**Confidentiality Agreement**

**between**

**the International Atomic Energy Agency**

**and**

**[INSERT NAME OF COUNTERPART]**

This confidentiality agreement (“Agreement”) is entered into between the **International Atomic Energy Agency** (hereinafter referred to as the “IAEA”), an intergovernmental organization established by its Statute, whose address is Vienna International Centre, P.O. Box 100, 1400 Vienna, Austria; and **[INSERT NAME OF COUNTERPART]** (hereinafter referred to as the [“INSERT SHORT NAME/ABBREVIATION”]), a [INSERT LEGAL STATUS] whose address is [INSERT ADDRESS]. Hereinafter, the IAEA and [“INSERT SHORT NAME/ABBREVIATION”] will also be referred to individually as a “Party” and collectively as the “Parties”.

WHEREAS, the IAEA wishes to establish a contract for the provision of IT Security Penetration Testing Services (the IAEA Project no. RFP-587569-YG; hereinafter referred to as the “Project”);

WHEREAS, for purposes of the Project, the IAEA and [“INSERT SHORT NAME/ABBREVIATION”] may need to disclose, on a reciprocal basis, certain proprietary and confidential data and information, including third-party proprietary data and information (hereinafter referred to as the “Information”); and

NOW, THEREFORE the Parties agree as follows:

**Article 1**

**Definition**

1. For the purpose of this Agreement, Information means: any proprietary information (including commercial, technological or industrial secrets) of a Party (hereinafter referred to as the “Discloser”) provided to the other Party (hereinafter referred to as the “Recipient”), in whatever form or storage medium, including, but not limited to, in writing, by oral or visual presentation, database, delivery of items, that is not publicly accessible, or any other information that is:
2. marked or otherwise clearly identified by the Discloser as restricted, confidential or highly confidential at the time of disclosure; or
3. normally treated by the Discloser as confidential whether or not marked or otherwise clearly identified as restricted, confidential or highly confidential at the time of disclosure; or
4. non-public information of, or accessible through, the Discloser, including the Discloser operational and administrative processes, internal manuals and guidelines, plans, strategies, policies, financial information, personnel information, information relating to any agreements or contracts concluded by the Discloser, information relating to any of the counterparties under agreements or contracts concluded by the Discloser, information relating to staff members of the Discloser, and any other internal information; as well as any information acquired or developed in the course of the Project; or
5. proprietary information, including, without limitation, geospatial data, ideas, samples, media, techniques, sketches, drawings, works of authorship, models, inventions, know-how, processes, apparatuses, equipment, algorithms, software programs, software source documents, and formulae related to the current, future, and proposed products and services of each of the Parties, and including, without limitation, their respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, marketing plans and information the Discloser provides regarding third parties.
6. Information shall not include information which:
7. was known to the Recipient prior to such disclosure, as evidenced by its written records;
8. is disclosed to the Recipient by a third party, who has rightfully obtained such information without any restriction on its use;
9. is, or subsequently becomes, public knowledge without any breach of this Agreement; or
10. is independently developed by, or on behalf of, the Recipient, as can be demonstrated by its written records.

**Article 2  
Use of Information**

1. The Parties agree that:
2. Any Information provided to the Recipient hereunder shall be used by the Recipient solely for the Project and shall not be used for any other purpose;
3. The Recipient shall not disclose the Information or any part thereof to any third party (person, Government or organisation) unless expressly authorized in writing by the Discloser and shall limit access to the Information to such of its employees, agents and representatives reasonably requiring the same for the above-mentioned Project;
4. The Recipient shall take all steps necessary to protect the Information from unauthorized use, reproduction and disclosure, and to protect the Information to the extent it would use to protect its own confidential information;
5. The Discloser shall retain the entire right, interest and title to its Information. No license under any patent, copyright, trademark, other intellectual property right or any application therefor, is hereby granted or implied by the provision of the Information to the Recipient;
6. The Recipient shall handle the Information in a manner so as to protect its integrity and shall not remove any proprietary of security marking from the Information;
7. Copies of the Information may be made by the Recipient only for the Project and only on as-required basis;
8. The Parties shall inform each other immediately of any breach of confidentiality that has occurred; and
9. The Parties shall not disclose to any third party the existence of the Project or this Agreement.
10. Notwithstanding the foregoing, the Parties agree that:
11. The IAEA may disclose the Information, if it is required to do so by its governing bodies. The IAEA shall inform the Discloser of such disclosure in due course; and
12. Without prejudice to the privileges and immunities accorded to the IAEA by its Member States, the Information can only be disclosed if [“INSERT SHORT NAME/ABBREVIATION”] becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process, or by court order, or in order to comply with requirements of any government or organization) to disclose the Information, provided that reasonable advance notice of such requirement is provided to the IAEA in order to allow the IAEA to obtain an appropriate protective order or other remedy as may be appropriate.

**Article 3  
Return of Information**

1. Upon expiration or termination of this Agreement, all Information provided by the Discloser, and any summaries, and/or compilations made of or from such Information, shall be returned to the Discloser within thirty (30) days from the conclusion of the Project, unless otherwise agreed in writing or, at the option of the Discloser, destroyed and a certification of such destruction transmitted to the Discloser.
2. In addition to the paragraph above, the Recipient shall purge all copies of the Information, or any part thereof, from any computer storage device or medium on which the Recipient has placed the Information or a part thereof, and shall provide the Discloser with a written certification within thirty (30) days from the conclusion of the Project that such action has been taken, unless otherwise agreed in writing.
3. Notwithstanding the foregoing, the IAEA is permitted to retain one (1) archival copy of the Information in a secure location.

**Article 4  
No Representation**

The IAEA makes no representation or warranties of any kind, either express or implied, with respect to any Information provided to [“INSERT SHORT NAME/ABBREVIATION”], and disclaim any liability, including for any special, incidental or consequential damages of any nature, resulting from the receipt or use of the Information.

**Article 5  
Indemnification**

The IAEA shall not be liable for any damages arising out of the use of the Information.

**Article 6**

**Legal Status**

Nothing contained in, or relating to, this Agreement shall be construed as establishing any relationship between the Parties except as a consequence of the rights and obligations arising from this Agreement. Neither Party shall be entitled to act as an agent or representative of the other Party.

**Article 7**

**Assignment**

Neither Party shall assign, transfer, pledge or make any other disposition of this Agreement or of any part thereof, or of any rights, claims, liabilities or obligations under this Agreement without the prior written consent of the other Party.

**Article 8**

**Notices**

1. Any notices under this Agreement shall be made in writing to the following designated individuals:

**If to the IAEA:**

Vienna International Centre

PO Box 100

1400 Vienna, Austria

Attn: Yury Golovkov

Tel: (+43-1) 2600-24292

Email: y.golovkov@iaea.org

**If to** [“INSERT SHORT NAME/ABBREVIATION”]**:**

[INSERT ADDRESS]

Attn: [INSERT NAME OF CONTACT PERSON]

Tel: [INSERT NUMBER OF CONTACT PERSON]

Email: [INSERT EMAIL OF CONTACT PERSON]

1. Any change to the points of contact will be notified in writing to the other Party in a timely manner.

**Article 9  
Use of Name, Emblem, or Official Seal of the IAEA**

[“INSERT SHORT NAME/ABBREVIATION”] shall, in no other manner whatsoever use the name, emblem, or official seal of the IAEA or any abbreviation of the name of the IAEA in connection with its business or otherwise.

**Article 10**

**Intellectual Property**

All Information is and remains the property of the owner, be it the Discloser or a third-party, and no other rights in the Information are granted hereby, except as expressly provided above.

**Article 11  
Settlement of Disputes**

All disputes arising out of, or relating to, interpretation or implementation of this Agreement, which cannot be amicable settled by the Parties, shall be referred by either Party to arbitration for settlement in accordance with the UNCITRAL Arbitration Rules as in force at the date the dispute is referred to arbitration. The number of arbitrators shall be one (1). The place of arbitration shall be Vienna, Austria. The language of arbitration shall be English. The decisions of the arbitrator shall be final and binding on the Parties.

**Article 12**

**Privileges and Immunities**

Nothing in this Agreement shall be construed as a waiver of the privileges and immunities accorded to the IAEA by its Member States.

**Article 13  
Entire Agreement**

This Agreement embodies the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior discussions, negotiations, agreements and understandings among the Parties with respect to the subject matter hereof.

**Article 14  
Entry into Force and Duration**

1. This Agreement shall enter into force on the date of the last signature by the duly authorized representatives of the Parties and shall remain in force for five (5) years, unless terminated earlier by the Parties pursuant to the terms of this Agreement.
2. Notwithstanding any termination, the Recipient’s obligations to protect the Information shall continue for a period of five (5) years from the date of the conclusion of the Project, without prejudice to the obligations set out in Article 3 (“Return of Information”).

**Article 15  
Amendments**

No modification of, or changes to, this Agreement, or waiver, either express or implied, of any provision shall be valid unless made in writing and approved by the duly authorized representatives of the Parties.

**Article 16  
Termination**

Any Party may terminate this Agreement upon giving thirty (30) days’ prior written notice to the other Party.

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| --- | --- | --- |
| **For the IAEA:** |  | **For [INSERT SHORT NAME/ABBREVIATION]:** |
|  |  |  |
| Signature |  | Signature |
|  |  |  |
| Name and Title |  | Name and Title |
| Date and Place |  | Date and Place |