

Confidentiality Guidelines

for contractors (each a "**Contractor**") of aed – Agency for Economic Cooperation and Development ("**aed**")

PREAMBLE:

- I. aed is the Federal Government's service provider for the implementation of international reform projects and represents Austria's interests in projects financed by the EU and other international institutions (also referred to below as the "**Projects**").
- II. The Contractor is a project developer and wishes to further develop the Projects jointly with aed or on aed's behalf.
- III. For this purpose it is necessary for aed to make available to the Contractor information, documents and data requiring confidentiality, which the Contractor is obliged to keep confidential.
- IV. These Confidentiality Guidelines (the "**Guidelines**") are binding on all Contractors of aed and constitute an essential precondition for cooperation with aed.
- V. Compliance with the principles set out below contributes lastingly to protecting aed's trade and business secrets as well as sensitive data of the Republic of Austria, and to promoting and safeguarding the quality of aed's project development.

1. Confidential Information

- 1.1. **"Confidential Information"** within the meaning of these Guidelines means all information, documents, assessments, drafts and sketches, as well as information of a technical, financial or economic nature in any form, including communications, written documents and other analogue or digital data, and including textual, tabular, graphic, photographic, in the form of drawings, electronic, oral or other data or communications, which the Contractor receives or has already received from aed directly or indirectly, in particular trade secrets, technical information, information on existing or future legal positions, rights of use and licence rights, trade mark rights and other industrial property rights as well as applications for them, patentable inventions, products, know-how, inventions, business relationships, business strategies, business plans, financial planning, personnel matters, information on corporate strategies, objectives, ideas, ongoing and planned projects, schedules, distribution channels, procedural and financing options, the implementation of projects, partner searches, the formation of consortia, the initiation and intensification of contacts between public authorities and/or commercial enterprises, experts and cooperation partners, as well as commercial data and information embodied in digital form (data) of aed or of the Republic of Austria and its subdivisions (the **"Confidential Information"**).

2. Confidentiality Obligation

- 2.1. The Contractor shall use and exploit the Confidential Information exclusively for the purposes designated by aed, treat it as strictly confidential and neither disclose it nor make it accessible to any third party, nor make it public, whether directly or indirectly and whether in whole or in part.
- 2.2. The Contractor is entitled to make the Confidential Information accessible exclusively to **"Permitted Recipients"** who need to know it in connection with project development for the purpose of examining, assessing and implementing the purposes designated by aed (need-to-know principle), namely
- (i) affiliated undertakings of the Contractor, that is, undertakings in which the respective Contractor holds more than 50 % of the capital shares or otherwise exercises a controlling influence;
 - (ii) the Contractor's own employees, corporate officers, representatives and staff, as well as any other persons who are able to obtain access to the Confidential Information in whole or in part;
 - (iii) the Contractor's professional representatives and advisers, in particular lawyers, notaries, auditors and tax advisers, who are subject to their own statutory or professional obligation of secrecy; and
 - (iv) subcontractors and consortium partners of the Contractor.
- 2.3. The passing on of Confidential Information to Permitted Recipients also requires aed's prior individual written approval, unless the Permitted Recipients fall under section 2.2(i) to section 2.2(iii). In all cases, Confidential Information may be passed on only after the Contractor has bound the respective Permitted Recipient in full to the same obligations of secrecy as apply to the Contractor, in particular under these Guidelines. The

Contractor is liable for compliance with these obligations by the Permitted Recipients as for its own conduct.

- 2.4. The Contractor acknowledges that, in principle, the Confidential Information relating to the Projects or to their implementation or development is not known to anyone other than aed and the Contractor. Should third parties therefore come to hold this information in whole or in part in the future, there shall be a rebuttable presumption that those third parties received the Confidential Information in whole or in part from the Contractor and that the Contractor has therefore breached its obligations under these Guidelines.
- 2.5. The confidentiality obligations apply to the Contractor even where the Confidential Information is no longer secret because the Contractor, or persons to whom the Contractor has made Confidential Information accessible, have breached their obligations of secrecy.
- 2.6. The confidentiality obligations under these Guidelines do not apply if and to the extent that information
 - (i) is or becomes publicly known without any breach of these Guidelines; or
 - (ii) was already known to the Contractor before its disclosure by aed; or
 - (iii) was developed independently by the Contractor without using or referring to the information provided by aed; or
 - (iv) has been released for disclosure on the basis of aed's written consent; or
 - (v) must be disclosed on the basis of mandatory judicial, official or statutory provisions or orders, provided that the Contractor, in so far as this is legally permissible, has informed aed in writing without delay of the disclosure obligation, has pursued reasonable legal remedies against the disclosure or, at aed's option, has enabled aed to pursue them, and has used its best efforts to limit the scope of any legally required disclosure of information.

Should the Contractor invoke one or more of the above exceptions, it must provide aed with written evidence of the underlying facts.

- 2.7. Confidential Information does not fall within one of the above exceptions merely because it is linked to one or more other items of Confidential Information which are subject to one of the exceptions listed.
- 2.8. The Contractor shall note that these confidentiality obligations continue to apply for an unlimited period even after completion of the respective Project or early termination of the cooperation between aed and the Contractor.
- 2.9. The Contractor shall inform aed in writing without delay, and in any event no later than 48 hours after becoming aware, if Confidential Information has been disclosed or used without authorisation, lost or destroyed, or if there is a corresponding suspicion. The notification must state the nature and scope of the Confidential Information affected, the point in time and the known circumstances. The Contractor shall without delay take all reasonable measures to mitigate the damage and shall support aed in investigating the matter and enforcing its rights.

3. Protection of Intellectual Property Rights

- 3.1. The Confidential Information belongs exclusively to aed or to the Republic of Austria.
- 3.2. The Contractor is aware that it may not exploit the Confidential Information obtained, whether itself or through third parties, and may not file any applications for intellectual property rights, without aed's express prior written consent. The Contractor's receipt of Confidential Information does not create any rights in the nature of a licence or of an authorisation to use or exploit.

4. Obligation to Return and Delete

- 4.1. The Contractor is aware that, following termination of the cooperation, realisation of the respective Project, or from the point in time at which the Confidential Information is no longer required for project development, it is obliged, upon aed's request, to return to aed or destroy without delay all Confidential Information embodied in documents or in any other form. This does not apply to copies which the Contractor is required by law to retain, or to automatically created backup copies which are overwritten or deleted in the course of standard IT processes; the confidentiality obligations under these Guidelines continue to apply unchanged to such retained copies.
- 4.2. The Contractor shall erase electronic storage media and shall not restore the deleted data. These obligations apply equally to originals and to copies. At aed's request, the Contractor shall confirm in writing the complete return, or the complete deletion or destruction, of the Confidential Information.
- 4.3. aed is entitled to review compliance with the obligations under these Guidelines at its own cost. At aed's request, the Contractor shall provide the information required for the assessment and shall evidence the technical and organisational measures taken. Reviews shall take place upon reasonable prior notice, during normal business hours and without unreasonably interfering with the Contractor's business operations.

5. Data Protection

- 5.1. The Contractor is obliged to keep confidential any personal data from data applications which have been entrusted to it or have become accessible to it as a result of project development, without prejudice to any other statutory obligations of secrecy, except to the extent that there is a legally permissible ground for transferring the data entrusted or made accessible to third parties.
- 5.2. The Contractor is obliged to protect confidential personal data, information and documents in such a way that any access by unauthorised third parties is rendered impossible.
- 5.3. The Contractor is obliged to keep secret, and not to disclose to any third party, all trade and business secrets, information, business transactions and documents, and generally all other information of a technical and economic nature, concerning the facts relating to the business sphere of aed and of aed's (potential) contractual partners which have come to its knowledge within the scope of the business relationship and these Guidelines.

- 5.4. The Contractor is obliged to maintain a record of processing activities in accordance with Art 30 GDPR in connection with the processing of personal data within the scope of the business relationship or these Guidelines, in so far as a corresponding legal obligation exists.
- 5.5. Should the Contractor, in performing its obligations in relation to project development, make use of the services of Permitted Recipients for the processing of personal data, it is obliged to conclude data processing agreements with them in accordance with Art 28 GDPR.
- 5.6. The Contractor is obliged, following termination of the contractual relationship with aed or of the project development, to delete all personal data from data applications which were entrusted to it or became accessible to it as a result thereof in accordance with the requirements of Art 17 GDPR, and to evidence and confirm such deletion to aed in writing, such confirmation to be received by aed within 7 days of termination. In addition, the principles relating to the processing of personal data under Art 5 GDPR and to the lawfulness of processing under Art 6 GDPR apply.

6. Contractual Penalty

- 6.1. The Contractor undertakes to pay aed a contractual penalty of EUR 50,000 for each breach of its obligations under these Guidelines, irrespective of fault. The court's right to reduce the penalty is excluded to the extent permitted by law. The right to claim damages in excess of that amount and to assert other claims, in particular for injunctive relief, remains unaffected.

7. Publication

- 7.1. These Confidentiality Guidelines are brought to the attention of all Contractors of aed and are published on aed's website at <https://www.aed.or.at/en/documents/confidentiality-guidelines.pdf>.
- 7.2. These Guidelines form part of all contracts concluded between aed and the respective Contractor in connection with project development. The Contractor shall, at aed's request, confirm in writing the receipt and acceptance of these Guidelines before receiving any Confidential Information; this occurs in any event upon signature of the respective order by the Contractor.

8. Amendments

- 8.1. aed is entitled to amend these Guidelines with effect for the future. Amendments shall be notified to the Contractor in text form and published on aed's website; they apply to all orders placed on or after the date on which they take effect. For orders already placed, the Guidelines published at the time the order was placed continue to apply unless the Contractor expressly agrees to an amendment.

9. Governing Law and Place of Jurisdiction

- 9.1. These Guidelines and all rights and obligations arising from them are governed by Austrian law, excluding the conflict-of-laws rules of private international law and the UN Convention on Contracts for the International Sale of Goods. The exclusive place of jurisdiction for all disputes arising out of or in connection with these Guidelines is the court having subject-matter jurisdiction in Vienna.

These Confidentiality Guidelines are drawn up in the German language and translated into English for convenience only. In the event of any difficulties in interpretation or inconsistencies between the language versions, the original German version shall take precedence and shall be the sole legally binding version.