

REF.: **Geschäftsfall -> Geschäftszahl**

AGREEMENT

Project number **Projekt -> Projektnummer on the Support of a Business Partnership**

concluded between

1. **Austrian Development Agency**, having its registered office in Vienna and the business address Zelinkagasse 2, A-1010 Vienna, registered in the companies register of the Vienna Commercial Court (*Handelsgericht Wien*) under register number FN 243529g,
(hereinafter "**ADA**")

as the party of the first part,

and

2. **Projekt -> Partner -> Name** a company with the legal form of a (e.g. limited liability company, unlimited partnership, sole proprietorship) having its registered office in **Projekt -> Partner -> Stadt** and the business address **Projekt -> Partner -> Strasse**, **Projekt -> Partner -> Postbox**, **Projekt -> Partner -> Postleitzahl**, **Projekt -> Partner -> Stadt**, **Projekt -> Partner -> Bundesland**, **Projekt -> Partner -> Land**, registered in the companies register of _____ under register number **Projekt -> Partner -> registriert unter FN/ZVR Zahl**,
(hereinafter "**Recipient**")

as the party of the second part,

as follows:

PREAMBLE

1. In the context of Austrian Development Cooperation ("ADC"), the Austrian development policy aims to make the economy of its partner countries more dynamic and promotes economic growth based on ecologically sustainable and socially balanced measures.
2. The basis of ADC is the Austrian Federal Act on Development Cooperation (*Bundesgesetz über die Entwicklungszusammenarbeit, EZA-G*), Federal Law Gazette I no. 49/2002, as amended in Federal Law Gazette I no. 65/2003, as well as the Three-Year Programme of Austrian development policy drawn up in accordance with Section 23 of the Development Cooperation Act by the Federal Minister for European and International Affairs in agreement with the Federal Minister of Finance ("*Three-Year Programme*"), in the currently applicable version. The 2003 amendment of the Austrian Federal Act on Development Cooperation added a new priority, i.e. "economy and development" to ADC's activities. Official development assistance in the context of ADC now also comprises the support of a sustainable economic, social and ecological development in the developing countries in accordance with the objectives of the Austrian development policy as laid down in the Austrian Federal Act on Development Cooperation, by using synergies with trade and industry as well as development organisations and by participating in multilateral development cooperation projects (Section 2 (3)(h) and (i) of the Austrian Federal Act on Development Cooperation).
3. To account for this new priority, ADC introduced a new development cooperation measure or a new partnership instrument, i.e. the promotion of cooperation between Austrian/European companies and businesses or institutions in the partner countries (hereinafter "*Business Partnerships*"). Support will only be provided for such cooperation partnerships where outcomes desirable from a development-policy perspective can be expected.
4. ADA plans and manages all ADC measures in its own name and for its own account. In particular, ADA is responsible for preparing programmes and projects and concluding agreements on development cooperation measures within the framework of the *Three-Year Programme* as well as managing such programmes, projects and measures.
5. ADA has approved the *Recipient's* grant application for the *Business Partnership* described in section I subject to the conclusion of this Agreement.

Based on the above, the parties to the Agreement, in compliance with the provisions of Section 20 (2) et seq. of the Austrian Federal Act on Development Cooperation, conclude the following Agreement:

I.

BUSINESS PARTNERSHIP, SUBJECT MATTER OF THE AGREEMENT

1. The *Business Partnership* consists in the business partnership intended by the *Recipient* entitled "**Projekt -> Titel des Projekts (Englisch)**" (hereinafter "*Project*") with the ADC Project no. **Projekt -> Projektnummer**.
2. The *Grant Application* approved by ADA and the Budget form an integral part of the Agreement and are enclosed to it as *Annex ./A and Annex ./B*. The subject matter of the Agreement is the funding of the *Project* by ADA in the extent of the *Grant Application* approved by ADA in the amount of **EUR Projekt -> Vertragssumme.00 maximum** (hereinafter "*Grant*"; i. e. **Projekt -> Vertragssumme in %** % of the total costs of the *Project* – excluding third-party contributions – in the amount of EUR .00). The *Recipient's* share in the total costs of the *Project* – excluding third-party contributions – amounts to **Projekt -> Vertragssumme in %**%, at least, however, EUR **Projekt -> Vertragssumme**.00.
3. The *Recipient* and its partners in the target country shall bear sole responsibility for the implementation of the *Project*; ADA will fund the *Project* to the extent approved by ADA.

II.

LEGAL BASES, APPLICABLE PROVISIONS

1. The Agreement shall be governed by the Austrian Federal Act on Development Cooperation, Federal Law Gazette I no. 49/2002, as amended in Federal Law Gazette I no. 65/2003. Subordinate to that, it shall be governed by the General Guidelines for the Granting of Support from Federal Funds (*Allgemeine Rahmenrichtlinien für die Gewährung von Förderungen aus Bundesmitteln, ARR*) 2004, issued as a regulation by the Austrian Federal Minister of Finance
2. The Agreement shall also be subject to the General Terms and Conditions for Support in the Field of Development Cooperation within the Business Partnerships Programme (General Terms and Conditions for Business Partnerships), which form an integral part of the Agreement and are enclosed to it as *Annex ./C*.
3. Who is eligible for funding, the scope of the *Grant*, the target countries and the procedural steps shall be regulated by the provisions of the "Guidelines for Business Partnerships", issued by ADA and entered into effect on 22 April 2009, which form an integral part of the Agreement and are enclosed to it as *Annex ./D*.

4. ALTERNATIVE A: The Grant subject to this Agreement qualifies as de minimis aid: The grant awarded is thus subject to "Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid" (OJ L 352/1 of 24 Dec. 2013).

~~4. ALTERNATIVE A: The Grant subject to this Agreement qualifies as de minimis aid: The~~

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ALTERNATIVE B: The grant subject to this Agreement does not qualify as aid within the meaning of Article 107 et seq. TFEU, because [please state reason, e.g. does not affect trade between Member States etc.]

[Please select option A or B in paragraph 4 and delete as appropriate; if alternative B is selected, please detail why the grant does not qualify as aid.]

III.

TERM OF THE GRANT AND DISBURSEMENT

1. The term of the *Grant* for the *Project* shall begin on and end on .
2. The *Grant* shall be disbursed in installments transferred to the *Recipient's* account

with:

BIC:

IBAN:

Name of account:

With the following credit advice information: ADC Contract **Projekt -> Projektnummer**

The amount and the time of the disbursement of each installment of the *Grant* shall be regulated in the approved *Grant Application (Annex ./A)*, which includes a time schedule. It is necessary in any case that the *Recipient* swiftly and duly proceeds with the *Project* and completes it within the agreed term, or failing that, a reasonable term, in order for the installments to be disbursed – subject to the disbursement conditions stated below-,

The installments shall be disbursed by *ADA*. *ADA* shall pay the installments to the above-mentioned account of the *Recipient* as set out in the time schedule contained in the *Grant Application*, subject to the availability of funds and after the following conditions have been fulfilled:

- This Agreement has been submitted to *ADA* by the *Recipient* with a legally binding signature/ after having been signed by the authorised signatory/-ies;
- The following documents have been submitted (hereinafter "*Documents required for Disbursement*"):
 - Audit report by an auditor: at the dates agreed in the *Grant Application (Annex ./A)*, the *Recipient* shall commission an auditor accepted by *ADA* to audit the costs of the *Business Partnership*. The audit report has to ascertain the total costs of the *Project*, taking into account the specifications set out in sub-section 4.6 of the General Terms and Conditions for *Business Partnerships (Annex ./C)*;
 - Proof of the contributions made by all partners of the *Business Partnership*

- with regard to the *Project* in the form of a clear and understandable table;
 - Copies of the transfer slips of contributions made by the *Recipient* himself/itself with regard to the *Project*, if explicitly requested by *ADA*;
 - Interim report or final report, which has to show the measures taken and contributions made by the *Recipient* with regard to the *Project* in a comprehensible manner and which has to state all further measures to be taken. The degree of realisation of the *Project* at the given time is to be illustrated by documents that provide suitable objective evidence of the degree of realisation of the *Project*, such as permits or confirmations of public authorities in the partner country, photographs, plans, contracts etc.
3. *ADA* may withhold a share of ten percent of the entire *Grant* awarded until the final evidence of use of funds has been accepted (see section IV. vi).
 4. If the *Grant* consists in services to be performed by *ADA* directly or in services to be performed by third parties assigned by *ADA*, performance of the services awarded by *ADA* may be demanded by the *Recipient* as set out in the time schedule agreed, or otherwise generally after the conclusion of this Agreement. The conditions for disbursement set out above shall apply analogously also as conditions for the performance of services by *ADA* or third parties assigned by *ADA*.
 5. Any value added tax (VAT) relating to the *Project* shall not be covered by the *Grant* unless it is proven that the relevant VAT is to be borne by the *Recipient* effectively and finally. VAT that can – by whatever means – be recovered by the *Recipient* shall not be covered by the *Grant*, even if the VAT is ultimately not refunded to the *Recipient*. Should a *Grant* or part of a *Grant* not be deemed to qualify as a *Grant* by the competent tax authority but rather be considered another type of contribution such as a remuneration for (arranging) a contract because the *Recipient* delivered goods or provided other services to *ADA* which are taxable under the VAT Act 1994 (*Umsatzsteuergesetz 1994*), Federal Law Gazette. no. 663/1994 and should the *Recipient* therefore be obliged to pay VAT to the competent tax authority, this part of the *Grant* shall be considered a gross amount. Any additional and separate coverage of VAT – on whatever legal grounds – is thus excluded.

IV.

OBLIGATIONS OF THE RECIPIENT

The *Recipient* undertakes to

- (i) take all measures as intended in the approved *Grant Application (Annex ./A)*; in doing so ensuring that the *Recipient's* business will be a going concern even after the end of the *Project* to ensure sustainability;
- (ii) use the funds in conformity with the principles of economy, efficiency and expediency, and in accordance with this Agreement;

- (iii) keep the required records and file all documentary evidence required to examine whether funds have been properly used as agreed in this Agreement;
- (iv) notify *ADA* immediately and proactively about all events that would delay the implementation of the *Project* or render it impossible or that would require changes with respect to the approved *Project* or agreed requirements and conditions; such notification must be made in writing;
- (v) adhere to the time schedule for the implementation of the *Project*;
- (vi) submit interim reports if the *Project* extends over a longer period of time; submit a final report immediately after the *Project* has been completed. This report shall, in particular, give an overview of the implemented measures and their results as well as a detailed numerical breakdown showing the use of the funds as well as the project-related income and expenses. Each interim report and the final report shall have two sections: a factual report and a numerical part. The factual report has to provide, in particular, evidence of the use of the awarded *Grant*, of the implementation and the status of the *Project* as well as of the success achieved by it;
- (vii) permit inspection of those books, bookkeeping vouchers and other documents necessary to monitor the implementation of the *Project*; permit on-site inspections and provide all required information relating to the *Project*;
- (viii) to store (generally the originals of) all books, bookkeeping vouchers and other documents useful for monitoring and implementing the *Project* in a safe and orderly manner for ten years starting from the end of the year in which the last partial amount of the *Grant* is disbursed – *ADA* reserves the right to extend the period for which such documents are to be stored in justified cases; generally, suitable image and data carriers may also be used as storage media, provided that complete, sorted, identical, authentic and verifiable reproduction is ensured at any time until the end of the period for which such documents are to be stored; in this case, the *Recipient* undertakes to provide, at his/its own cost, all equipment required to make the books, bookkeeping vouchers and other documents readable and, as far as necessary, to provide durable reproductions that are readable without the need for appropriate equipment and to provide data carriers containing such durable reproductions; upon *ADA*'s request, the *Recipient* shall translate all those books, bookkeeping vouchers and other documents necessary to monitor the implementation of the *Project* into German or English and to have their correctness and completeness confirmed by an external certified auditor;
- (ix) to state in writing, unless already stated in the *Grant Application*, the amount of those funds for which the *Recipient* has applied for or wants to apply for the same activity, even if for different purposes, with another Austrian public authority or another legal entity including other territorial entities (*Gebietskörperschaften*) or of

those funds which have already been granted or promised to him/it by any of the above entities; furthermore, to state which grants the *Recipient* has received from public and EU funds for activities of the same kind within the last five years before filing the *Grant Application*, including all grants for which the *Recipient* intends to apply for subsequently;

- (x) to verifiably obtain several offers for procurements (services, supplies, works) to be awarded, regardless of the provisions of the Austrian Federal Procurement Act 2006 (*Bundesvergabegesetz 2006*), Federal Law Gazette I No. 17/2006 in the currently applicable version, as long as this seems expedient in view of the amount of the estimated contract value (see sub-section 1.2 of the General Terms and Conditions for Business Partnerships for more details);
- (xi) to comply with the Austrian Equal Treatment Act (*Gleichbehandlungsgesetz - GIBG*), Federal Law Gazette I, no. 66/2004, the bans and rules stipulated in the Equal Treatment Directive of the European Union, the Austrian Federal Act on the Equal Treatment of Disabled Persons (*Bundes-Behindertengleichstellungsgesetz*), Federal Law Gazette I no. 82/2005 as well as the prohibition to discriminate against disabled persons as defined in Section 7b of the Act on the Disabled Persons Employment Act (*Behinderteneinstellungsgesetz*), Federal Law Gazette no. 22/1970;
- (xii) to comply with environmental and social standards, in particular the fundamental conventions of the International Labour Organization (ILO), the OECD Guidelines for Multinational Enterprises and the UN Global Compact's ten principles.

V.

SPECIAL PROVISIONS APPLYING TO SUBSEQUENTLY GRANTED OR CANCELLED CO-FINANCING BY THIRD PARTIES

1. If a grant for the *Project* is awarded by a third party but not yet taken into account in the *Grant Application*, the *Grant* awarded under section 1, paragraph 2 shall be reduced by the amount of the grant provided by such third party. The *Recipient* shall immediately notify *ADA* in writing of any such third-party grant. The disbursements shall be reduced by the percentage equivalent to the share of the third-party grant in the total amount of the grant.
2. If a third-party grant originally included in the financing plan is then not awarded, the *Recipient* shall immediately notify *ADA* thereof in writing. In the course of this notification, the *Recipient* shall state whether he/it intends to replace the shortfall with his/its own funds, to terminate the *Project* or to amend the *Project* in such a manner that it can be carried out with the reduced co-financing amount.

If the *Recipient* declares his/its intention to terminate the *Project*, this shall constitute a reason to discontinue the payment/demand repayment of the *Grant* pursuant to section 8 paragraph 1 (iii) of the General Terms and Conditions for Business

Partnerships.

If the *Recipient* declares his/its intention to amend the *Project*, *ADA* may either agree to the proposed amendment, reduce the *ADA* grant in proportion to the shortfall in the co-financing amount or withdraw from the Agreement pursuant to section 8 paragraph 1 (iii) of the General Terms and Conditions for Business Partnerships.

VI.

GOVERNING LAW, COMPETENT COURT, REQUEST FOR A STATEMENT OF REASONS

1. This Agreement, its validity, interpretation and performance shall be subject to Austrian law excluding its conflict-of-laws rules.
2. The court exclusively competent for any disputes arising from this Agreement, including disputes concerning its coming into existence, shall be agreed to be the court competent in civil law matters in the first district of Vienna (Inner City).
3. Before resorting to the courts to assert a claim for payment or performance of a *Grant* awarded, the *Recipient* has to submit a written request to *ADA* by registered letter asking it to state, within a period of three months, the reasons why it refuses to disburse the *Grant* or a part thereof. If the *Recipient* fails to comply with such provision, *ADA* shall be entitled to reimbursement of costs pursuant to Section 45 of the Austrian Code of Civil Procedure (*Zivilprozessordnung, ZPO*).

VII.

SEVERABILITY CLAUSE

If any provision of this Agreement is or becomes invalid or unenforceable in whole or in part, this shall have no effect whatsoever on the validity and enforceability of the remaining provisions. The invalid or unenforceable provision shall be replaced by a valid or enforceable provision which most closely corresponds to the economic effect intended by the invalid or unenforceable provision; the same shall apply in the event of lacunae in this Agreement.

VIII.

FINAL PROVISIONS

1. In order to be effective, any modification or amendment to this Agreement shall be done in the form of a written agreement to be signed by all parties to the Agreement or their universal or singular successors. To the extent that the parties to the Agreement have agreed on matters regulated by this Agreement, this Agreement shall supersede any and all such previous agreements.
2. All annexes to this Agreement are an integral part thereof. In the event of any

contradictions, the Agreement shall take precedence, followed by the *Grant Application*, then the Budget, then the General Terms and Conditions for Business Partnerships and, finally, the Guidelines for Business Partnerships. Unless provided for to the contrary in the context of this Agreement, all references to annexes shall be interpreted as references to provisions of this Agreement.

3. All notices under this Agreement – unless regulated otherwise in this Agreement – are to be made in writing (e-mail shall be sufficient) by the *Recipient* or a duly authorised representative of the *Recipient*.

- Annex ./A: Grant Application
- Annex ./B: Budget
- Annex ./C: General Terms and Conditions for Business Partnerships
- Annex ./D_ Guidelines for Business Partnerships

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.....,

Austrian Development Agency

[Recipient]
(signature by the authorised signatory/-ies / legally binding signature)

CONSENT TO THE USE AND PROCESSING OF DATA

1. By signing this Agreement, the *Recipient* confirms that he/it is aware that the personal data recorded in connection with the initiation and management of the Agreement, the use of which is an essential requirement for performing a task assigned to ADA by law or is otherwise permissible according to Sections 7-11 of the Austrian Data Protection Act 2000 (*Datenschutzgesetz 2000*), will be used by ADA, and the body entrusted by ADA with managing the *Grant* as service provider(s) for managing and monitoring grants and the financial aspects of grants as well as for supervisory purposes. The *Recipient* is aware that, in the context of such use, data may be communicated or disclosed to, in particular, bodies and officials of the Court of Audit (in particular pursuant to Section 3 (2), Section 4 (1) and Section 13 (3) of the Court of Audit Act 1948 (*Rechnungshofgesetz 1948*), Federal Law Gazette I no. 144/1948), of *Österreichische Kontrollbank AG*, of the Austrian Ministry of Finance (in particular pursuant to Sections 43-47 and 54 of the Austrian Budget Act 1986 (*Bundeshaushaltsgesetz 1986, BHG*) and Sections 8 and 9 of the General Guidelines for the Granting of Support from Federal Funds (*Allgemeine Rahmenrichtlinien für die Gewährung von Förderungen aus Bundesmitteln, ARR*)) and of the EU pursuant to provisions contained in EU law. The same shall apply if several bodies want to grant funding to the same *Recipient* for one and the same activity, even if for different purposes (see Section 9 of *ARR*) and thus have to inform one another thereof.

2. By signing the Agreement, the *Recipient* **explicitly consents**, in accordance with Section 8 (1) no. 2 and Section 9 no. 6 of the Austrian Data Protection Act 2000 in the currently applicable version, that – unless the permissibility of communicating personal data results from statutory provisions anyways – the following **data** may be **used** by ADA for managing, monitoring and accounting of grants as well as for supervisory purposes, including, but not limited to communication **to third parties** and **publication on ADA's website** for PR purposes:
 - Data in the brief description of the *Project* (data on the cover sheet of the *Grant Application*), in particular
 - Name of the *Project*;
 - Contract amount and term of the Agreement;
 - Name and address of the contractor.

To the extent that the *Project* at hand is funded by *Österreichische Entwicklungsbank (OeEB)*, the *Recipient*, by signing the Agreement, expressly **consents** to the above-mentioned **personal data being communicated to OeEB** and to the **use of such data by OeEB**. The *Recipient* is aware that, in the context of such use, data may be communicated or disclosed to, in particular, bodies and officials of *Österreichische Kontrollbanken AG* for supervisory purposes.

The *Recipient* can **revoke** this declaration of consent at any time. In order to be effective, such revocation must be declared notified in writing to ADA.

....., on

[Recipient]
(signature by the authorised signatory/-ies / legally binding signature)