

# CONFIDENTIALITY and NON-DISCLOSURE AGREEMENT

## "Confidentiality Agreement"

THIS CONFIDENTIALITY AGREEMENT is made by and between:

The **Organisation for Security and Co-operation in Europe** (the "**OSCE**"), having its Secretariat at Wallnerstrasse 6, A-1010 Vienna, Austria,

- and -

\_\_\_\_\_ (the "**Recipient**"),

located at \_\_\_\_\_.

WHEREAS the Recipient is ready to receive confidential data, information and other materials of the OSCE in relation to the Productive Environment Penetration testing to be performed; and

WHEREAS the OSCE is willing to disclose such information to the Recipient on the condition that the Recipient does not disclose same to any third party, or make use thereof in any manner except as set out herein;

**NOW, THEREFORE**, the Parties have agreed as follows:

### 1 DEFINITIONS

1.1 "**Confidential Information**" means any data, documents, specifications, and other information or materials in whatever form disclosed by the OSCE to the Recipient, whether documentary, orally, visually, or otherwise (including computerised form) except information which was: (a) in the public domain at the time of disclosure; (b) known to the Recipient prior to obtaining the same pursuant to this Confidentiality Agreement; or, (c) obtained by the Recipient from a third party who did not receive the same directly or indirectly from the OSCE under a confidentiality agreement with the OSCE, or (d) required by applicable law;

1.2 "**OSCE**" means the Organization for Security and Co-operation in Europe, including the OSCE Secretariat, Institutions (the OSCE Secretariat, the Office of the High Commissioner on National Minorities (HCNM), the Office of Democratic Institutions and Human Rights (ODIHR) and the Office of the Representative on Freedom of the Media) and Field Operations (Missions, Centres, Groups, Presences, Project Coordinators and any other field operations), whichever is or are applicable;

1.3 "**Party**" means the OSCE or the Recipient and "**Parties**" means the OSCE and the Recipient;

1.4 "**Permitted Purpose**" means the use of the Confidential Information to facilitate the Recipient performing the Services;

1.5 "**Recipient**" means the person or entity named as 'Recipient' above; and

1.6 "**Services**" means any and all of the services to be provided to the OSCE by the Recipient as part of the Review.

## **2 OBLIGATIONS OF THE RECIPIENT**

2.1 In respect to the Confidential Information, the Recipient hereby undertakes;

2.1.1 to hold in trust and confidence and not to disclose the Confidential Information to any third party without the express, prior written consent of the OSCE.

2.1.2 not to use the Confidential Information for any purpose whatsoever other than for the Permitted Purpose.

2.1.3 only to disclose the Confidential Information to employees of companies directly or indirectly owned or controlled by the Recipient, consultants and/or advisors to whom disclosure is necessary for the Permitted Purpose and then only on the understanding that such employees, consultants and/or advisors are expressly subject to the provisions of this Confidentiality Agreement.

2.1.4 not at any time other than to the extent that is necessary for the Permitted Purpose to make copies of or reduce the Confidential Information to any electronic form or to store it in a database or other electronic media.

2.1.5 to comply with all requirements of the OSCE for the security of the Confidential Information.

2.1.6 to treat Confidential Information as being confidential and proprietary to the OSCE by using the same degree of care, but in any case no less than a reasonable degree of care, to prevent unauthorised use, dissemination or publication thereof, as it uses to protect its own Confidential Information of a similar nature.

2.1.7 upon demand of the OSCE, to promptly return all Confidential Information (in whatever medium), together with all copies thereof or, where expressly authorised in writing by the OSCE, to destroy or delete all such Confidential Information and shall confirm to the OSCE in writing that such destruction or deletion has taken place.

## **3 INDEMNIFICATION**

The Recipient agrees to indemnify the OSCE in respect of any expenses, losses, damages, costs, claims, liabilities the OSCE may suffer or incur as a result of an act or omission by the Recipient or its employees in connection with the Confidential Information and the Recipient's obligations under this Agreement.

## **4 ACCRUED RIGHTS**

Nothing in this Confidentiality Agreement shall be construed as granting the Recipient, by implication or otherwise, any right whatsoever with respect to the Confidential Information or part thereof.

## **5 PRIVILEGES AND IMMUNITIES**

No provision of this Confidentiality Agreement shall be deemed, or interpreted as, a waiver of the privileges and immunities enjoyed by the OSCE.

## **6 SETTLEMENT OF DISPUTES**

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with the Contract or its interpretation. Any dispute, controversy or claim arising out of or in relation to the Contract shall be settled through negotiations between the Parties. If the Parties fail to settle the dispute amicably within sixty (60) Days of commencement of the negotiations, the dispute shall be settled through arbitration. Arbitration shall be performed in accordance with the UNCITRAL arbitration rules. One (1) sole arbitrator shall be appointed who shall have full powers to make final and binding decisions. The appointing authority shall be the Permanent Court of Arbitration at The Hague. The place of arbitration shall be Vienna and the language used in the arbitration proceedings shall be English.

## **7 AMENDMENT**

No modification, amendment or change to this Confidentiality Agreement, or waiver of any of its provisions, or any additional contractual relationship with the Recipient shall be valid unless approved in the form of a written amendment to this Confidentiality Agreement, signed by a fully authorized representative of each Party.

## **8 ENTRY INTO FORCE**

This Confidentiality Agreement shall enter into force on the date of the last signature by or on behalf of both Parties and shall remain in force for a period of five (5) years, notwithstanding any earlier purported termination of this Confidentiality Agreement for whatever reason.

## **9 GENERAL PROVISIONS**

9.1 Non-Disclosure. The Parties agree that each of them shall not, without the prior consent of the other in writing, disclose to any third party the terms of this Confidentiality Agreement, or the content, nature or extent of the discussions proceeding in connection herewith.

9.2 Severability. If any provision of this Confidentiality Agreement shall be held invalid or unenforceable for any reason, such invalidity and/or unenforceability shall not effect the enforceability of any remaining provisions of this Confidentiality Agreement.

9.3 Waiver. No waiver of any provision of this Confidentiality Agreement shall be enforceable unless in writing and signed by the party against whom enforcement is sought. No failure or delay by either party in exercising any right under this Confidentiality Agreement shall operate as a waiver or preclude enforcement of any other right hereunder.

9.4 Entire Agreement. This Confidentiality Agreement constitutes the entire understanding between the Parties relating to the protection of Confidential Information disclosed hereunder and supersedes all prior and collateral communications, representations and understandings between the Parties hereto relating to the exchange of Confidential Information.

9.5 Governing Law. This Confidentiality Agreement shall be governed by, and construed in accordance with, the substantive laws of the Republic of Austria.

9.6 Signatures and Dates. This Confidentiality Agreement is executed in two (2) copies and each copy is treated as original for all legal purposes.

*[ the remainder of this page is intentionally left blank; signing page follows ]*

**IN WITNESS WHEREOF**, the Parties hereto have executed this Confidentiality Agreement.

Signed by:

Signed by:

\_\_\_\_\_

\_\_\_\_\_

.....,.....

Chief, Procurement and Contracting Unit

(for the Recipient)

(for the OSCE)

Date\_\_\_\_\_

Date\_\_\_\_\_