship between resources employed and results achieved.

## **Article 2: General obligations**

### **Implementation of the Action**

- 2.1 The Organisation is responsible for the implementation of the Action described in Annex I, regardless of whether the activities are performed by the Organisation itself, a Contractor or a Grant Beneficiary. Both Parties will endeavour to strengthen their mutual contacts with a view to foster the exchange of information throughout the implementation of the Action. To this end, the Organisation and the Contracting Authority shall participate in coordination meetings and other jointly organised common activities, and the Organisation shall invite the European Commission to join any donor committee which may be set up in relation to the Action.

### **Responsibility**

- 2.2 The Organisation shall be responsible for the performance of the obligations under this Agreement with a due degree of professional care and diligence, which means that it shall apply the same level of duty and care which it applies in managing its own funds. The Organisation shall respect the principles of Sound Financial Management, transparency, non-discrimination and visibility of the European Union in the implementation of the Action.
- 2.3 The Organisation shall have full financial responsibility towards the Contracting Authority for all funds, including those unduly paid to or incorrectly used by Contractors or Grant Beneficiaries. The Organisation shall take measures to prevent, detect and correct irregularities and fraud when implementing the Action. To this end, the Organisation shall carry out, in accordance with the principle of proportionality and its positively assessed Regulations and Rules, ex-ante and/or ex-post controls including, where appropriate, on-the-spot checks on representative and/or risk-based samples of transactions, to ensure that the Action financed by the EU Contribution is effectively carried out and implemented correctly. The Organisation shall inform the European Commission and the Contracting Authority of irregularities and fraud detected in the management of the EU Contribution and the measures taken. Where funds have been unduly paid to or incorrectly used by Contractors or Grant Beneficiaries, the Organisation shall take all applicable measures in accordance with its own Regulations and Rules to recover those funds, including, where appropriate, by bringing legal proceedings and by endeavouring to assign claims against its Contractors or Grant Beneficiaries to the Contracting Authority or the European Commission. Where the Organisation has exhausted such measures and the non-recovery is not the result of error or negligence on the part of the Organisation, the Contracting Authority will consider the amounts that could not be recovered from Contractors and/or Grant Beneficiaries as eligible costs.

### **Other obligations**

- 2.4 The Organisation undertakes to ensure that the obligations stated in this Agreement under Articles 2.6, 5-Conflict of interests, 7-Data protection, 8-Communication and Visibility, 16-Accounts and archiving and Article 17-Access and financial checks apply, where applicable, to all Contractors and Grant Beneficiaries.

- 2.5 The Organisation shall notify the Contracting Authority and the European Commission without delay of any substantial change in the rules, procedures and systems applied in the implementation of the Action. This obligation concerns in particular (i) substantial changes affecting the pillar assessment undergone by the Organisation or (ii) those that may affect the conditions for eligibility provided for in the applicable legal instruments of the EU. The Parties shall use their best efforts to resolve amicably any issues resulting from such changes. The Contracting Authority reserves the right to adopt or require additional measures in response to such changes. In the event an agreement on such measures or other solutions cannot be reached between the Parties, either Party may terminate the Agreement in accordance with Article 13.3.
- 2.6 The Organisation shall promote the respect of human rights and respect applicable environmental legislation including multilateral environmental agreements, as well as internationally agreed core labour standards. The Organisation shall not support activities that contribute to money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion.
- 2.7 Where the European Commission is not the Contracting Authority, it shall not be a party to this Agreement, with the consequence that rights and obligations are conferred upon it only where explicitly stated. This is without prejudice to the European Commission's role in promoting a consistent interpretation of the terms of this Agreement.

### **Article 3: Obligations regarding information and reporting**

#### **General issues**

- 3.1 The Organisation shall provide the Contracting Authority with full information on the implementation of the Action. To that end, the Organisation shall include in Annex I a work plan at least for the first year of the Implementation Period (or the whole Implementation Period where it is less than one year). The Organisation shall submit to the Contracting Authority progress report(s) and a final report in accordance with the provisions below. These reports shall consist of a narrative part and a financial part.
- 3.2 Every report, whether progress or final, shall provide a complete account of all relevant aspects of the implementation of the Action for the period covered. The report shall describe the implementation of the Action according to the activities envisaged in Annex I as well as the degree of achievement of its Results (Outcomes or Outputs) as measured by corresponding Indicators. The report shall be drafted in such a way as to allow monitoring of the objective(s), the means envisaged and employed. The level of detail in any report shall match that of Annexes I and III.
- 3.3 Where the overall action of the Organisation lasts longer than the Implementation Period of this Agreement, the Contracting Authority may request – in addition to the final reports to be submitted pursuant to Article 3.8 - the final reports of the overall action, once available.
- 3.4 Any alternative or additional reporting requirement shall be set out in the Special Conditions.
- 3.5 The Contracting Authority may request additional information at any time, providing the reasons for that request. Subject to the Organisation's Regulations and Rules, such information shall be supplied within thirty (30) days of receipt of the request. The Organisation may submit a duly motivated request to extend the 30-day deadline.
- 3.6 The Organisation shall notify the Contracting Authority without delay of any circumstances likely to adversely affect the implementation and management of the Action, or to delay or jeopardise the performance of the activities.



## Content of the reports

- 3.7 The progress report(s) shall relate directly to this Agreement and shall at least include:
- a) summary and context of the Action;
  - b) actual Results: an updated table based on a logical framework matrix including reporting of Results achieved by the Action (Outcomes or Outputs) as measured by their corresponding Indicators, agreed baselines and targets, and relevant data sources;
  - c) information on the activities directly related to the Action as described in Annex I and carried out during the reporting period;
  - d) information on the difficulties encountered and measures taken to overcome problems and eventual changes introduced;
  - e) information on the implementation of the Visibility and Communication Plan (Annex VI) and any additional measures taken to identify the EU as source of financing;
  - f) a breakdown of the total costs, following the structure set out in Annex III, incurred from the beginning of the Action as well as the legal commitments entered into by the Organisation during the reporting period;
  - g) a summary of controls carried out and available final audit reports in line with the Organisation's policy on disclosure of such controls and audit reports. Where errors and weaknesses in systems were identified, an analysis of their nature and extent, as well as information on corrective measures taken or planned, shall also be provided;
  - h) where applicable, a request for payment;
  - i) work plan and budget forecast for the next reporting period.
- 3.8 The final report shall cover the entire Implementation Period and include:
- a) all the information requested in Article 3.7 a) to h);
  - b) a summary of the Action's receipts, payments received and of the eligible costs incurred;
  - c) where applicable, an overview of any funds unduly paid or incorrectly used which the Organisation could or could not recover itself;
  - d) the exact link to the webpage where, according to Article 22.1, information on Grant Beneficiaries and Contractors is available;
  - e) if relevant, details of transfers of equipment, vehicles and remaining major supplies mentioned in Article 9;
  - f) where the Action is a Multi-Donor Action and the EU Contribution is not earmarked, a confirmation from the Organisation that an amount corresponding to that paid by the Contracting Authority has been used in accordance with the obligations laid down in this Agreement and that costs that were not eligible for the EU Contribution have been covered by other donors' contributions;
  - g) where applicable, a request for payment.
- 3.9 The Organisation shall submit a report for every reporting period as specified in the Special Conditions starting from the commencement of the Implementation Period, unless otherwise specified in the Special Conditions<sup>1</sup>. Reporting, narrative as well as financial, shall cover the whole Action, regardless of whether this Action is entirely or partly financed by the EU Contribution. Progress reports shall be submitted within sixty (60) days after the period covered by such report. The final report shall be submitted, at the latest, six (6) months after the end of the Implementation Period.

## Management declaration

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<sup>1</sup> By default, the reporting period is every 12 months as from the commencement of the Implementation Period.

- 3.10 Every progress and final report shall be accompanied by a management declaration in accordance with the template included in Annex VII, unless Article 1.5 of the Special Conditions states that an annual management declaration shall be sent to the European Commission headquarters, separately from the reports provided under this Agreement.

#### **Audit or control opinion for organisations other than International Organisations/Member State Organisations**

- 3.11 In case the Organisation is neither an International Organisation, nor a Member State Organisation, the Organisation shall provide an audit or control opinion in accordance with internationally accepted audit standards, establishing whether the accounts give a true and fair view, whether the control systems in place function properly, and whether the underlying transactions are managed in accordance with the provisions of this Agreement. The opinion shall also state whether the audit work puts in doubt the assertions made in the management declaration mentioned above.
- 3.12 Such audit or control opinion shall be provided up to one (1) month following the management declaration sent with every progress or final report, unless Article 1.5 of the Special Conditions states that the management declaration and the audit or control opinion shall be sent annually to the European Commission headquarters separately from the reports provided under this Agreement.

#### **Currency for reporting**

- 3.13 The reports shall be submitted in the Currency of the Agreement as specified in Article 3 of the Special Conditions.
- 3.14 The Organisation shall convert legal commitments, the Action's receipts and costs incurred in currencies other than the accounting currency of the Organisation according to its usual accounting practices.

#### **Failure to comply with reporting obligations**

- 3.15 If the Organisation is unable to present a progress or final report, together with the accompanying documents, by the deadline set out in Article 3.9, the Organisation shall inform the Contracting Authority in writing of the reasons. The Organisation shall also provide a summary of the state of progress of the Action and, where applicable, a provisional work plan for the next period. If the Organisation fails to comply with this obligation for two (2) months, following the deadline set out in Article 3.9, the Contracting Authority may terminate the Agreement in accordance with Article 13, refuse to pay any outstanding amount and recover any amount unduly paid.

#### **Article 4: Liability towards third parties**

- 4.1 The European Commission shall not, under any circumstances or for any reason whatsoever, be held liable for damage or injury sustained by the staff or property of the Organisation while the Action is being carried out, or as a consequence of the Action. The European Commission shall not therefore accept any claim for compensation or increase in payment in connection with such damage or injury.
- 4.2 The European Commission shall not, under any circumstances or for any reason whatsoever, be held liable towards third parties, including liability for damage or injury of any kind sustained by them in respect of or arising out of the implementation of the Action.
- 4.3 The Organisation shall discharge the European Commission of all liability associated with any claim or action brought as a result of an infringement of the Organisation's Regulations and Rules committed by the Organisation or Organisation's employees or individuals for

whom those employees are responsible, or as a result of a violation of a third party's rights in the context of the implementation of the Action.

#### **Article 5: Conflict of interests**

- 5.1 The Organisation shall refrain, in accordance with its Regulations and Rules, from any action which may give rise to a conflict of interests.
- 5.2 A conflict of interest shall be deemed to arise where the impartial and objective exercise of the functions of any person implementing the Agreement is compromised.

#### **Article 6: Confidentiality**

- 6.1 The Contracting Authority and the Organisation shall both preserve the confidentiality of any document, information or other material directly related to the implementation of the Action that is communicated as confidential. The confidential nature of a document shall not prevent it from being communicated to a third party on a confidential basis when the rules binding the Parties, or the European Commission when it is not the Contracting Authority, so require. In no case can disclosure put in jeopardy the Parties' privileges and immunities or the safety and security of the Parties' staff, Contractors, Grant Beneficiaries or the Final Beneficiaries of the Action.
- 6.2 The Parties shall obtain each other's prior written consent before publicly disclosing such confidential information unless:
- a) the communicating Party agrees in writing to release the other Party from the earlier confidentiality obligations; or
  - b) the confidential information becomes public through other means than in breach of the confidentiality obligation by the Party bound by that obligation; or
  - c) the disclosure of confidential information is required by law or by Regulations and Rules established in accordance with the basic constitutive document of any of the Parties.
- 6.3 The Parties shall remain bound by confidentiality for five (5) years after the End Date of the Agreement, or longer as specified by the communicating Party at the time of communication.
- 6.4 Where the European Commission is not the Contracting Authority, it shall nonetheless have access to all documents communicated to the Contracting Authority, and shall maintain the same level of confidentiality.

#### **Article 7: Data Protection**

The Organisation shall ensure an appropriate protection of personal data in accordance with its applicable Rules and Procedures. Personal data shall be:

- processed lawfully, fairly and in a transparent manner in relation to the data subject;
- collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;
- adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;
- accurate and, where necessary, kept up to date;
- kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; and
- processed in a manner that ensures appropriate security of the personal data.

## Article 8: Communication and visibility

- 8.1 The Organisation shall implement the Communication and Visibility Plan detailed in Annex VI.
- 8.2 Unless the European Commission requests or agrees otherwise, the Organisation shall take all appropriate measures to publicise the fact that the Action has received funding from the EU. Information given to the press and to the Final Beneficiaries, as well as all related publicity material, official notices, reports and publications shall acknowledge that the Action was " funded by the European Union or co-funded by the European Union" and shall display the EU emblem (twelve yellow stars on a blue background) in an appropriate way. Publications by the Organisation pertaining to the Action, in whatever form and whatever medium, including the internet, shall carry the following disclaimer: "This document was produced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union." Such measures shall be carried out in accordance with the Communication and Visibility Requirements for EU External Action<sup>2</sup> published by the European Commission, or with any other guidelines agreed between the European Commission and the Organisation.
- 8.3 If, during the implementation of the Action, equipment, vehicles or major supplies are purchased using the EU Contribution, the Organisation shall display appropriate acknowledgement on such vehicles, equipment or major supplies, including the display of the EU emblem (twelve yellow stars on a blue background). Where such display could jeopardise the Organisation's privileges and immunities or the safety of the Organisation's staff or of the Final Beneficiaries, the Organisation shall propose appropriate alternative arrangements. The acknowledgement and the EU emblem shall be of such a size and prominence as to be clearly visible in a manner that shall not create any confusion regarding the identification of the Action as an activity of the Organisation, nor the ownership of the equipment, vehicles or major supplies by the Organisation.
- 8.4 If, pursuant to Article 9.5, the equipment, vehicles or remaining major supplies purchased with the EU Contribution have not been transferred to the local authorities, local Grant Beneficiaries or Final Beneficiaries when submitting the final report, the visibility requirements as regards this equipment, vehicles or major supplies (in particular display of the EU emblem) shall continue to apply between submission of the final report and the end of the overall action, if the latter is longer. Where the Organisation retains ownership in accordance with Article 9.6, the visibility requirements shall continue to apply as long as the relevant equipment, vehicles or remaining major supplies are used by the Organisation.
- 8.5 Unless otherwise provided in the Special Conditions, if disclosure risks threatening the Organisation's safety or harming its interests, the European Commission and the Contracting Authority (if other than the European Commission) may publish in any form and medium, including on its internet sites, the name and address of the Organisation, the purpose and amount of the EU Contribution.
- 8.6 The Organisation shall ensure that reports, publications, press releases and updates relevant to the Action are communicated to the addresses stated in the Special Conditions upon their issuance.
- 8.7 The Parties will consult immediately and endeavour to remedy any detected shortcomings in implementing the visibility requirements set out in this Article. This is without prejudice to measures the Contracting Authority may take in case of substantial breach of an obligation.

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<sup>2</sup> Communication and Visibility in EU-financed external actions – Requirements for implementing partners (Projects), available at: [https://ec.europa.eu/intpa/comm-visibility-requirements\\_en](https://ec.europa.eu/intpa/comm-visibility-requirements_en).



## **Article 9: Right to use results and transfer of equipment**

### **Right to use**

- 9.1 Ownership of the results of the Action shall not vest in the Contracting Authority. Subject to Article 6, the Organisation shall grant, and shall act to ensure that any third party concerned grants the Contracting Authority (and the European Commission where it is not the Contracting Authority) the right to use free of charge the results of the Action, including the reports and other documents relating to it, which are subject to industrial or intellectual property rights.
- 9.2 Where the results mentioned in Article 9.1 include pre-existing rights and the Organisation cannot warrant the Contracting Authority (and the European Commission where it is not the Contracting Authority) the right to use such results, the Organisation shall inform in writing the Contracting Authority (and the European Commission, where it is not the Contracting Authority) accordingly.

### **Transfer**

- 9.3 The equipment, vehicles and remaining major supplies purchased with the EU Contribution shall be transferred to or remain with local authorities, local Grant Beneficiaries or Final Beneficiaries, at the latest when submitting the final report.
- 9.4 The documentary proof of those transfers shall not be presented with the final reports, but shall be kept for verification for the duration and along with the documents mentioned in Article 16.2.
- 9.5 By way of derogation from Article 9.3, the equipment, vehicles and remaining major supplies purchased with the EU Contribution in the framework of actions which continue after the end of the Implementation Period may be transferred at the end of the overall action. The Organisation shall use the equipment, vehicles and remaining major supplies for the benefit of the Final Beneficiaries. The Organisation shall inform the Contracting Authority on the end use of the equipment, vehicles and remaining major supplies in the final report.
- 9.6 In the event that there are no local authorities, local Grant Beneficiaries or Final Beneficiaries to whom the equipment, vehicles and remaining major supplies could be transferred, the Organisation may transfer them to another action funded by the EU or - exceptionally - retain ownership of the equipment, vehicles and remaining major supplies at the end of the Action or the overall action. In such cases, it shall submit a justified written request with an inventory listing of the items concerned and a proposal concerning their use in due course and - at the latest - together with the submission of the final report. In no event may the end use jeopardize the sustainability of the Action.

## **Article 10: Monitoring and evaluation of the Action**

- 10.1 Keeping in mind the commitment of the Parties to the effective and efficient operation of the Agreement, the Organisation shall invite representatives of the European Commission and the Contracting Authority (if other than the European Commission) to participate at their own costs to the main monitoring missions and evaluation exercises related to the performance of the Action. Participation in evaluation exercises should be ensured by requesting comments from the European Commission and the Contracting Authority on the terms of reference before the exercise takes place, and on the different deliverables related to an evaluation exercise prior to their final approval (as a minimum, on the final report). The Organisation shall send all monitoring and evaluation reports relating to the Action to the European Commission and the Contracting Authority once issued, subject to confidentiality.
- 10.2 Article 10.1 is without prejudice to any monitoring mission or evaluation exercise, which the European Commission as a donor, or the Contracting Authority, at their own costs, may wish

to perform. Monitoring and evaluation missions by representatives of the European Commission or the Contracting Authority shall be planned ahead and completed in a collaborative manner between the staff of the Organisation and the European Commission's (or Contracting Authority's) representatives, keeping in mind the commitment of the Parties to the effective and efficient operation of the Agreement. The European Commission (or the Contracting Authority) and the Organisation shall agree on procedural matters in advance. The European Commission (or the Contracting Authority) shall make available to the Organisation the terms of reference of the evaluation exercise before it takes place, as well as the different deliverables (as a minimum, the draft final report) for comments prior to final issuance. The European Commission (or the Contracting Authority) shall send the final monitoring and evaluation report to the Organisation once issued.

- 10.3 In line with the spirit of partnership, the Organisation and the European Commission (and the Contracting Authority, if applicable), may also carry out joint monitoring and/or evaluation. Such arrangements will be discussed and agreed in due time, planned ahead and completed in a collaborative manner.
- 10.4 Representatives of the relevant partner country may, whenever possible, be invited to participate at their own costs in the main monitoring missions and evaluation exercises, unless such participation would be detrimental to the objectives of the Action or threaten the safety or harm the interests of Partners, Grant Beneficiaries or Final Beneficiaries.

## **Article 11: Amendment to the Agreement**

- 11.1 Without prejudice to Articles 11.3 to 11.7, any amendment to this Agreement, including its annexes, shall be set out in writing in an addendum signed by both Parties. This Agreement can only be amended before the End Date.
- 11.2 The requesting Party shall request in writing any amendment thirty (30) days before the amendment is intended to enter into force and no later than thirty (30) days before the End Date, unless there are special circumstances, duly demonstrated by it, and accepted by the other Party. The other Party shall notify its decision regarding the amendment proposed in due time and in any case no later than thirty (30) days after the date when the amendment request was received.
- 11.3 By way of derogation from Articles 11.1 and 11.2, where an amendment to Annex I and/or Annex III does not affect the main purpose of the Action, such as its objectives, strategy and priority areas, and the financial impact is limited to a transfer within a single budget heading, including cancellation or introduction of an item, or a transfer between budget headings involving a variation (as the case may be in cumulative terms) of 25 % or less of the amount originally entered (or as amended by a written addendum) in relation to each concerned heading, the Organisation may unilaterally amend Annex I and/or Annex III and shall inform the Contracting Authority accordingly in writing, at the latest in the next report.
- 11.4 The method described in Article 11.3 shall be used neither to amend the contingency reserve, the rate for remuneration, nor the agreed methodology or fixed amounts/rates of simplified cost options.
- 11.5 The Organisation may, in agreement with the Contracting Authority, change Outputs, the Indicators and their related targets, baselines and sources of verification described in Annex I and in the logical framework if the change does not affect the main purpose of the Action, without the need for a formal addendum to the Agreement.
- 11.6 The Organisation may, in agreement with the European Commission, amend Annex VI without the need for a formal addendum to the Agreement.
- 11.7 Changes of address and of bank account shall be notified in writing to the Contracting Authority. Where applicable, changes of bank account must be specified in the request for payment, using the financial identification form attached as Annex IV.

## **Article 12: Suspension**

### **Suspension of the time limit for payment**

- 12.1 The Contracting Authority may suspend the time limit for payment following a single payment request by notifying the Organisation that either:
- a) the amount is not due; or
  - b) the appropriate supporting documents have not been provided and therefore the Contracting Authority needs to request clarifications, modifications or additional information to the narrative or financial reports. Such clarifications or additional information may notably be requested by the Contracting Authority if it has doubts about compliance by the Organisation with its obligations in the implementation of the Action; or
  - c) credible information has come to the notice of the Contracting Authority that puts in doubt the eligibility of the reported expenditure; or
  - d) credible information has come to the notice of the Contracting Authority that indicates a significant deficiency in the functioning of the Internal Control System of the Organisation or that the expenditure reported by the Organisation is linked to a serious irregularity and has not been corrected. In this case, the Contracting Authority may suspend the payment deadline if it is necessary to prevent significant damage to the EU's financial interests.
- 12.2 In the situations listed in Article 12.1, the Contracting Authority shall notify the Organisation as soon as possible, and in any case within thirty (30) days from the date on which the payment request was received, of the reasons for the suspension, specifying - where applicable - the additional information required. Suspension shall take effect on the date when the Contracting Authority sends the notification stating the reasons for the suspension. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further checks are carried out. If the requested information or documents are not provided within the deadline fixed in the notification or are incomplete, payment may be made on the basis of the partial information available.

### **Suspension of the Agreement by the Contracting Authority**

- 12.3 The Contracting Authority may suspend the implementation of the Agreement, fully or partly, if:
- a) the Contracting Authority has proof that irregularities, fraud or breach of substantial obligations have been committed by the Organisation in the procedure of its selection, in its pillar assessment or in the implementation of the Action;
  - b) the Contracting Authority has proof that irregularities, fraud or breach of obligations have occurred which call into question the reliability or effectiveness of the Organisation's Internal Control System or the legality and regularity of the underlying transactions;
  - c) the Contracting Authority has proof that the Organisation has committed irregularities, fraud or breaches of obligations under other agreements funded by EU funds provided that those irregularities, fraud or breaches of obligations have a material impact on this Agreement.
- 12.4 Before suspension, the Contracting Authority shall formally notify the Organisation of its intention to suspend, inviting the Organisation to make observations within ten (10) days from the receipt of the notification. If the Organisation does not submit observations, or if - after examination of the observations submitted by the Organisation - the Contracting Authority decides to pursue the suspension, the Contracting Authority may suspend all or

part of the implementation of this Agreement serving seven (7) days' prior notice. In case of suspension of part of the implementation of the Agreement, upon request of the Organisation, the Parties shall enter into discussions in order to find the arrangements necessary to continue the part of the implementation that is not suspended. Any expenditures or costs incurred by the Organisation during the suspension and related to the part of the Agreement suspended shall not be reimbursed, nor be covered by the Contracting Authority. Following suspension of the implementation of the Agreement, the Contracting Authority may terminate the Agreement in accordance with Article 13.2, recover amounts unduly paid and/or, in agreement with the Organisation, resume implementation of the Agreement. In the latter case, the Parties will amend the Agreement where necessary.



## **Suspension for exceptional circumstances**

- 12.5 The Organisation may decide to suspend the implementation of all or part of the Action if exceptional and unforeseen circumstances beyond the control of the Organisation make such implementation impossible or excessively difficult, such as in cases of Force Majeure. The Organisation shall inform the Contracting Authority immediately and provide all the necessary details, including the measures taken to minimise any possible damage, and the foreseeable effect and date of resumption.
- 12.6 The Contracting Authority may also notify the Organisation of the suspension of the implementation of the Agreement if exceptional circumstances so require, in particular:
- a) when a relevant EU Decision identifying a violation of human rights has been adopted; or
  - b) in cases such as crisis entailing a change of EU policy.
- 12.7 Neither of the Parties shall be held liable for breach of its obligations under the Agreement if Force Majeure or exceptional circumstances as set forth under Articles 12.5 and 12.6 prevent it from fulfilling said obligations, and provided it takes any measures to minimise any possible damage.
- 12.8 In the situations listed in Articles 12.5 and 12.6, the Parties shall minimise the duration of the suspension and shall resume implementation once the conditions allow. During the suspension period, the Organisation shall be entitled to the reimbursement of the minimum costs, including new legal commitments, necessary for a possible resumption of the implementation of the Agreement or of the Action. The Parties shall agree on such costs, including the reimbursement of legal commitments entered into for implementing the Action before the notification of the suspension was received which the Organisation cannot reasonably suspend, reallocate or terminate on legal grounds. This is without prejudice to any amendments to the Agreement that may be necessary to adapt the Action to the new implementing conditions, including, if possible, the extension of the Implementation Period or to the termination of the Agreement in accordance with Article 13.3. In case of suspension due to Force Majeure or if the Action is a Multi-Donor Action, the Implementation Period is automatically extended by an amount of time equivalent to the duration of the suspension.

## **Article 13: Termination**

- 13.1 Without prejudice to any other provision of these General Conditions or penalties foreseen in the EU Financial Regulation, where applicable, and with due regard to the principle of proportionality, the Contracting Authority may terminate the Agreement if the Organisation:
- a) fails to fulfil a substantial obligation incumbent on it under the terms of the Agreement;
  - b) is guilty of misrepresentation or submits false or incomplete statements to obtain the EU Contribution or provides reports that do not reflect reality to obtain or keep the EU Contribution without cause;
  - c) is bankrupt or being wound up, or is subject to any other similar proceedings;
  - d) is guilty of Grave Professional Misconduct proven by any justified means;
  - e) has committed fraud, corruption or any other illegal activity to the detriment of the EU's financial interests on the basis of proof in the possession of the Contracting Authority;
  - f) fails to comply with the reporting obligations in accordance with Article 3.15;
  - g) has committed any of the failings described in Article 12.3 on the basis of proof in the possession of the Contracting Authority.
- 13.2 Before terminating the Agreement in accordance with Article 13.1, the Contracting Authority shall formally notify the Organisation of its intention to terminate, inviting the Organisation to make observations (including proposals for remedial measures) within thirty (30) days

from the receipt of the notification. During this period, and until the termination takes effect, the Contracting Authority may suspend the time limit for any payment in accordance with Article 12.2 as a precautionary measure informing the Organisation immediately in writing. If the Organisation does not submit observations, or if, after examination of the observations submitted by the Organisation, the Contracting Authority decides to pursue the termination, the Contracting Authority may terminate the Agreement serving seven (7) days' prior notice. During that period, the Organisation may refer the matter to the responsible director in the European Commission. Where the Contracting Authority is the European Commission, the termination will take effect if and when confirmed by the director. Where the Contracting Authority is not the European Commission, the referral to the responsible director in the European Commission will not suspend the effects of the decision of the Contracting Authority. In case of termination, the Contracting Authority may demand full repayment of any amounts paid in excess of the final amount determined in accordance with Article 20 after allowing the Organisation to submit its observations. Neither Party shall be entitled to claim indemnity by the other Party on account of the termination of this Agreement.

- 13.3 If, at any time, either Party believes that the purpose of the Agreement can no longer be effectively or appropriately performed, it shall consult the other Party. Failing agreement on a solution, either Party may terminate the Agreement by serving sixty (60) days written notice. In this case, the final amount shall cover:
- a) payment only for the part of the Action carried out up to the date of termination;
  - b) in the situations described in Articles 12.5 and 12.6, the unavoidable residual expenditures incurred during the notice period; and,
  - c) in the situations described in Articles 12.5 and 12.6, reimbursement of legal commitments the Organisation entered into for implementing the Action before the written notice on termination was received by it and which the Organisation cannot reasonably terminate on legal grounds.

The Contracting Authority shall recover the remaining part in accordance with Article 15.

- 13.4 In the event of termination, a final report and a request for payment of the balance shall be submitted in accordance with Articles 3 and 19. The Contracting Authority shall not reimburse or cover any expenditure or costs which are not included or justified in a report approved by it.

#### **Article 14: Applicable law and settlement of disputes**

- 14.1 The Parties shall endeavour to settle amicably any disputes or complaints relating to the interpretation, application or validity of the Agreement, including its existence or termination.
- 14.2 Where the Organisation is not an International Organisation, and the European Commission is the Contracting Authority, this Agreement is governed by EU law, complemented - if necessary - by the relevant provisions of Belgian law. In the absence of an amicable settlement in accordance with Article 14.1 above, the General Court, or on appeal the Court of Justice of the European Union, has sole jurisdiction. Such actions must be brought under Article 272 of the Treaty on the Functioning of the EU (TFEU). Notwithstanding the foregoing sentence, where the Organisation is not established or incorporated in the EU, any of the Parties may bring before the Brussels courts any dispute between them concerning the interpretation, application or validity of the Agreement, if such dispute cannot be settled amicably. Where one party has brought proceedings before the Brussels courts, the other party may not bring a claim arising from the interpretation, application or validity of the Agreement in any other court than the Brussels courts before which the proceedings have already been brought.
- 14.3 Where the Organisation is not an International Organisation and the European Commission is not the Contracting Authority, the Agreement shall be governed by the law of the country

of the Contracting Authority and the courts of the country of the Contracting Authority shall have exclusive jurisdiction, unless otherwise agreed by the Parties. The dispute may, by common agreement of the Parties, be submitted for conciliation to the European Commission. If no settlement is reached within one hundred and twenty (120) days of the opening of the conciliation procedure, each Party may notify the other that it considers the procedure to have failed and may submit the dispute to the courts of the country of the Contracting Authority.

14.4 Where the Organisation is an International Organisation:

- a) nothing in the Agreement shall be interpreted as a waiver of any privileges or immunities accorded to any Party by its constituent documents, privileges and immunities agreements or international law;
- b) in the absence of an amicable settlement pursuant to Article 14.1 above, any dispute shall be settled by final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organizations and States, as in effect on the date of entry into force of this Agreement. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration. The arbitration proceedings must take place in the Hague and the language used in the arbitral proceedings will be English. The arbitrator's decision shall be binding on all Parties and there shall be no appeal.

### **Article 15: Recovery**

15.1 Where an amount is to be recovered under the terms of the Agreement, the Organisation shall repay the amount due to the Contracting Authority.

15.2 Before recovery, the Contracting Authority shall formally notify the Organisation of its intention to recover any undue amount, specifying the amount and the reasons for recovery and inviting the Organisation to make any observations within 30 days from the date of receipt of the notification. If, after examination of the observations submitted by the Organisation or if the Organisation does not submit any observations, the Contracting Authority decides to pursue the recovery procedure, it may confirm recovery by formally notifying the Organisation. If there is a disagreement between the Organisation and the Contracting Authority on the amount to be repaid, the Organisation may refer the matter to the responsible director in the European Commission within thirty (30) days. Where the Contracting Authority is the European Commission, a debit note specifying the terms and the date for payment may be issued after the deadline for the referral to the director. Where the Contracting Authority is not the European Commission, the referral to the responsible director in the European Commission will not prevent the Contracting Authority from issuing the debit note.

15.3 If the Organisation does not make the payment by the date specified in the debit note, the Contracting Authority shall recover the amount due:

- a) by offsetting it against any amounts owed to the Organisation by the EU;
- b) by taking legal action pursuant to Article 14;
- c) in exceptional circumstances justified by the necessity to safeguard the financial interests of the EU, the Contracting Authority may, when it has justified grounds to believe that the amount due would be lost, recover by offsetting before the deadline specified in the debit note without the Organisation's prior consent.

15.4 If the Organisation fails to repay by the due date, the amount due shall be increased by late payment interest calculated at the rate indicated in Article 19.6(a). The interest shall be payable for the period elapsing from the day after the expiration of the time limit for payment up to and including the date when the Contracting Authority actually receives payment in full of the outstanding amount. Any partial payment shall first cover the interest.

- 15.5 Where the European Commission is not the Contracting Authority, it may, if necessary, proceed itself to the recovery.
- 15.6 The European Commission may waive the recovery in accordance with the principle of Sound Financial Management and proportionality or it shall cancel the amount in the event of a mistake.

## **Article 16: Accounts and archiving**

### **Accounting**

- 16.1 The Organisation shall keep accurate and regular records and accounts of the implementation of the Action. The accounting Regulations and Rules of the Organisation shall apply to the extent that they ensure accurate, complete, reliable and timely information. Financial transactions and financial statements shall be subject to the internal and external auditing procedures laid down in the Regulations and Rules of the Organisation.

### **Archiving**

- 16.2 For a period of five (5) years from the End Date and in any case until any on-going audit, verification, appeal, litigation or pursuit of claim or investigation by the European Anti-Fraud Office (OLAF), if notified to the Organisation, has been disposed of, the Organisation shall keep and make available according to Article 17 all relevant financial information (originals or copies) related to the Agreement and to any Procurement Contracts and Grant agreements financed by the EU Contribution.

## **Article 17: Access and financial checks**

- 17.1 The Organisation shall allow the European Commission, or any authorised representatives, to conduct desk reviews and on-the-spot checks on the use made of the EU Contribution on the basis of supporting accounting documents and any other document related to the financing of the Action.
- 17.2 The Organisation agrees that OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions laid down by EU law for the protection of the financial interests of the EU against fraud, corruption and any other illegal activity.
- 17.3 The Organisation agrees that the execution of this Agreement may be subject to scrutiny by the Court of Auditors when the Court of Auditors audits the European Commission's implementation of EU expenditure. In such case the Organisation shall provide to the Court of Auditors access to the information that is required for the Court to perform its duties.
- 17.4 To that end, the Organisation undertakes to provide officials of the European Commission, OLAF and the European Court of Auditors and their authorised agents, upon request, information and access to any documents and computerised data concerning the technical and financial management of operations financed under the Agreement, as well as grant them access to sites and premises at which such operations are carried out. The Organisation shall take all necessary measures to facilitate these checks in accordance with its Regulations and Rules. The documents and computerised data may include information that the Organisation considers confidential in accordance with its own established Regulations and Rules or as governed by contractual agreement. Such information once provided to the European Commission, OLAF, the European Court of Auditors, or any other authorised representatives, shall be treated in accordance with EU confidentiality rules and legislation and Article 6. Documents must be accessible and filed in a manner permitting checks, the Organisation being bound to inform the European Commission, OLAF or the European



Court of Auditors of the exact location at which they are kept. Where appropriate, the Parties may agree to send copies of such documents for a desk review.

- 17.5 Where applicable, the desk reviews, investigations, on-the-spot checks and inspections referred to in Article 17.1 to 17.4 shall refer to a verification that shall be performed in accordance with the verification clauses agreed between the Organisation and the European Commission. This is without prejudice to any cooperation arrangement between OLAF and the Organisation's anti-fraud bodies.
- 17.6 The European Commission shall inform the Organisation of the planned on-the-spot missions by agents appointed by the European Commission in due time in order to ensure adequate procedural matters are agreed upon in advance.
- 17.7 Failure to comply with the obligations set forth in Article 17 constitutes a case of breach of a substantial obligation under this Agreement.

### **Article 18: Eligibility of costs**

- 18.1 Direct costs are eligible for EU financing if they meet all the following criteria:
- a) they are necessary for carrying out the Action, directly attributable to it, arising as a direct consequence of its implementation and charged in proportion to the actual use;
  - b) they are incurred in accordance with the provisions of this Agreement;
  - c) they are actually incurred by the Organisation, i.e. they represent real expenditure definitely and genuinely borne by the Organisation, without prejudice to Article 18.5;
  - d) they are reasonable, justified, comply with the principle of Sound Financial Management and are in line with the usual practices of the Organisation regardless of their source of funding;
  - e) they are incurred during the Implementation Period with the exception of costs related to final report, final evaluation, audit and other costs linked to the closure of the Action which may be incurred after the Implementation Period;
  - f) they are identifiable and backed by supporting documents, in particular determined and recorded in accordance with the accounting practices of the Organisation;
  - g) they are covered by one of the sub-headings indicated in the estimated budget in Annex III and by the activities described in Annex I; and
  - h) they comply with the applicable tax and social legislation taking into account the Organisation's privileges and immunities.
- 18.2 The following costs may not be considered eligible direct costs, but may be charged as part of the remuneration: all eligible costs that, while necessary and arising as a consequence of implementation, are supporting the implementation of the Action and not considered part of the activities that the European Union finances as described in Annex I, including corporate management costs or other costs linked to the normal functioning of the Organisation, such as horizontal and support staff, office or equipment costs (except when duly justified and described in Annex I, such as a project office).
- 18.3 The remuneration shall be declared on the basis of a flat-rate which shall not exceed 7% of the total eligible direct costs to be reimbursed by the Contracting Authority. The remuneration does not need to be supported by accounting documents. For Multi-Donor and comparable actions, the remuneration shall not be higher than that charged by the Organisation to comparable contributions.
- 18.4 The following costs are ineligible for EU financing:

- a) bonuses, provisions, reserves or non-remuneration related costs. Employers' contributions to pension or other insurance funds run by the Organisation may only be eligible to the extent they do not exceed the actual payments made by these schemes and that the amount provisioned does not exceed the contribution that could have been made to an external fund;
- b) full-purchase cost of equipment and assets unless the asset or equipment is specifically purchased for the Action and ownership is transferred in accordance with Article 9;
- c) duties, taxes and charges, including VAT, that are recoverable/deductible by the Organisation;
- d) return of capital;
- e) debts and debt service charges;
- f) provision for losses, debts or potential future liabilities;
- g) banking charges for the transfers from and to the Contracting Authority;
- h) costs incurred during the suspension of the implementation of the Agreement except the minimum costs agreed on in accordance with Article 12.8;
- i) costs declared by the Organisation under another agreement financed by the European Union budget (including through the European Development Fund);
- j) contributions in kind. The cost of staff assigned to the Action and actually incurred by the Organisation is not a contribution in kind and may be declared as a direct eligible cost if it complies with the conditions set out in Article 18.1; and
- k) costs of purchase of land or buildings, unless otherwise provided in the Special Conditions.

#### **Simplified cost options**

- 18.5 Direct eligible costs may also be declared by using any or a combination of unit costs, lump sums and flat-rate financing.
- 18.6 The methods used by the Organisation to determine unit costs, lump sums or flat-rates shall comply with the principles provided in Articles 18.1, 18.2 and 18.4, be clearly described and substantiated in Annex III, shall avoid double funding of costs and shall respect the principle of Sound Financial Management. These methods shall be based on the Organisation's historical or actual accounting data, its usual accounting practices, an expert judgment or on statistical or other objective information where available and appropriate.
- 18.7 Costs declared under simplified cost options do not need to be backed by accounting or supporting documents except if they are necessary to demonstrate that the costs have been declared according to the declared method or cost accounting practices and that the qualitative and quantitative conditions defined in Annex I and III have been respected.
- 18.8 Simplified cost options not linked to the achievement of concrete Results shall only be eligible if they have been ex ante-assessed by the European Commission.
- 18.9 If a verification reveals that the methods used by the Organisation to determine unit costs, lump sums or flat-rates are not compliant with the conditions established in this Agreement, the Contracting Authority shall be entitled to recover proportionately up to the amount of the unit costs, lump sums or flat-rate financing.

#### **Article 19: Payments**

- 19.1 Payment procedures shall be as follows:

- a) the Contracting Authority shall provide a first pre-financing instalment as set out in Article 4.1 of the Special Conditions within thirty (30) days of receiving the Agreement signed by both Parties;
- b) the Organisation may submit a request for further pre-financing instalment for the following reporting period in accordance with Article 4 of the Special Conditions; the following provisions apply:
  - i) the reporting period is intended as a twelve-month period, unless otherwise provided for in the Special Conditions. When the remaining period to the end of the Action is up to eighteen (18) months, the reporting period shall cover it entirely;
  - ii) if at the end of the reporting period less than 70% of the last payment (and 100% of previous payments, if any) has been paid by the Organisation to its staff or otherwise subject to a legal commitment with a third party, the further pre-financing payment shall be reduced by the amount corresponding to the difference between the 70 % of the immediately pre-financing payment (and 100% of previous payments, if any) and the part of the previous pre-financing payments which has been paid by the Organisation to its staff or has been subject to a legal commitment with a third party;
  - iii) the Organisation may submit a request for further pre-financing payment before the end of the reporting period, once more than 70 % of the immediately preceding payment (and 100% of previous payments, if any) has been paid by the Organisation to its staff or otherwise subject to a legal commitment with a third party. In this case, the following reporting period starts anew from the end date of the period covered by this payment request;
- c) at the end of the Implementation Period, the Organisation shall submit a payment request for the balance, where applicable, together with the final report. The amount of the balance shall be determined according to Article 20 and following approval of the request for payment of the balance and of the final report; and
- d) the Contracting Authority shall pay the further pre-financing instalments and the balance within ninety (90) days of receiving a payment request accompanied by a progress or final report, unless the time limit for payment was suspended according to Article 12 or 13.

19.2 Payment requests shall be accompanied by narrative and financial reports presented in accordance with Article 3. The requests for pre-financing payments and the request for the balance shall be drafted in the Currency of the Agreement as specified in the Special Conditions. Except for the first pre-financing instalment, the payments shall be made upon approval of the payment request accompanied by a progress or final report. The final amount shall be established in line with Article 20. If the balance is negative, the payment of the balance takes the form of recovery.

19.3 Approval of the requests for payment and of the accompanying reports shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information contained therein.

19.4 The Contracting Authority shall make payments in the Currency of the Agreement as specified in the Special Conditions to the bank account referred to in the financial identification form in Annex IV.

19.5 Payment arrangements for performance-based financing in accordance with Article 21 shall be set out in Article 4 of the Special Conditions and Annex I.

### **Late payment interest**

19.6 In case of late payment of the amounts stated in Article 4 of the Special Conditions the following conditions apply:

- a) upon expiry of the time limits for payments specified in Article 19.1, if the Organisation is not a Member State Organisation, it shall receive interest on late payment based on the rate applied by the European Central Bank for its main refinancing operations in Euros (Reference Rate), increased by three and a half percentage points. The Reference Rate shall be the rate in force on the first day of the month in which the time limit for payment expires, as published in the C series of the Official Journal of the EU;
- b) the suspension of the time limit for payment by the Contracting Authority in accordance with Article 12 or 13 shall not be considered as late payment;
- c) interest on late payment shall cover the period running from the day following the due date for payment, up to and including the date of actual payment as established in Article 19.1. Any partial payment shall first cover the interest;
- d) by way of exception to point (c), when the interest calculated in accordance with this provision is lower than or equal to EUR 200, the Contracting Authority shall pay such interest to the Organisation only upon request from the Organisation submitted within two months of it receiving late payment;
- e) by way of exception to point (c), when the Contracting Authority is not the European Commission, and the European Commission does not make the payments, the Organisation shall be entitled to late payment interest upon its request submitted within two months of it receiving late payment.

#### **Article 20: Final amount of the EU Contribution**

- 20.1 The Contracting Authority shall determine the final amount of the EU Contribution when approving the Organisation's final report. The Contracting Authority shall then determine the balance:
- a) to be paid to the Organisation in accordance with Article 19 where the final amount of the EU Contribution is higher than the total amount already paid to the Organisation; or
  - b) to be recovered from the Organisation in accordance with Article 15 where the final amount of the EU Contribution is lower than the total amount already paid to the Organisation.
- 20.2 The final amount shall be the lower of the following amounts:
- a) the maximum EU Contribution referred to in Article 3.1 of the Special Conditions in terms of absolute value;
  - b) the amount obtained after reduction of the EU Contribution in accordance with Article 20.3.
- 20.3 Where the Action (i) is not implemented, (ii) is not implemented in line with the Agreement or (iii) is implemented partially or late, the Contracting Authority may, after allowing the Organisation to submit its observations, reduce the EU Contribution in proportion to the seriousness of the above mentioned situations. If there is a disagreement between the Organisation and the Contracting Authority on the reduction, the Organisation may refer the matter to the responsible director in the European Commission.

#### **Article 21: Performance-based financing**

- 21.1 The payment of the EU Contribution may be partly or entirely linked to the achievement of Results measured by reference to previously set milestones or through performance Indicators. Such performance-based financing is not subject to Article 18. The relevant Results and the means to measure their achievement shall be clearly described in Annex I.
- 21.2 The amount to be paid per achieved Result shall be set out in Annex III. The method to determine the amount to be paid per achieved Result shall be clearly described in Annex I and take into account the principle of Sound Financial Management.



- 21.3 The Organisation shall not be obliged to report on costs linked to the achievement of Results. However, the Organisation shall submit any necessary supporting documents, including where relevant accounting documents, to prove that the Results triggering the payment as defined in Annex I and III have been achieved.
- 21.4 Articles 3.7 f), 3.8 b) and 3.8 f) do not apply to the part of the Action supported by way of performance-based financing.

#### **Article 22: Ex-post publication of information on Contractors and Grant Beneficiaries**

- 22.1 The Organisation shall publish, on an annual basis, on its internet site, the following information on Procurement Contracts exceeding EUR 15.000 and all Grants financed by the EU Contribution: title of the contract/agreement/project, nature and purpose of the contract/agreement/project, name and locality of the Contractor or Grant Beneficiary and amount of the contract/agreement/project. The term "locality" shall mean the address for legal persons and the Region on NUTS<sup>3</sup> 2 level, or equivalent, for natural persons. This information shall not be published in relation to education support paid to natural persons and other direct support paid to natural persons in most need. This information shall be published with due observance to the requirements of confidentiality security and in particular the protection of personal data. The publication shall be waived, if such disclosure risks threatening rights and freedoms as protected by the Charter of Fundamental Rights of the European Union or harm the commercial interests of the Contractors or Grant Beneficiaries.
- 22.2 The Organisation shall provide to the European Commission the address of the internet site where this information can be found and shall authorise the publication of such address on the European Commission's internet site.
- 22.3 Where the Action is a Multi-Donor Action and the EU Contribution is not earmarked, the publication of information on Contractors and Grant Beneficiaries shall follow the rules of the Organisation.

#### **Article 23: Contracting and Early Detection and Exclusion System**

##### **Contracting**

- 23.1 Unless otherwise provided for in the Special Conditions, the origin of the goods and the nationality of the organisations, companies and experts selected for carrying out activities in the Action shall be determined in accordance with the Organisation's relevant rules. However, and in any event, goods, organisations, companies and experts eligible under the applicable regulatory provisions of the European Union shall be eligible. Without prejudice to the foregoing or to the Organisation's assessed Regulations and Rules, the Organisation shall promote the use of local contractors when implementing the Action.
- 23.2 The Organisation shall adopt reasonable measures, in accordance with its own Regulations and Rules, to ensure that potential candidates or tenderers and applicants shall be excluded from the participation in a procurement or grant award procedure and from the award of a Procurement Contract or Grant financed by the EU Contribution, if the Organisation becomes aware that these entities:
- a) or persons having powers of representation, decision making or control over them, have been the subject of a final judgement or of a Final Administrative Decision for fraud, corruption, involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings;

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<sup>3</sup> Nomenclature of Territorial Units for Statistics, available at: <http://ec.europa.eu/eurostat/ramon/>

- b) or persons having powers of representation, decision making or control over them have been the subject of a final judgement or of a Final Administrative Decision for an irregularity affecting the EU's financial interest;
- c) are guilty of misrepresentation in supplying the information required as a condition of participation in the procedure or if they fail to supply this information;
- d) have been the subject of a final judgment or of a Final Administrative Decision establishing that the entities have created an entity under a different jurisdiction with the intention to circumvent fiscal, social or any other legal obligations of mandatory application in the jurisdiction of its registered office, central administration or principal place of business;
- e) have been created with the intention described in point d) above as established by a final judgment or a Final Administrative Decision.

### **Early Detection and Exclusion System**

- 23.3 The Organisation shall inform the European Commission if, in relation to the implementation of the Action, it has detected a situation of exclusion pursuant to Article 23.2 or its own positively assessed Regulations and Rules, as applicable, or if it has detected a fraud and/or an irregularity pursuant to Article 2.3. This information may be used by the European Commission for the purpose of the Early Detection and Exclusion System. The Organisation shall inform the European Commission when it becomes aware that transmitted information needs to be rectified updated or removed. The Organisation shall ensure that the entity concerned is informed that its data was transmitted to the European Commission and may be included in the Early Detection and Exclusion System and be published on the website of the European Commission. These requirements cease at the end of the Implementation Period.
- 23.4 Without prejudice to the power of the European Commission to exclude a person or an entity from future procurement contracts and grants financed by the EU and/or to impose financial penalties according to the EU Financial Regulation, the Organisation may impose sanctions on third parties according to its own Regulations and Rules ensuring, where applicable, the right of defence of the third party.
- 23.5 The Organisation may take into account, as appropriate and on its own responsibility, the information contained in the Early Detection and Exclusion System, when implementing the EU Contribution. Access to the information can be provided through the authorised persons or via consultation with the European Commission as referred in Article 5.6 of the Special Conditions<sup>4</sup>.

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<sup>4</sup> The Organisation shall be allowed to have direct access to the Early Detection and Exclusion System through an authorised person when the Organisation certifies to the Contracting Authority service responsible that it applies adequate data protection measures as provided in Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 or its successor, as applicable.

## INFORMATION CODE OF CONDUCT

Your organisation will act as partner<sup>1</sup> of the Contractor **for ADC-Contract No. ADA Project Number: 6550-00/2022; EU Contract Number 2021/427-494**

ADA has the statutory mandate to carry out measures of development cooperation. In order to fulfill this mission, **integrity** and **professionalism** are prerequisites for ADA.

ADA expects from its Contractors and their partners the **adherence to the following fundamental rules** in the implementation of its projects:

- Personal interests may affect the objective and substantive performance of the project. Conflicts of interest may arise, for example, due to personal or commercial connections with target groups or third contractual partners of ADA. Partners of the Contractor shall notify the **Contractor promptly of each and every potential or existing conflict of interest**, so that the Contractor can consult with ADA with respect to further action.
- **Contractors and their partners shall not solicit third parties for any gifts or other personal benefits in the course of the project implementation.** Only low-value gratuities which are customary in the local area and business sector may be accepted or granted. It is never permissible to grant or accept gifts or other personal benefits with regard to an action or omission in breach of an obligation or the exercise of an undue influence on the decision-making process of a third party.
- Activities in the course of the project implementation must **not contribute to any violation of human rights** (neither directly nor indirectly). In particular, **non-discrimination principles and principles of equal treatment** must be complied with. Social and environmental standards stipulated by local law or international agreements shall be observed.
- Applicable laws or provisions on combating money laundering or terrorism financing shall be complied with and all reasonable efforts shall be taken to prevent any violation of such provisions in the course of the project implementation.
- **Reporting Persons** shall not incur any detriment or discrimination due to providing information in **good faith**.

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<sup>1</sup> Partners of the Contractor are particularly its sub-contractors

## ADA INFORMATION POINTS

### WHEN TO CONTACT THE INFORMATION POINTS?

In the event of suspicion of irregularities (such as corruption, fraud, misuse of funds, breach of contract) concerning projects funded by the Austrian Development Agency (ADA).

### WHO CAN CONTACT THE INFORMATION POINTS?

- ADA employees
- **Contract partners of ADA (Contractors), their partners (sub-contractors, sub-recipients) and their employees**
- Beneficiaries of ADA projects and every informant of the interested general public

### HOW TO GET IN TOUCH WITH THE INFORMATION POINTS?

General Information can be found on the **ADA-Website:**

<https://www.entwicklung.at/en/ada/integrity>

- **Internal Information Point**

- ADA Integrity Officers**

- [www.entwicklung.at/en/ada/integrity/electronic-whistleblower-portal](http://www.entwicklung.at/en/ada/integrity/electronic-whistleblower-portal)

- Address: Zelnkagasse 2, 1010 Vienna, Austria

You may also contact the competent local **ADA Coordination Office.**

- **External Information Point/ Ombudsperson**

- Dr. Pilar Mayer-Koukol**

- [www.paulitsch.law/ombudsperson-ada/en](http://www.paulitsch.law/ombudsperson-ada/en)

- E-mail: [ombudsperson-ada@paulitsch.law](mailto:ombudsperson-ada@paulitsch.law)

- Phone: +43 1 361 4007

- Address: Hoher Markt 8-9/2/10  
1010 Vienna, Austria

### HOW WILL INFORMATION BE TREATED?

**Confidentially:** Information will be treated with the highest confidentiality. If requested, the identity of the informant will not be passed on. Anonymous information is also accepted. However, deliberate false reports shall not be tolerated.

**Independently:** The ADA Integrity Officers (members of the Executive Unit Law) and the External Ombudsperson are not subject to directives in regard to their activities. Only they have access to reported information.

**Follow-up:** Every reported information is subject to an acknowledgment of receipt.



### Act de primire-predare nr. 2212.2/23 din 22.12.2023

"Ambasada Republicii Austria în Republica Moldova", IDNO 42370016  
cu sediul în Republica Moldova, mun. Chişinău, str. A.Mateevici 23A  
(în continuare "Beneficiar"), pe de o parte,

şi

„TENDEX Consulting SRL”, IDNO: 1019600027996  
cu sediul în Republica Moldova, MD-2060, mun. Chişinău, str. M. Costin 25,  
of. 103,  
care activează în baza statutului (în continuare "Prestator"),

care sunt numite în continuare "Părţi", au încheiat prezentul Act referitor la **Contractul nr. 035 din 11.09.2023** privind achiziţionarea Serviciilor de proiectare Conform Project Number: 2021/427-494, EU4Moldova: Local communities (LOCOMO)


	Denumirea Bunurilor/Serviciilor	Cantitatea	Suma, (lei) TVA 0%
1.	Documentația de proiect pentru "Renovarea acoperişurilor și instalarea panourilor fotovoltaice cu termoizolarea fațadelor, renovarea unor încăperi la imobilele din cadrul IP Colegiul de Medicină Veterinară și Economie Agrară, situat în r-nul Edineț, com. Brătușeni" (rom-eng)	1 set	1 179 388,84
2.	Documentația de proiect pentru "Reconstrucția acoperişului și instalarea panourilor fotovoltaice la blocul de studii nr. 3 al Școlii Profesionale din or. Leova" (rom-eng)	1 set	
3.	Documentația de proiect pentru "Renovarea acoperişului la căminul IP Școala profesională or. Cupcini, termoizolarea fațadei și instalarea panourilor fotovoltaice, din r-ul Edineț, or. Cupcini, str. Chişinău, nr.5" (rom-eng)	1 set	
	<b>TOTAL</b>		<b>1 179 388,84</b>

Beneficiarul nu are pretenții față de serviciul prestat de către Prestator, fapt confirmat prin semnătura acestuia.

În confirmare, prezenta anexă a fost semnată în modul corespunzător de către părți:

**Beneficiar:**  
"Ambasada Republicii Austria în Republica Moldova",  
Austrian Embassy  
Technical Cooperation  
EU-Moldova Local communities ADA PMT  
Coordination Office for Technical Cooperation  
of the Austrian Embassy, Chisinau  
Ștefan cel Mare și Sfânti 73/1  
2001 Chişinău  
Cod fiscal: 1019600027996  
Banca: BC MOBIASBANCA OTP GROUP S.A.  
Cod banca: MOBBMD22  
Cont bancar: MD50MO2224ASV45854557100

Semnătura  LS

**Prestator:**  
TENDEX Consulting SRL  
Semnătura  LS