



## Organization for Security and Co-operation in Europe

### Staff Instruction 23/Rev.2 “Special Service Agreements”, Annex 9: Confidentiality and Non-Disclosure Obligations for Consultants

#### CONFIDENTIALITY AND NON-DISCLOSURE OBLIGATIONS FOR CONSULTANTS (the “CONFIDENTIALITY OBLIGATIONS”)

WHEREAS Consultants hired by the OSCE on Special Service Agreements (SSA) may be provided or have access to confidential data, information and other materials of the OSCE resulting from the Consultant’s performance of certain services for the OSCE;

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

**NOW, THEREFORE**, Consultants hired by the OSCE under the terms of Staff Instruction No. 23 on Special Service Agreements (SSA) shall abide by the following Confidentiality Obligations:

#### 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 Consultant, whether documentary, orally, visually, or otherwise (including computerised form) except information which the OSCE, on request of the Consultant, establishes was: (a) in the public domain at the time of disclosure; (b) known to the Consultant prior to obtaining the same pursuant to these Confidentiality Obligations; or (c) obtained by the Consultant from a third party who did not receive the same directly or indirectly from the OSCE under a confidentiality agreement with the OSCE;

1.2 “**OSCE**” means the Organization for Security and Co-operation in Europe, including the OSCE Secretariat, Institutions (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 OSCE Field Operations (Missions, Centres, Groups, Presences, Project Co-ordinators and any other field operations), whichever is or are applicable;

1.3 “**Party**” means the OSCE or the Consultant and the “**Parties**” means the OSCE and the Consultant;

1.4 “**Permitted Purpose**” means the use of the Confidential Information solely to facilitate the Consultant’s performance of the Services;

1.5 “**Consultant**” means the person hired by the OSCE on a special service agreement (SSA); and

1.6 “**Services**” means any and all of the services to be provided to the OSCE by the Consultant.

#### 2 OBLIGATIONS OF THE CONSULTANT

2.1 In respect to the Confidential Information, the Consultant shall:

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

2.1.2 only disclose the Confidential Information to a third party to whom disclosure is

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necessary for the Permitted Purpose and then only on the understanding that all such third parties are expressly subject to the provisions of these Confidentiality Obligations, and the Consultant is responsible for ensuring that all third parties adhere to the terms and conditions of these Confidentiality Obligations;

2.1.3 not use the Confidential Information for any purpose whatsoever other than for the Permitted Purpose;

2.1.4 keep a written record of all third parties who will have access to the Confidential Information disclosed under these Confidentiality Obligations;

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

2.1.6 comply with all requirements of the OSCE for the security of the Confidential Information;

2.1.7 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 unauthorized use, dissemination or publication thereof, as it uses to protect the Consultant's own confidential information of a similar nature; and

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

### **3 INDEMNIFICATION**

3.1 The Consultant shall be responsible to the OSCE for any unauthorized use or disclosure of the Confidential Information. Without limitation, the Consultant shall indemnify, save and hold harmless the OSCE from any unauthorized use or disclosure of the Confidential Information resulting from any breach of these Confidentiality Obligations, including any loss, damage or claim made by third parties arising as a result of such unauthorized disclosure or use of the Confidential Information.

3.2 The OSCE, in addition to any other rights and remedies available to it, reserves the right to seek injunctive relief, both preliminary and final, enjoining and restraining any actual or threatened unauthorized use or disclosure of the Confidential Information.

### **4 ACCRUED RIGHTS**

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

### **5 PRIVILEGES AND IMMUNITIES**

No provision of these Confidentiality Obligations shall be deemed or interpreted as a waiver, express or implied, of the privileges and immunities enjoyed by the OSCE or its officials.

### **6 SETTLEMENT OF DISPUTES**

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with the Confidentiality Obligations or their interpretation. Any dispute, controversy or claim arising out of

or in relation to the Confidentiality Obligations 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 then in force. 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 these Confidentiality Obligations, or waiver of any of its provisions, or any additional contractual relationship with the Consultant shall be valid unless approved in the form of a written agreement by the OSCE.

## **8 ENTRY INTO FORCE AND DURATION**

These Confidentiality Obligations shall enter into force on the date of the commencement of the special service agreement signed between the Consultant and the OSCE and shall remain in force for as long as the Confidential Information is deemed by the OSCE to be confidential.

## **9. GOVERNING LAW**

These Confidentiality Obligations shall be governed by and construed in accordance with the substantive laws of the Republic of Austria.