

DRAFT***Contract on “Local expertise, support for the implementation of the project: Vietnam University Cooperation on Energy Efficiency in Buildings (VUCE)”*****DRAFT**

between the

Deutsche Energie-Agentur GmbH (dena) – the German Energy Agency (dena)

represented by the Management Corinna Enders and Kristina Haverkamp,

Chausseestrasse 128a,

10115 Berlin,

hereafter referred to as “dena” or “principal”

and

Name + address of the contracting party,

hereafter referred to as “contractor”,

Preamble

Short project overview

The project is commissioned by the German Federal Foreign Office, financed through the International Climate Initiative (IKI) and implemented by the Climate Diplomacy Action Programme within the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) (main order).

On the part of dena, **Name of contact person at dena** is named as the responsible contact person. For the contractor **Name of contact person at the contractor** is named as the contact person.

1. Subject and conditions of the contract

- 1.1 With the following contract, the contractor undertakes to provide local expertise, support for the implementation of the project: Vietnam University Cooperation on Energy Efficiency in Buildings (VUCE).
- 1.2 This contract has the following conditions. The order below is the hierarchy for application and interpretation in the event of contradictions between the contractual components:
 - (1) The provisions of this contract
 - (2) The invitation to tender (specifications) (Annex 1)
 - (3) The offer of the contractor (Annex 2)

2. Services to be provided by the contractor

- 2.1 The nature and scope of the services to be provided by the contractor shall be governed by this contract and the other parts of the contract referred to in subsection 1.2 above. The contractor shall provide its services in close consultation with the principal.
- 2.2 A schedule shall be agreed upon for the provision of the individual services by the contractor. The deadlines stated therein shall be binding and may only be changed with the principal's consent. The services must be provided in full latest by 30 September 2025.
- 2.3 The contractor shall notify dena in text form at least days prior to the lapse of a deadline to warn about the delay and shall do everything in its power to make up for any missed deadlines. Any claims arising from omission to fulfil the contract in due time shall remain unaffected. The principal is entitled to inform himself at any time about the contractual execution of the services.
- 2.4 The acceptance or partial acceptance by dena shall be issued in text form.

3. Remuneration

- 3.1 For its services, the contractor shall receive from dena the fixed price (lump-sum fee) amounting to a total of **"[Amount (net)]"** euro plus VAT at the statutory rate, which shall cover all travel expenses and other expenses. Travel times shall not be regarded as service times subject to remuneration.

Out of the agreed total remuneration, the following amounts are to be paid in the years

2024 (...) Euro

2025 (...) Euro

3.2 Services provided in the year 2024 must be invoiced by 31 December 2024, services provided in the year 2025 by 30 September 2025. Postponements of services between the years are to be agreed upon. 30 September 2025 is a fixed date; services provided after this date can neither be accepted nor remunerated.

4. Payment terms and invoicing

dena shall pay the fees in three instalments after correct invoices have been issued:

- an advance payment of 15 % of the total contract value;
- an interim payment for the services of 2024 after the services have been completed in full (acceptance);
- and a final payment for the services of 2025 after the services have been completed in full (acceptance) reduced by the advance payment.

The contractor shall prepare a clearly laid-out invoice and provide evidence of the type and scope of the services in the form of generally accepted receipts. Invoices must be sent to **rechnungen@dena.de** as soon as possible after performance of the service (6 weeks at the latest). Invoices for 2024 must state the **order number** and the **project number 2-14-24**. Invoices for 2025 must state the **order number** and the **project number 2-14-24**. The final invoice must have been received by dena no later than 30 November 2025.

dena's VAT identification number is: DE 214080111. The Contractor's VAT identification number is: .

5. Confidentiality, evaluation, data protection

- 5.1 The contractor is obliged to treat confidentially all information which is not publicly accessible and which becomes known to the contractor in connection with its work for dena unless agreed otherwise in this contract. This particularly concerns, but is not limited to, circumstances or procedures that relate to the business processes, commercial results, expertise, business partners or personal data, and irrespective of a label as confidential. The contractor shall ensure that third parties do not gain access to dena's documents or the documents of dena's business partners. Upon request, the documents provided shall be returned to dena without delay. Upon completion or termination of this contract, the documents must be returned unsolicited to the dena. Any right of retention is hereby excluded.
- 5.2 The project was commissioned by the German Federal Foreign Office, financed through the International Climate Initiative (IKI) and implemented by the Climate Diplomacy Action Programme within the GIZ. For this reason, dena shall pass on project-related information, data and results to the German Federal Foreign Office. Where necessary dena shall pass on information about and from the present contractual relationship.
- 5.3 The contractor is obliged to observe the data protection rules and take appropriate precautions. Should the contractor gather, process or use personal data for dena within the scope of this contract, they are obliged to sign an order data processing agreement. The contractor may not pass on, sell, process or use the personal data collected, processed or used in the context of this contract for purposes other than to perform its duties

under the contract. The contractor shall ensure that the personal data is protected, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures. The contractor shall also ensure that assigned staff or third parties are obligated to comply with data protection rules. Upon dena's request the contractor shall erase the data irretrievably. The contractor must erase the data without delay (at the latest) upon expiry of the contract and shall submit evidence of such upon dena's request.

6. Subcontractors

- 6.1 The contractor may not transfer the performance of its services or of essential parts thereof to third parties without dena's prior written approval (email is acceptable).
- 6.2 The contractor shall be responsible to the Principal for the correct implementation of the projects. The contractor remains the sole party which is contractually liable. Any subcontractors commissioned by the contractor shall be vicarious agents of the contractor within the meaning of Paragraph 278 of the German Civil Code (BGB).

7. General duties

- 7.1 The contractor shall provide its services in compliance with the legal regulations and in accordance with accepted commercial principles and with the required state of the art technical and professional expertise.
- 7.2 The contractor shall be obliged to comply with the provisions implementing the relevant ILO core labour standards (Conventions numbers 29, 87, 98, 100, 105, 111, 138, 182, 155 and 187) into the law of the country of assignment when fulfilling the contract. If the country of assignment has not ratified one or more core labour standards or has not implemented them into national law, the contractor is obliged to comply with those regulations of the country of assignment, which pursue the same objective as the core labour standards.
- 7.3 In accordance with Principles 1 and 2 of the UN Global Compact, the contractor is obligated to respect fundamental human rights as defined in the Universal Declaration of Human Rights of the United Nations dated December 10, 1948. Furthermore, the contractor commits himself to comply with the laws and regulations applicable to him which prohibit discrimination on the grounds of race or ethnic origin, gender, religion, disability, age, sexual identity or political opinion.
- 7.4 If a contracting party determines that the violation of a human rights-related obligation in its own business sphere in connection with this contractual relationship has already occurred or is imminent, it shall immediately take appropriate remedial measures to prevent or end this violation or to minimize the extent of the violation. If the contracting party cannot end the violation in the foreseeable future, it must draw up and implement a concept for ending or minimizing it.

8. Warranty, Default

- 8.1 Where the statutory conditions are met, the right to supplementary performance, self-remedy of defects and reduction exist prior to acceptance.

8.2 The contractor shall be in default if the services are not delivered to dena in accordance with the agreed schedule. The contractor may only invoke postponements, if dena has confirmed this in text form.

9. Contractual penalty

9.1 Should the contractor be in default with the agreed delivery or service dates, they shall be liable to pay a contractual penalty amounting to 0.2 percent of the net order value of each scope of delivery or service for every working day of delay for which they are responsible. The contractual penalty shall be limited to a total of 5 percent of the net order value per scope of delivery and performance and a total of 5 percent of the net total order value.

9.2 In the event that the contractor, the contractor's employees or other persons for whom the contractor is liable pursuant to §§ 31, 278, BGB culpably violate obligations under this Agreement, the Parties agree on the payment of a contractual penalty by the contractor to dena in an appropriate amount. This shall not be less than EUR 5,001.00 and shall not exceed EUR 100,000.00. Dena shall determine the amount at its reasonably exercised discretion within the scope of § 315 BGB. In case of dispute the adequacy of the contractual penalty may be verified by the competent court. The right to lodge a claim for further-reaching damage is not excluded, in this case, however, the contractual penalty will be deducted. Further claims for damages shall remain unaffected. In the case of a minor infringement the contractual penalty shall be limited to a maximum of € 1,000.00. 348 HGB is excluded.

9.3 In the event of a culpable breach by the contractor of the obligations under Clause 7.2 f (minimum wage), the contractor shall be obliged to pay a contractual penalty, the amount of which shall be one of one hundred, in the event of several breaches up to five of one hundred of the order value, but at least 5,000 euros. This shall also apply in the event that the violation is committed by a subcontractor used by the Contractor, unless the contractor was not aware of the violation when the subcontractor were commissioned and, taking into account the duty of care of a prudent businessman, did not have to be aware of it. In the event of a disproportionately high contractual penalty, the contractor may apply to the Principal for a reduction of the contractual penalty.

9.4 In the event of a breach of Clause 13 (Integrity), the contractor shall be obliged to pay a contractual penalty in the amount of EUR 25,000 for each breach. If, in the case of a pecuniary benefit granted, the amount of such benefit exceeds EUR 25,000, the contractor shall owe a contractual penalty in the amount of the benefit granted.

9.5 The Principal is able to claim an incurred contractual penalty until the final payment is due. He does not need to reserve this right when the service is accepted and received. Any claims for compensation above and beyond this shall remain unaffected. The contractual penalty to be paid shall be offset against the compensation claim.

10. Usage rights

10.1 If copyrightable works are created during the performance of the services agreed upon in this contract, the contractor shall grant dena the exclusive, transferable and irrevocable right of use to these works which shall be unrestricted in terms of content, time and place and encompass all types of use (publishing right,

right of public access, editing right, translation right, right of alteration, right of storage on any available medium (multimedia right) as well as database right, etc.). Furthermore, dena shall acquire ownership of the works or the open files. This also applies to individual components and design elements. The contractor agrees to the processing and adaptation as well as the publication and exploitation of the works, including revised and adapted works, by dena or third parties commissioned by dena.

10.2 The contractor shall grant dena the non-exclusive, irrevocable and transferable right of use, unlimited in terms of space, content and time, with regard to existing works of the contractor (e.g. pictures, graphics, etc.) as well as the right to process such works. dena holds the exclusive right to use any adaptations of the works. The contractor shall mark its existing works separately.

The contractor shall grant dena the non-exclusive, unrestricted in terms of content, time and location and transferable right to use to the works procured from third parties. The contractor shall mark the works of third parties separately and advise dena of the source.

10.3 The contractor hereby affirms that they have the right to use the work, and that no right of third parties, in particular trademark right, copyright, general right of personality or other proprietary right, prevent dena's unrestricted use of the work.

10.4 The contractor assures that any third parties holding copyright to the work have fully waived their right to be named as author of the work in accordance with Paragraph 13 of the German Copyright Act (UrhG) or provide dena with the information required for naming the author.

10.5 As a precaution, the contractor shall, upon first request, indemnify dena against all claims by third parties that may derive from any right that such third parties have to the work. This also includes the costs of an appropriate legal defence by dena against third parties. Otherwise, damages shall be determined according to statutory provisions.

10.6 The granting of usage right is a primary contractual obligation. Paragraph 40 a UrhG remains unaffected.

11. Term of the contract

The term of the contract shall commence on the date on which it is signed and end when both sides have completed their performance.

12. Right of termination, withdrawal

12.1 dena is entitled to prematurely terminate the contract. There is no period of notice.

12.2 Should dena terminate the contract without giving a reason, the contractor shall be entitled to claim remuneration for the services that have been provided up to that point and which are ready for acceptance as well as five per cent of the agreed upon remuneration attributable to the part of the service which has not yet been provided.

12.3 However, if dena terminates the contract for reasonable cause for which the contractor is responsible, the contractor shall only be entitled to pro-rata remuneration for the services provided up to that point,

provided dena is able to use these services. In particular, such a cause shall exist if the contractor violates its obligation under Clause 7.4.

12.4 In the event of termination of the main order by GIZ, dena has an immediate special right of termination. This also applies in the event that the main contracting authority does not approve the selected (sub) contractor. In this case, only the services provided up to that point shall be remunerated.

12.5 The contractor may only terminate the contract for reasonable cause, for example, due to the principal's failure to cooperate. First, the Principal must be given reasonable deadline for the subsequent act of cooperation, accompanied by a declaration that the contract shall be terminated if this deadline expires without result. In this case, the provision set out in paragraph 2 shall apply to the remuneration.

12.6 Notice of termination must be given in writing.

13. Integrity

13.1 The contractor may not offer, grant or accept or demand gifts or benefits for himself or others (including through third parties) in connection with the procurement respectively the order and/or fulfilment of the contract; this also applies to acceleration bribes.

13.2 The contractor may not agree to any restriction of competition with one or more other companies.

13.3 Any form of corruption is prohibited. The contractor is obliged to take suitable and appropriate measures to prevent and combat corruption. Furthermore, he is obliged to immediately report confirmed cases as well as severe suspicion of corruption and/or offences against property such as fraud, embezzlement or breach of trust in connection with the fulfilment of the contract to the ombudsperson. The ombudsperson can be reached via e-mail: jan.gerd.moeller@pwc.com, telephone: +49 02119814031 or mobile: +49 1708548529. Notes can also be given via the web form available under the link <https://whistleblowerreporting.pwc.de/ecf7d254f0>.

14. Final provisions

14.1 Any supplementary agreements, amendments or additions to this contract must be made in writing to be effective. This shall also apply to the modification or cancellation of the requirement for written form. There are no subsidiary verbal agreements.

14.2 All appendices mentioned in this contract as well as supplementary provisions are a mandatory part of the contract and become effective with the signing of this contract.

14.3 The parties' general terms and conditions of business are excluded.

14.4 If any individual provisions of this contract are or become void, the validity of the remaining provisions shall not be affected. In such a situation, the contracting parties shall replace the invalid provision with a different provision that is permitted and comes closest to the economic purpose of the ineffective provision. The same applies to any loopholes.

14.5 The place of jurisdiction is Berlin.

14.6 This contract shall be governed by the law of the Federal Republic of Germany; the UN Convention on Contracts for the International Sale of Goods shall not apply.

Date, Signature
The German Energy Agency (dena)

Date, Signature
contractor

Date, Signature
The German Energy Agency (dena)

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