

NON-DISCLOSURE UNDERTAKING

NATO Communications and Information Agency, a subsidiary body of the North Atlantic Treaty Organisation (NATO) established pursuant to Article 9 of the North Atlantic Treaty and subject to the 1951 Ottawa Agreement (hereinafter referred to as the "NCI Agency")

Each a "Party" and together the "Parties".

The disclosure of any Confidential Information belonging to the NCI Agency, either preceding, during, or in the aftermath of the Purpose, shall be governed by the conditions of confidentiality set out in this Undertaking.

Article 1. Confidential Information

1.1 For the purposes of this Undertaking, "Confidential Information" shall mean any information shared by the NCI Agency, or any information that is not generally available to the public and that is treated as confidential by the NCI Agency, or which the Supplier otherwise obtains as knowledge or as a result of its relationship with, access to premises of, or communication with the NCI Agency's employees or independent contractors, whether in written, oral, graphic, electromagnetic, digital, or any other tangible or intangible form, including information without limitation relating to NCI Agency's organization, business, projects, technology, products, services, marketing, research, activities and/or the existence of the Purpose itself.

1.2 Without being limited thereto, Confidential Information shall include the following tangible and intangible forms of information: concepts, agendas, designs, drawings, presentation slides, ideas, minutes, e-mails, inventions, specifications, techniques, discoveries, models, data, database structures, database schema, metadata, source code, object code, documentation, diagrams, flow charts, videos (including GIFs and other formats), research, development, processes, procedures, know-how, new product or new technology information, training materials, marketing techniques and materials, marketing plans, letters, online messages, verbal conversations, timetables, strategies and development plans (including prospective trade names or trademarks), intellectual property, customer names and any other information related to customers, pricing and pricing policies, and financial information.

1.3 The NCI Agency shall only disclose Confidential Information to the Supplier as necessary for the Purpose.

Article 2. Confidentiality Obligation

2.1 Scope and identification of the Parties:

- (a) The NCI Agency shall include divisions, organizations, agencies, and other bodies of the NATO Organization, including NATO HQ, agencies, and military commands in accordance with the NATO's policy framework relating to the need-to-know principle.
- (b) The Supplier shall limit the internal dissemination of Confidential Information to the most restricted number of individuals required for the satisfactory execution of the Purpose (need-to-know). Only the following exhaustive list of members of the Supplier shall have access to Confidential Information under the present Undertaking:

#	Name	Title
1		
2		
3		

- (c) Every addition to the list at Article 2.1(b) above shall occur on an exceptional basis only, following the prior written approval of an authorized representative of the NCI Agency, in accordance with Article 2.2(a) below.

2.2 The Supplier undertakes with respect to all Confidential Information:

- (a) to maintain strict confidentiality and to not disclose or reveal to any third party (not mentioned in the list under Article 2.1(b) above), including professional consultants or affiliates of the Supplier, any Confidential Information received hereunder from the NCI Agency without the clear and express prior written consent of a duly authorized representative of the NCI Agency.
For the avoidance of doubt, the Supplier shall only communicate about Confidential Information with the following individuals acting as duly authorized representatives of the NCI Agency for this Undertaking, unless explicitly instructed otherwise in writing by the following individuals:
- (b) to solely use the Confidential Information for the Purpose, and not to make any use, directly or indirectly, by act or by omission, of the Confidential Information in a manner inconsistent with the Purpose;
- (c) to inform the NCI Agency of the location of any physical representations of Confidential Information in the possession of the Supplier, and to inform the NCI Agency should the location of this Confidential Information change following physical handling;
- (d) to not produce tangible or intangible copies or reproductions of any part of the Confidential Information without the prior express written consent of an NCI Agency's representative;
- (e) to use the same degree of care and means that it utilizes to protect its own information of a similar nature, but in any event not less than reasonable care and means, technical or other, to ensure the confidentiality of such Confidential Information and avoid a third party to have access to the Confidential Information;
- (f) not to alter, modify, disassemble, reverse engineer or decompile any Confidential Information without the clear and express prior written consent of a duly authorized representative of the NCI Agency;
- (g) to immediately, upon instructions from the NCI Agency, return or destroy any Confidential Information in tangible or intangible form, together with any copies that may have been made, in accordance with Article 2.2(d):
 - i) upon completion or abandonment of the Purpose or the activities to which they relate; or
 - ii) upon termination of the Undertaking or any business or other relationship between the Parties; or
 - iii) in any event, upon written request of the NCI Agency;
- (h) in the event of an actual or suspected breach of confidentiality, not limited to but including any misappropriation or unauthorized disclosure of Confidential Information, to inform the NCI Agency immediately in writing of such breach and of the actions the Supplier has undertaken to remediate the actual or suspected breach;
- (i) to remain exclusively responsible for any of its staff, agents or similar personnel's compliance with the terms of this Undertaking.

Article 3. Exceptions to the obligation of confidentiality

3.1 The restrictions on the use or disclosure of Confidential Information set out in Article 2 hereinabove shall not apply to any Confidential Information which:

- (a) is or falls within the public domain through no act or omission of the Supplier and as such loses its confidential character; or
- (b) is disclosed to the Supplier by a third party who is not in breach of any obligation of confidentiality; or
- (c) was known to the Supplier before such Confidential Information was imparted by the NCI Agency as can be evidenced by its records; or
- (d) is independently developed by the Supplier without any reference to any Confidential Information.

3.2 In the event the Supplier is required to disclose any Confidential Information relating to the Purpose of this Undertaking, due to any statute, law, rule or regulation of any governmental authority or pursuant to any order of any court of competent jurisdiction, the Supplier shall advise the NCI Agency of the request for disclosure within 14 calendar days to apply for such legal protection as may be available with respect to the confidentiality of the Confidential Information. The Supplier shall not disclose any Confidential Information until a non-appealable decision is granted. The Supplier shall let the NCI Agency interact with any authority, instance, or legally competent requestor.

Article 4. Indemnity and Enforcement

- 4.1 The Supplier acknowledges that the Confidential Information has been developed or obtained by the investment of significant time, effort and expense, and that this Confidential Information, as well as its confidential nature, is key for the continued well-functioning and critical security of the NCI Agency. The Supplier understands that the NCI Agency will thus suffer substantial and irreparable harm in the event that the Supplier fails to comply with any of its obligations set forth in this Undertaking.
- 4.2 The Supplier acknowledges that the NCI Agency reserves the right to record instances of any actual breaches of confidentiality by the Supplier, as defined within the terms of this Undertaking, for the purposes of minimising risk and safeguarding Confidential Information. In the extreme circumstance the Supplier is found to have caused repeated or grave breaches of confidentiality, the NCI Agency reserves the right of imposing monetary relief in the form of compensation, for the actual or potential harm caused by the actual breach(es) of confidentiality.

Article 5. Scope of the Undertaking

- 5.1 This Undertaking shall not be assignable by the Supplier and the NCI Agency may not delegate its duties hereunder, without the clear and express prior written consent of a duly authorized representative of the NCI Agency, which consent may be granted or denied in the sole discretion of the NCI Agency. All of the terms and provisions contained herein shall be binding upon the Supplier and their respective heirs, successors and permitted assigns.
- 5.2 Nothing in this Undertaking shall be construed as creating any obligation on the part of the NCI Agency to disclose any Confidential Information whatsoever.
- 5.3 All Confidential Information is, and shall remain, the sole property of the NCI Agency. Nothing in this Undertaking shall be construed as granting the Supplier any license or any other rights with respect to the NCI Agency's Confidential Information or proprietary rights.
- 5.4 Nothing contained in this Undertaking shall be construed as creating any obligation or an exception on the part of the NCI Agency to enter into a business relationship with the Supplier, or an obligation to refrain from entering into a business relationship with any third party. Nothing contained in the Undertaking shall be construed as creating a joint venture, partnership or employment relationship between the Parties, it being understood that the Parties are independent contractors vis-à-vis one another. Except as specified herein, neither Party shall have any right, power or implied authority to create any obligation or duty express or implied, on behalf of the other Party.

Article 6. General

- 6.1 This Undertaking shall take effect on its signature date or the first exchange of Confidential Information by the NCI Agency to the Supplier, whichever occurs first, and shall only cease in effect upon the express written consent of an authorized representative of the NCI Agency (regardless of the status of the Purpose). The Supplier agrees that any undertaking given in relation to the Confidential Information shall remain valid after termination of the discussion process relating to the Purpose between Parties.
- 6.2 This Undertaking sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all other oral or written representations and understandings.
- 6.3 No provision of this Undertaking shall be amended, modified or waived without the clear and express prior written consent of a duly authorized representative of the NCI Agency.
- 6.4 If any provision of this Undertaking is held invalid or unenforceable for any reason, this Undertaking shall remain otherwise in full force apart from such provision which shall be deemed deleted, or be amended.
- 6.5 The fact that the NCI Agency does not demand the strict execution by the Supplier of any provision or condition of the present Undertaking at any time will not be considered as a final waiver of the exercise of this right.
- 6.6 The Supplier agrees that, without the prior written consent of the NCI Agency, the Supplier will refrain from attributing any Confidential Information to the NCI Agency in any external or internal communication for any purpose, including but not limited to press releases or otherwise to the media, web sites, offering memoranda, and conversations with third parties including professional consultants and affiliates of the Supplier.

Article 7. Disputes and arbitration

- 7.1 The Supplier acknowledges that the NCI Agency, as a subsidiary body of the NATO and subject to the 1951 Ottawa Agreement enjoys full immunity from every form of legal process, unless expressly waived by the NATO Secretary General. Similarly, the NCI Agency staff is immune from legal process with respect to words spoken or written, and of acts conducted within their official capacity and limits of their authority.
- 7.2 All disputes arising under, or which are related to this Undertaking or with respect to its effectiveness, shall be resolved by consultation between the Parties. If no agreement can be found, either Party may open arbitration proceedings in accordance with the following arbitration provisions.
- 7.3 The Party instituting the arbitration proceedings shall advise the other party by registered letter, with official notice of delivery, of their desire to have recourse to arbitration. Within a period of thirty (30) days from the date of receipt of this letter, the Parties shall jointly appoint an arbitrator. In the event of failing to appoint an arbitrator, the dispute or disputes shall be submitted to an Arbitration Tribunal consisting of three arbitrators, one being appointed by the NCI Agency, another by the Supplier and the third, who shall act as President of the Tribunal, by these two arbitrators. Should one of the Parties fail to appoint an arbitrator during the fifteen (15) days following the expiration of the said first period, the appointment shall be made, within twenty-one (21) days, at the request of the party instituting the proceedings, by the Secretary General of the Permanent Court of Arbitration at The Hague.
- 7.4 Regardless of the procedure concerning the appointment of this Arbitration Tribunal, the third arbitrator will have to be of a nationality different from the nationality of the other two members of the Tribunal. Any arbitrator must be of the nationality of any one of the member states of the NATO and shall be bound by the rules of security in force within NATO.
- 7.5 Any individual appearing before the Arbitration Tribunal in the capacity of an expert witness shall, if they are of the nationality of one of the member states of the NATO, be bound by the rules of security in force within NATO; if they are of another nationality, no NATO classified documents or information shall be communicated to them.
- 7.6 An arbitrator, who, for any reason whatsoever, ceases to act as an arbitrator, shall be replaced under the procedure laid down in Article 7.3 above.
- 7.7 The Arbitration Tribunal will take its decisions by a majority vote. It shall decide where it will meet and, unless it decides otherwise, shall follow the arbitration procedures of the International Chamber of Commerce in force at the date of signature of the present Undertaking. The awards of the arbitrator or of the Arbitration Tribunal shall be final and there shall be no right of appeal or recourse of any kind. These awards shall determine the appointment of the arbitration expenses
- 7.8 Pending final decision of a dispute, the Supplier shall proceed diligently with the performance of the Purpose, unless otherwise instructed by the NCI Agency.

Article 8. Representation

- 8.1 The Supplier warrants and represents that it has carefully read and understood this Undertaking, and acknowledges receipt of a copy thereof. The individual executing this Undertaking warrants and represents that they have the authority to enter into this Undertaking on behalf of the individual, firm or corporation, of any, listed below their name.

IN WITNESS WHEREOF, the duly authorized representative of the Supplier has executed this Undertaking electronically, each Party retaining a copy of the signed document.

For the Supplier

Name:

Title:

Date:

Signature: