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general terms and conditions

to the Austrian Development Agency Grant Agreement
for Support in the Field of Development Cooperation
(EZA Terms and Conditions for Grants)

# project implementation

## Time schedule

### The Project shall be implemented in accordance with the schedule attached to the Project Document.

## Principles applicable to the use of grant funds

### The grant funds shall be used efficiently, cost effectively and solely for the purpose for which they are provided. The Recipient shall exercise due diligence and shall apply the required prudence and expertise.

## Duty to notify ADA of certain events

### The Recipient shall promptly notify ADA (via the local responsible Coordination Office, if any) of all events that are apt to delay proper implementation of the contract or of the underlying Project or render them impossible, or which would require modification of the Project, of agreed conditions or amendment of the contract, and shall submit proposals for remedying the same. The Recipient shall further notify ADA promptly – via the local responsible Coordination Office, if any – of any events or circumstances related to the implementation of the Project which could generate potential adverse environmental and/or social impacts or risks, as set forth in ADA’s Environmental, Gender and Social Impact Management Manual[[1]](#footnote-2). Any such notifications must be provided in writing. There are further duties of notification in connection with conflicts of interest (see section 1.9.1).

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

### **General requirements (for all procurements under 1.4.2 and 1.4.3)**

#### The Recipient 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 Recipient shall make use of rebates, cash discounts and the like and shall pass them on to ADA in its accounting.

#### The Recipient 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.

#### The Recipient 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).

### **Requirements** **for** **projects** **financed** **by** **more** **than** **50% from public** **funds**

#### **For procurements (service, works, supply contracts) in developing countries** as per DAC list of ODA recipients[[2]](#footnote-3)**,** the Recipient must apply **local procurement law**. Notwithstanding the regulations set forth therein, the Recipient 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 Recipient. If the estimated contract value is **equal or above** **EUR 20,000** (net) the following applies: The Recipient 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 Recipient must identify the best bidder and verify its eligibility (legal authorization, professional reliability, technical and financial capability). The Recipient 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 Recipient must issue a public invitation to tender in accordance with local procurement law (analogous application) and document the entire procurement process.

#### 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 Recipient, when procuring works and associated services, is obliged to apply the PPA.

#### **For procurements (service, works, supply contracts) in any other country or in Austria** the Recipient must apply **the PPA** in its currently applicable version. Notwithstanding the thresholds set forth therein, the Recipient 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 Recipient. If the estimated contract value is equal or above **EUR 50.000** (net) the following applies: The Recipient 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 Recipient must identify the best bidder and verify its eligibility (legal authorization, professional reliability, technical and financial capability). The Recipient must document the entire procurement process, including the determination of the best bidder, in writing. If the estimated contract value is **equal or above 100.000** (net), the Recipient must issue a public invitation to tender in accordance with the PPA (analogous application) and document the entire procurement process.

### **Requirements for** **projects financed up to a maximum of 50% by public funds**

Basis and benchmark for all procurements are the basic principles mentioned under 1.4.1 above. Within this scope the following applies: If the estimated contract value is equal or above **EUR 10.000** (net) the Recipient shall demonstrably obtain three offers for comparison purposes. 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 Recipient. If the estimated contract value is equal or above **EUR 50.000** (net) the Recipient 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 Recipient must identify the best bidder and verify its eligibility (legal authorization, professional reliability, technical and financial capability). The Recipient 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 Recipient is required to make the planned procurement accessible to a broader public, e.g. by publishing it on a procurement portal, the Recipient's website, the ADA website or in any other suitable media or platforms.

### The Recipient may be exempted from the application of the provisions under 1.4.2 and 1.4.3 in justified exceptional cases. The following requirements must be cumulatively met for this:

#### The Recipient shall provide a plausible written justification for the deviation from the provisions.

#### the Recipient shall submit the offer which he deems reasonable to accept.

#### the Recipient 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).

#### the Recipient 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.

## Goods designated for the Project partners or other beneficiaries

### Goods to be procured pursuant to the Project Document for the Project partner (i.e. the institution in the developing country with responsibility for the Project, which is not identical to the Recipient) or another beneficiary must, as a rule, be purchased directly for the Project partner or the other beneficiary of the Project, pursuant to an agreement made between the Recipient and the Project partner in the developing country. Where, in an individual case, the foregoing is not possible or is not deemed expedient, then upon completion of the contract, these goods shall be conveyed gratuitously to ADA’s ownership or to an institution designated by ADA. The record documenting the Project partner’s acceptance thereof must be promptly forwarded to ADA following signature by both parties, via the responsible ADA Coordination Office, if any. The Recipient shall alert ADA promptly to the agreement made with the Project partner after it has been concluded.

### In respect of the goods procured, the rules set forth under section 1.6 in respect of preparation of inventories of the goods and handling, use of and liability for vehicle(s) shall apply.

## Goods designated for use of the Recipient

### The Recipient shall prepare a list of the goods procured with the grant funds (which are expressly or by their nature designated for the use of the Recipient) and whose individual procurement price exceeds EUR 400 or any lower amount which may apply under local law in respect of inventory requirements), and shall update the same on an ongoing basis. The Recipient shall furnish such list to ADA in each case together with the reports provided for in section 4, at the latest.

### Any motor vehicles (Project vehicles) procured with ADA funds must be treated with care, properly maintained and adequately insured.

### Such Project vehicles may only be used for Project-related purposes. It is prohibited to use Project vehicles for private purposes or to permit third parties to use them.

### A log-book must be kept for each Project vehicle. The log-book must clearly show, in chronological order, the number of kilometres driven on official business, the date and the purpose of the trip, the kilometre readings at the start and end, the name of the driver as well as the amounts of fuelling and costs of any repairs. For trips exceeding 100 kilometres, the departure and arrival times must also be noted.

### The Recipient shall be liable to pay compensation to ADA for any damage to the Project vehicle caused by intentional act or gross negligence. In the case of violations of law (administrative offences, accidents) caused by wilful/intentional act or gross negligence of third parties, the Recipient hereby undertakes to pursue recourse claims against such parties. The Recipient’s indemnification undertaking provided to ADA in section 1.10 shall, in particular, also apply to any claims asserted by third parties in connection with the use of the Project vehicle.

### Following conclusion of the Project or where there is a material change of the objects of the grant, ADA may demand that the goods procured for the Project individually exceeding the net value of EUR 1,500 be conveyed on a gratuitous basis to a third party nominated by ADA or may require payment for them at their fair market value or may direct that the goods be kept available by the Recipient for further use free of charge. In the event that the procurement was not made exclusively using ADA grant funds, ADA shall only be entitled to the corresponding percentage-based pro rata share of fair market value. Any disposition by ADA which provides otherwise shall be subject to the prerequisite of ADA’s reimbursement to the Recipient of ADA’s equitable share in the procured item of goods.

## Cooperation with other organisations

### The Recipient shall support efforts to cooperate or to achieve division of tasks with other organisations active in the field of Austrian development work and to achieve technological network integration which takes account of time constraints. The foregoing shall apply in particular where a simultaneous grant of public funds by these organisations would appear to make it desirable for coordination to be achieved, for reasons of frugality, value for money and expediency. In particular, the Recipient shall not undertake any IT-related measures (such as introducing new documentation systems which would be difficult to reverse etc.) which could make it more difficult to achieve the planned technological integration.

### For purposes of exercising influence on decision-making and in the interests of good coordination, the Recipient shall take part in dialogue with the above-referenced organisations and ADA.

## Observance of agreements and cooperation with the Austrian Coordination Office

### 1.8.1 The Recipient shall comply with the treaty agreements made between the Republic of Austria and the country of deployment and with agreements on performance of the Project, if any. If an Austrian EZA Coordination Office exists in the developing country, the Recipient shall collaborate with it in an appropriate way.

## Code of Conduct (Principle of integrity, social and environmental standards and prevention of sexual exploitation, harassment and abuse)

### The Recipient’s own interests/those of its staff members or partners engaged in the context of the Project, 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 Recipient and/or of its staff members or partners with target groups or other parties contracting with ADA. The Recipient 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 Recipient and/or its staff members or partners engaged in the context of the Project, must, in performing the Project, refrain from demanding gifts or other personal benefits from third parties. In connection with the performance of the Project, Recipients 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.

### The Recipient shall, in performing the Project, comply with its due diligence obligations under human rights law[[3]](#footnote-4) and shall comply with the social and environmental standards stipulated by local law or international agreements. These include, in particular, the core labour standards of the ILO. In addition, the Recipient shall take account of the environmental and social standards as set forth in ADA’s Environmental and Social Impact Management Manual (*see* section 1.3).

### Within the scope of the Project, the Recipient shall take immediate corrective measures in any case of sexual exploitation, harassment, or abuse, including any case of sexual contact with minors. The Recipient 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.

### The Recipient must implement agreed conditions regarding environmental, gender or social aspects as part of the Project. In particular, the Recipient may be required under these conditions to establish community-based complaint mechanisms or other appropriate grievance mechanisms and to provide information on how and when to report incidents and what follow-up actions are taken.

### The Recipient must comply with the Austrian Federal Act on Gender Equality [German acronym: GIBG], Federal Law Gazette I No. 66/2004 in its currently applicable version, the EU Equal Treatment Directive 2006/54/EG in its currently applicable version, the Austrian Federal Disabled Equality Act, Federal Law Gazette No. 82/2005 in its currently applicable version, and the ban on discrimination under Section 7b of the Austrian Employment of the Disabled Act, Federal Law Gazette No. 22/1970 in its currently applicable version.

### The Recipient 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 Project.

### The Recipient shall inform ADA immediately of any case or suspicion of misuse of grant funds, fraud or corruption in connection with the Project, as well as the proposed proceeding in this regard.

### The Recipient shall ensure that all partners engaged in the context of the Project observe the requirements listed under sections 1.9.2 – 1.9.7. The Recipient must confirm in writing the transmission of the information sheet Code of Conduct and Information Points.

## Indemnification of ADA against third-party claims

### The Recipient shall bear sole responsibility for implementation of the Project and shall indemnify ADA for and against any third-party claims relating to the implementation of the Project. This obligation shall include a duty to reimburse ADA for all costs for any legal proceedings and other expenses incurred by ADA in this regard. In the event of legal action being taken against ADA, the Recipient shall – upon ADA’s request, of which it may give notice at any time – join the litigation as an intervenor on the side of ADA.

## Subsequent amendments by ADA

### ADA may at any time amend the Agreement or impose additional conditions and requirements if particular circumstances subsequently require changes of the Project or of the agreed conditions and requirements. If such amendments should result in additional costs, the Recipient shall promptly notify ADA thereof. In such case, the Recipient is only obliged to implement the amendments of the Project and to satisfy the additional or amended conditions and requirements if an additional written agreement is concluded covering the financial aspects. If the Recipient fails to promptly notify ADA of additional expenses, or if no additional written agreement is reached, then the Recipient shall have no right to claim reimbursement of additional costs.

# travel expenses and salaries

### If the budget (Section 2.1 of the Agreement) includes travel expenses, i.e. travel expenses and costs for catering and overnight accommodation, such expenses will only be reimbursed where the following conditions are met:

#### the travel expenses have actually been incurred and can be verified;

#### the individual, detailed travel expenses actually incurred do not exceed the entitlement of a comparable Austrian civil servant under the rule applicable to Austrian civil servants on travel expenses (*Reisegebührenvorschrift für Bundesbedienstete*, *RGV*), Federal Law Gazette I No. 133/1955, in its currently applicable version and the respective ordinances of the Austrian Ministry of Finance;

#### the costs of catering and overnight accommodation abroad actually incurred do not exceed the rates stipulated in the ordinances of the Federal Government issued with regard to Section 25c of the regulation on travel expenses for civil servants at fee level 2b; and

#### all possible fare reductions, rebates, discounts, etc. were claimed and the least expensive route was chosen in the case of air travel.

### Reimbursement of expenses incurred in case of use of a private vehicle (kilometre allowance) shall be provided only on condition that the use of the private vehicle is necessary and explicitly stipulated in the Project Document or has been approved by ADA; in such case, maximum reimbursement will be up to the amount of the official Austrian kilometre allowance in the national currency at the relevant daily exchange.

### Salaries will be reimbursed up to the amount that an Austrian civil servant or other agent of the public administration with equivalent education, qualifications and years of experience would receive.

# Financial management

## Bank account

### The bank account specified in the Agreement shall be used solely for the EZA funds provided by ADA.

## Separate accounting

### Project bank accounts shall be kept separately from the Recipient´s other account(s); corresponding bookkeeping receipts may be filed in the general bookkeeping records of the Recipient.

## Obligation to keep books

### The Recipient shall keep all records and bookkeeping related to the Project in accordance with the generally accepted principles of business bookkeeping applicable to Entrepreneurs and apply the relevant accounting provisions of the Austrian Commercial Code (*Unternehmensgesetzbuch*), Imperial Law Gazette S 219/1897, in its currently applicable version.

## Obligation to retain business records

### The Recipient undertakes to keep all grant-related records and bookkeeping receipts as well as other records and correspondence in a secure and orderly manner for a period of ten years starting from the end of the year during which the last instalment has been disbursed.

# Reporting and accounting

## Semi-annual narrative reports and interim financial statements

### The Recipient shall report to ADA on the progress of its execution of this Agreement for every calendar six-month period (via the ADA Coordination Office located in the development country, if any) and shall submit quantifiable proof thereof; it shall do so preferably in electronic form, and otherwise in writing and in duplicate, within two months of expiry of the relevant reporting period, i.e. by 31 August and 28 February, at the latest. With respect to the initial report, the reporting period shall end at the end of the calendar six-month period following the calendar six-month period in which the contract was concluded.

## Contents of reporting and financial statements

### The reports must evidence the use of grant monies provided from ADA funding and of the progress achieved. Financial statements must contain a numerical breakdown income and expenditures in line with the budget which forms an integral part of the Project Document. Receipts may also be transmitted in electronic form, provided that complete, orderly, identical, authentic and verifiable reproduction is assured. However, ADA expressly reserves the right to inspect the original receipts or to require subsequent presentation thereof. Only receipts issued in the name of the Recipient or of the Project Partner and manifestly demonstrating a direct relation to the implementation of the Project shall be deemed adequate evidence. Internal vouchers produced by the Recipient or verbal or written confirmations by third parties do not qualify as receipts. Travel expenses may only be verified by production of the original ticket, or in the case of air travel by the ticket or a printout of the electronic receipt in combination with the boarding pass and the itemised travel agency invoice.

### Depending on the Project, reports must be written in German, English or French, and must follow the description given in the Project Document, must refer to the indicators set out therein and must, in particular, contain the following:

#### A description of the activities and a detailed evaluation of progress during the reporting period, based on the intervention logic (and the indicators thereof), including deviations from the Project Document, if any;

#### analysis of the Project status with respect to the targets to be achieved;

#### description of the monitoring and control measures implemented; and

#### references to necessary amendments or addenda to the Project.

### The report must accord with the published model format.

### A bank statement for the account specified in Article 5 of the Agreement shall be enclosed to each financial statement. For expenditures incurred in the developing country a bank statement for the Project account kept in that country – if such is kept – shall be enclosed with the financial statements. Currency conversion receipts shall be enclosed for any expenditures settled in local currency. Where any such receipt is missing, the exchange rate defined by the Austrian Ministry of Finance for the respective foreign currency for the month in which the expenditure was made, minus a 25% deduction, shall be applied. Furthermore, a certificate confirming the substantive and financial accuracy of the reports as well as confirming the implementation of the Project in accordance with the Agreement and compliance with the principles of economy, efficiency and expediency must be appended.

## Final narrative report and final financial statement

### No later than three months after the conclusion of the Project, the Recipient shall submit to ADA a final narrative report with a final financial statement and documentation, each in duplicate, via the ADA Coordination Office in the relevant developing country, if any. section 4.2 applies *mutatis mutandis* ADA shall be entitled to request a German translation of the final narrative report, the costs of which shall be borne by the Recipient.

## Reporting obligations where proprietary funding and/or third-party grants used on Project

### All reports including financial reports (numerical breakdown) shall cover the Project as a whole. If the Recipient contributes proprietary funds to the Project, or receives funds from a third-party entity, the information submitted in the reports and financial statements shall cover all income and expenditure of the Recipient in relation to the Project.

## Accounting principles

### When submitting financial statements, the Recipient shall conform to the accounting rules for businesses and shall apply these regulations with the due diligence of a prudent entrepreneur.

## Annual audit by external auditors

### Upon explicit written authorisation by ADA or when explicitly provided for in the Project Document, the Recipient may commission an/several external certified auditor/auditors to conduct an annual audit of the Project accounts (account of the parts of the Project implemented by the local Project partner and an overall view) instead of submitting the receipts to ADA each six-month period (in original or electronic form) pursuant to section 4.2. In such case, the Recipient shall only confirm the substantive accuracy of the semi-annual accounts, whereas the correctness of the annual accounts is confirmed by the audit report of the certified auditor. If the Recipient makes use of this authorisation by ADA, the following rules shall apply:

#### Individual expenditures made from grant funds shall be clearly evident from the Project bookkeeping and the audit report and must be assigned to the budget items as specified in the Project Document. The Recipient’s statements must refer to these documents and to the expenditures designated as relevant to the Project.

#### Selection of the external auditor must be agreed in advance with ADA or the responsible Coordination Office prior to engagement of the auditor. In any event, the auditor in question must be a licensed firm of auditors.

#### The Recipient must enter into a contract with the external auditor, which shall include a detailed description of the tasks assigned, and must submit the contract to ADA. Regarding the parts of the Project implemented by a local partner, a contract between the local partner and an external auditor shall be submitted. In addition, the Recipient must furnish evidence that it has fully informed the external auditor(s) regarding the Agreement, including all annexes thereto, as well as the contract with the Project partner.

#### The contract(s) with the external auditor(s) shall include at least the following tasks: examination of the correctness of the related expenditure practices, audit on the basis of original receipts, invalidation of original receipts, examination of plausibility of the expenses and allocation of the same to the items of the Project budget, examination of the total financial management, examination of the compliance with the applicable provisions of labour law and social security law and examination of the compliance with the applicable procurement provisions.

#### It must be evident from the bookkeeping records and from the audit of the accounts that the expenditures are covered by the revenues and thus be verified that there is no duplicate financing by external funding bodies.

#### Each financial statement shall include a clear description of cash flows, which shall be evidenced in the form of receipts as evidence of currency exchange and bank account statements.

#### The audit report shall be available to ADA not later than two months after the end of every calendar year or three months after the end of the Project.

#### If book-keeping and the audit report are not satisfactory, ADA may demand presentation of original receipts at any time.

#### Original receipts must be kept available at all times for a potential on-site inspection by ADA and ADA must be able to comprehensively review the financial management of the Project and that of the local Project partner at any time.

# oversight

## Oversight by ADA and the EU

### The Recipient agrees to permit bodies and officials of ADA and the EU to inspect its bookkeeping records and receipts and to carry out in situ inspections in order to verify the proper implementation of the Project and the appropriate use of funds in line with the intended purposes of the grant. The Recipient shall provide these bodies and officials with the necessary information – directly or via a suitable informant – with respect to the Project; the Recipient shall submit to the decision of the inspecting body as to what is considered relevant to the Project.

## Audit by the Austrian Court of Audit

### The Recipient is aware that use of the grant funds is subject to audit by the 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,as from time to time amended. The Recipient undertakes that, in the event of such an audit by the Court of Audit, it shall provide the relevant information and assist accordingly.

## Information to be procured from third parties

### The Recipient hereby agrees that bodies and officials of ADA and the EU may request information relating to the Project from third parties, in particular from fiscal authorities, banks and creditor associations. The Recipient hereby authorises these third parties to provide such information. In particular, this may also include credit rating information about the Recipient.

# No transfer, assignment or pledge

### The Recipient must not dispose of claims arising from the contract, whether by transfer, assignment, pledge, or in any other way; dispositions made in breach of this section 6.1.1 shall not have any legal validity *vis-à-vis* ADA and shall not be enforceable against ADA.

# Publications

## Publications by the Recipient

### ADA must be informed in advance of any publications by the Recipient regarding the Project. The Recipient shall display the logo and/or the financing information of the Austrian Development Cooperation in a clearly visible place, in accordance with the Guidelines for the Visibility of the Austrian Development Cooperation in its currently applicable versions, as amended, on all publications as well as on all financed equipment, facilities and buildings. The foregoing shall also apply to publications in the media (films, audio tapes, exhibitions, etc.), to the extent the Recipient has influence on such publications.

## Publications by ADA

### ADA shall be entitled to make own publications on the Project, except for information regarding which confidentiality has been agreed.

### Without prejudice to section 10.2, the Recipient grants ADA the free-of-charge, irrevocable, unrestricted as to place, transferable and non-exclusive right of use, in respect of all types of uses, regarding the following documents:

#### Gender analyses and assessments regarding potential negative environmental, gender and social impacts, as applicable, as well as implementation progress reports, monitoring reports and final reports on any related risk management and sustainability plans;

##### and in addition, if the amount of the grant pursuant to Article 3 of the Agreement exceeds (i) for project-type interventions the amount of EUR 2 million or (ii) for programme-type interventions the amount of EUR 3 million:

#### Progress reports and final reports pursuant to section 4 or other agreed terms, in each case excluding financial reporting, receipts and any final financial statements;

#### Summaries of Project evaluation reports including results assessment forms, which pursuant to the terms of the Agreement are created or contracted by the Recipient and provided to ADA or which are created jointly with ADA.

### The right of use granted to ADA includes in particular, without limitation, the right to reproduce and distribute these documents in electronic and other formats, to include the making available to the public by way of ADA’s website. The right of use further includes, without limitation, the right to edit the reports in view of correcting obvious spelling, grammar or calculation errors (whose correction does not require the expert knowledge of the author), as well as the right to layout changes.

### The Recipient shall ensure that such publication by ADA 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 Recipient 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).

### If legal action is taken against ADA by third parties on account of a document published in accordance with section 7.2.2, section 1.10 shall apply analogously.

### The Recipient acknowledges that ADA may publish the following information and documents:

#### Project description including Project number, Project title, country, contract value, source of funding, applicant, implementing organisation, Project objective, expected results (impact, outcome), target group(s), inputs/activities, background information, beginning and end of the contract term, sector, tied/untied status, modality, OECD DAC policy marker, concerned SDG, number of beneficiaries, information about ADA budget line;

##### as well as, if the amount of the grant pursuant to Article 3 of the Agreement exceeds (i) for project-type interventions the amount of EUR 2 million or (ii) for programme-type interventions the amount of EUR 3 million:

#### Monitoring reports and reports on inspections performed pursuant to section 5.1;

#### Summaries of Project evaluation reports including results assessment forms, which are created or contracted by ADA.

# profit from exploiting the project

### Profits from exploitation of the Project (e.g. sales revenues from publications) generated within three years from completion of the Project shall be reported to ADA by the Recipient. The proportional share of such profits (percentage based on ADA grant relative to the overall costs of the Project, in any case not exceeding the total amount of ADA funds provided) shall be transferred to ADA.

# discontinuation and reclaim of grant funds

## Reasons for discontinuation/reclaim of funds

### Upon written request of ADA, the Recipient shall immediately return any funds already disbursed, and at the same time any entitlements to as-yet undisbursed funds shall expire, wherever

#### bodies or officials of ADA or the EU have been informed incorrectly or incompletely regarding material circumstances with regards to the award of the grant;

#### a portion or all of the grant funds have not been used for their intended purpose;

#### the Project cannot be carried out or has not been carried out at all or in a timely manner, through the fault of the Recipient;

#### the Recipient fails to submit required reports, furnish documentary verifications, or provide required information, provided that a written reminder setting an appropriate deadline and expressly referencing to the legal consequences of non-compliance has been given and was to no avail;

#### events which delay or render impossible the implementation of the funded Project, or which require an amendment of the Project, are not reported immediately;

#### the opening of bankruptcy proceedings against the Recipient is dismissed due to lack of assets and therefore the objective of the Project appears to be unachievable or uncertain;

#### the Recipient hinders or prevents prescribed oversight measures;

#### appropriate use of the funds can no longer be verified within the period required for safekeeping of records (section 3.4);

#### the Project has been modified by the Recipient without ADA’s approval;

#### the awarded grant was assigned, transferred or pledged in violation of section 6;

#### the Recipient has not complied with the *Code of Conduct* (section 1.9) or if, in the event of a conflict of interest, the Recipient and ADA are unable to reach agreement on further action, or the Recipient fails to promptly remedy a case of sexual exploitation, harassment, or abuse (section 1.9.4) or fails to immediately report a (suspected) case to ADA;

#### a gift, a pecuniary benefit or any other benefit has been offered, promised or granted to a person or agency directly or indirectly in connection with the awarding of the grant or with the implementation of the Project;

#### the discontinuation and/or reclaim of the funds is demanded by European Union bodies because the funding violates Community regulations;

#### other requirements and conditions for funding, particularly those aimed at ensuring that the purpose of funding is achieved, are not complied with;

#### the Recipient discontinues business activities or the business of the Recipient is closed down;

#### shareholders of the Recipient withdraw or new shareholders join;

#### the business or parts of the business, significant assets, investments, facilities or rights relevant to the purposes of the funding are sold, transferred (for consideration or gratuitously), leased, rented or otherwise assigned, split, divided or spun-off in any other way;

#### a transfer of rights concerning the Recipients business or a change of the shareholder structure or the share-ownership ratio occurs;

#### the funded investment is alienated or assigned in any other way;

#### the Recipient has not respected the requirements for procurements as specified under section 1.4

### This list of reasons for discontinuation/reclaim of funds is not exhaustive; any other important and significant circumstances that, due to their nature, are equivalent to the above reasons shall be deemed the equivalent of the listed reasons for the discontinuation of the Project/reclaim of funds.

## Interest

### With regard to any of the cases stipulated in sections 9.1.1.a), 9.1.1.b), 9.1.1.d), 9.1.1.e), 9.1.1.g), 9.1.1.i), 9.1.1.j), 9.1.1.k), 9.1.1.l) and 9.1.1.n), the amount to be repaid shall bear interest, as from the date of disbursement, at a rate which is 3% above the current base rate defined by the Austrian National Bank (Section 1 (1) 1. Euro-JuBeG (Austrian 1st Euro-legal-collateral Law Act), Federal Law Gazette I, No. 125/1998 in its currently applicable version). If the above-referenced interest rate is lower than the rate stipulated by the EU for repayments, the latter rate shall apply.

## Limitation on repayment

### In the event that the Project can be or has been implemented only partially (section 9.1.1.c)) and if the funded Project can be split into components, the reclaim of the grant funds shall only amount to the difference between the value of the funded Project and the value of the performed components, if the performed components as such are eligible for grant support.

### If only a part of the grant funds has not been used for its specific purpose (section 9.1.1.b)) and the aim of the funding has not been entirely frustrated, the Recipient’s obligation to repay shall only apply to that portion of the grant funds which were not used for their specific purpose.

### In the event that requirements for procurements have not been respected (section 9.1.1.t)), the reclaim of the grant funds shall only amount to the procurement price of the services/good procured contrary to the requirements specified under section 1.4

## Reimbursement of audit expenses

### The Recipient shall reimburse ADA for any audit expenses associated with the investigation into the grounds for discontinuation/repayment (e.g. expenses for engaging third-party auditors, travel expenses of ADA bodies).

## Discontinuation of the Project without fault

### If the Project cannot be carried out without fault on the Recipient´s part, even where an appropriate extension period has been agreed upon, the Recipient shall terminate the Project, issue a final report and a final financial statement, and shall immediately repay any unused grant funds, including any interest accrued. For goods procured with grant funds in the developing country section 1.6.6 shall apply.

## Further legal claims

### Sections 9.1 to 9.5 shall be without prejudice to any further legal claims on the part of ADA.

# Intellectual property rights

## No infringement

### The Recipient declares that no copyright or intellectual property rights will be infringed by implementation of the Agreement or the funded Project.

## Right of use

### Where the grant provided by ADA amounts to at least 75% of the total costs of the Project, the Recipient shall convey to ADA the irrevocable, unrestricted as to place, transferable and non-exclusive right of use, covering all types of uses, with respect to all intellectual property rights, intellectual property applications, inventions, design documents, methods, documents and results of work that originated or were procured by implementing the Project.

### If the grant provided by ADA amounts to at least 90% of the total costs of the Project, the right of use pursuant to section 10.2.1 shall include also the right to commercial exploitation.

1. Available for download at ADA’s website: http://www.entwicklung.at/. [↑](#footnote-ref-2)
2. 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. [↑](#footnote-ref-3)
3. “Due diligence obligations under human rights law” refers to the duty of Recipients to ensure that they do not directly or indirectly contribute to breaches of human rights as a result of their activities. [↑](#footnote-ref-4)