

Annex D. IFB-CO-15577-SSSB Non-Disclosure Undertaking

1. COMPANY SIGNING THE UNDERTAKING

Insert Name of Company located in Insert Address (hereinafter referred to as “**Company**”) and its officers, directors and employees (being permanent, temporary, full-time, part-time, or staff that has been hired as consultants by the said company) agree to be bound by the terms of this undertaking (the “**Undertaking**”).

2. BACKGROUND

In order to allow potential bidders to prepare a bid under IFB-CO-15577-SSSB, Confidential Information, as defined below, will be released to potential Bidders that have duly executed this Undertaking.

3. CONFIDENTIAL INFORMATION

For the purposes of this Undertaking, Confidential Information shall include the following items, regardless of the classification marked on the documents:

- All Documentation and materials included in SSSB IFB Bidders’ Library
- All documentation and briefings supporting the SSSB Bidders Conference

4. RIGHT OF USE

4.1 Company is authorised to use the Confidential Information for the sole purpose of preparing a bid for IFB-CO-15577-SSSB and for a limited period not to exceed the completion of the bid evaluation period (as notified by the Purchaser) for IFB-CO-15577-SSSB. This period shall be extended automatically if Company is determined to be the Successful Bidder until the effective date of Contract CO- IFB-CO-15577-SSSB, which shall then govern the terms of use and disclosure of the Confidential Information.

4.2 The Confidential Information will be delivered “as is”. Company acknowledges that the Confidential Information is released without any acceptance of liability for damages of any kind including but not limited to incidental, special or consequential damages sustained by the Company as a result of the usage of the Confidential Information.

4.3 Any cost involved with the use of the Confidential Information is the sole responsibility of the Company.

4.4 On completion of the bidding process in relation to Invitation For Bid IFB-CO-15577-SSSB and at the latest five (5) working days after notification that Company is not the successful Bidder, Company shall return to NCI Agency, or destroy, the

Confidential Information and provide NCI Agency with a written statement that Company has returned the original Confidential Information and all copies or destroyed the original Confidential Information and all copies.

5. NON-DISCLOSURE

5.1. Company shall not disclose the Confidential Information to any third party and shall limit the disclosure internally to those of its officers, directors, employees (being permanent, temporary, full-time, part-time, or staff that has been hired as consultants by the said company) on a need to know basis and provided that these officers, directors, employees (being permanent, temporary, full-time, part-time, or staff that has been hired as consultants by the said company) are bound by a non-disclosure agreement or an adequate confidentiality clause covering the Confidential Information disclosed on the basis of this Undertaking.

5.2 Should any portion of the Confidential Information falls within any of the following provisions, such portion of the Confidential Information is released from the protection provided under this Undertaking from the date such provision becomes effective:

- Information which is or becomes part of the public domain without breach of this Undertaking;
- Information which is received after the signature of this Undertaking by Company from a third party who did not obtain or disclose it in violation of any rights of the NCI Agency;
- Information which is already known by Company, which is legally allowed to use it, at the time of signature of this Undertaking, which the Company can substantiate by written evidence;
- Information which is publicly disclosed with the prior written approval of the NCI Agency; and Information which is independently developed by an employee of the Company who did not have access to the Confidential Information and independent development is substantiated by sufficient evidence.

6. DISPUTE RESOLUTIONS

All disputes arising as a result of this Undertaking shall be subject to the dispute resolution procedure as detailed below:

6.1. Dispute resolution shall be governed, interpreted and construed in accordance with the private contract law of the Kingdom of Belgium.

6.2. All disputes arising under, or which are related to this Undertaking or with respect to its effectiveness shall be resolved by consultation. If no agreement can be found, either NCI AGENCY or the Company may open arbitration proceedings in accordance with the following arbitration provisions.

6.3. The party instituting the arbitration proceedings shall advise the other party by registered letter, with official notice of delivery, of his desire to have recourse to

arbitration. Within a period of thirty (30) days from the date of receipt of this letter, NCI AGENCY and the Company 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 NCI AGENCY, another by the Company and the third, who shall act as President of the Tribunal, by these two arbitrators. Should NCI AGENCY or the Company 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.

6.4. 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.

6.5. Any person appearing before the Arbitration Tribunal in the capacity of an expert witness shall, if he is of the nationality of one of the member states of the NATO, be bound by the rules of security in force within NATO; if he is of another nationality, no NATO classified documents or information shall be communicated to him.

6.6. An arbitrator, who, for any reason whatsoever, ceases to act as an arbitrator, shall be replaced under the procedure laid down in paragraph 6.3 above.

6.7. 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. GENERAL PROVISIONS

7.1. Nothing in this Undertaking shall be construed as granting or conferring any proprietary rights to the Company on the Confidential Information.

7.2 This Undertaking shall enter into effect on the date of signature. The confidentiality obligation under this Undertaking shall remain in effect for a period of 5 years following completion of the evaluation of IFB-CO-15577-SSSB.

On behalf of Company

Name:

Title:

Date: