



This **NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT** (“**Agreement**”) is made this _____ (Jour/day) of _____ (Mois / Month), 2020 (“**Effective Date**”) by and between:

- (i) **United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA)**, United Nations subsidiary organ established by United Nations Security Council Resolution 2100 (2013) of 25 April 2013 with his headquarter on the Old Road of Senou Airport in Bamako (hereinafter referred to as the “**UN**”) and,
- (ii) _____ (**Name of entity / Nom de la Société**),
a _____ (**Legal Nature of Entity/ Forme Legale de la société**) established in accordance with the laws of _____ (**Country/ Pays**) and having its principal offices located at _____ (**Headquarters / siege social**)
(also hereinafter, “**the Bidder**”).

The Discloser and Recipient are also referred to collectively as the “**Parties**” and individually as a “**Party**.”

RECITALS

WHEREAS, the UN has issued one or more tenders for bid or requests for proposals for the provision of goods or services, or both, to UN pursuant to contract or, otherwise; or,

WHEREAS, the Parties wish to enter into discussions or negotiations regarding the possibility of the UN’s acquiring goods or services, or both; or,

WHEREAS, in evaluating the capabilities of potential providers of such goods or services, including the capabilities of **Construction of a High level Security Building**, the UN may choose, in its sole discretion, to provide to **the Bidder** with, or with access to, certain Confidential Information, as defined below; or,

WHEREAS, the UN and **the Bidder** wish to disclose and to receive Confidential Information, as defined below, for their mutually beneficial purposes; and,

WHEREAS, the Parties wish to maintain the confidentiality of such Confidential Information, as defined below, in all cases, including whether or not the Parties enter into a contract, or other arrangement for the UN’s acquisition of goods or services, or both; and,

WHEREAS, the Parties desire to prevent the disclosure of such Confidential Information, as defined below, other than as permitted in accordance with this Agreement;



NOW THEREFORE, subject to their mutual covenants, and for good and valuable consideration, the sufficiency whereof is hereby acknowledged, the Parties agree as follows:

1. “Confidential Information,” whenever used in this Agreement shall mean any information disclosed by the Discloser to the Recipient in written, oral, recorded, photographic, or any other form, and in any medium, whether now known or hereinafter invented, including, but not limited to, information regarding the Intellectual Property, business processes, trade secrets, operations, activities, plans, financial information, data or records relating to personnel, agents, officials and representatives, and any other information that, at the time of disclosure to the Recipient, the Discloser has marked or labeled, “Confidential” or, “Restricted,” or is otherwise marked, labeled or otherwise referred to by the Discloser in any other manner that would lead the Recipient to reasonably conclude that such information is to be regarded as Confidential Information in accordance with this Agreement. For purposes of this Agreement, “Intellectual Property” shall mean patents, trade marks, service marks, design rights (whether or not registered), applications for any of the foregoing, copyright, database rights, trade or business names and other similar rights or obligations, whether or not registered or subject to registration, in any jurisdiction.

2. Confidential Information that is delivered or otherwise disclosed by a Party (the “Discloser”) to the other Party (the “Recipient”) shall be held in confidence by the Recipient and shall be handled as follows:

2.1. The Recipient shall use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser’s Confidential Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate, and Recipient hereby represents and warrants that such degree of care is reasonably designed to protect the confidentiality of Confidential Information from disclosure, publication or dissemination other than in accordance with this Agreement;

2.2. The Recipient shall use the Discloser’s Confidential Information solely for the purpose for which it was disclosed or otherwise solely for the benefit of the Discloser;

2.3. The Recipient may disclose the Discloser’s Confidential Information to the following third-parties only in the following circumstances:

2.3.1. its employees, officials, representatives and agents who have a strict need to know the contents of the Confidential Information, and employees, officials, representatives and agents of any legal entity that it controls, controls it, or with which it is under common control, who have a similar need to know the contents of the Confidential Information, where “control” means to own or control, directly or indirectly, over 50% of voting shares of any corporation or similar entity or over 50% of the financial assets of any type of legal entity or person, or, in the case of the United Nations, is a Principal or Subsidiary Organ of the United Nations within the meaning of the Charter of the United Nations; and,

2.3.2. any other person or entity with the Discloser’s prior written consent.



2.4. Before disclosure to any of the above-mentioned third parties, the Recipient will have a written agreement with such third-party party that is sufficient to require that party to treat Confidential Information in accordance with this Agreement. In any event, Recipient accepts responsibility for any breach of the terms and conditions of this Agreement by any third-party to whom Confidential Information has been disclosed.

2.5. The Recipient may disclose Confidential Information to the extent required by law and pursuant to an order of a competent legal authority having jurisdiction over the Recipient sufficient to compel such disclosure, provided that before making any such disclosure, the Recipient shall give the Discloser prompt notice to allow the Discloser a reasonable opportunity to obtain a protective order or to take such other action as may be appropriate, including action that may be consistent with the status and the privileges, immunities and exemptions of the United Nations.

3. The Recipient shall not be liable for the disclosure or use of Confidential Information that:

3.1. is obtained by the Recipient from a third party without legal restriction;

3.2. is disclosed by the Discloser to a third party without any obligation of confidentiality;

3.3. is previously known by the Recipient; or,

3.4. is at any time developed by the Recipient completely independently of any disclosures hereunder.

4. All Confidential Information in any form and on any medium, including all copies thereof, disclosed to the Recipient shall be returned to the Discloser or, at the request of the Discloser, shall be destroyed promptly upon the Discloser's request.

5. In the event of a breach or a threatened breach of the terms of this Agreement, nothing in this Agreement or otherwise shall limit the rights or the remedies available to the Parties at law or in equity, including any remedies necessary for the prevention of such breach, provided that nothing in this paragraph 5 shall be deemed as a waiver, express or implied of the privileges and immunities of the United Nations.

6. Either Party may terminate the working relationship contemplated by this Agreement by providing written notice to the other, provided, however, that the obligations and restrictions hereunder regarding the Confidential Information shall remain effective following any such termination or any other termination or expiration of this Agreement.

7. Any dispute, controversy or claim arising out of this Agreement or the breach, termination or invalidity thereof, shall, unless it is settled amicably by direct negotiations between the Parties, be referred by either Party hereto to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The arbitral tribunal shall have no authority to award punitive damages or to award any interest in excess of the discount rate as set forth in the London Inter-Bank Overnight Rate (LIBOR) then obtaining, which interest shall be simple interest only. The arbitral tribunal shall be empowered to order the return or destruction of the Confidential Information, order the termination of this Contract, and/or



order such other protective measures with respect to the Confidential Information as are appropriate in accordance with the authority of the arbitral tribunal under and pursuant to Article 26 (“Interim measures”) and Article 34 (“Form and effect of the award”) of the UNCITRAL Arbitration Rules. The Parties shall be bound by the arbitration award rendered in accordance with such arbitration, as the final adjudication of any such dispute, controversy or claim.

8. Nothing in or relating to this Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

9. **The bidder** shall not advertise or otherwise make public the fact that it has a confidential relationship with the United Nations, nor shall **The bidder**, in any manner whatsoever use the name, emblem, or official seal of the United Nations, or any abbreviation of the name of the United Nations in connection with its business or otherwise.

10. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

11. This Agreement contains and constitutes the entire agreement and understanding by and between the Parties concerning the subject matter hereof and supersedes all prior representations, understandings, agreements, and contracts whether written or oral, by and between the Parties on the subject hereof. This Agreement may only be amended by means of a further written agreement signed by authorized representatives of the Parties hereto.

12. The Parties acknowledge and agree that their representatives who have signed this Agreement had full authority to do so and to fully bind the Party being represented by doing so.

IN WITNESS WHEREOF, the Parties, acting through their authorized representatives, have caused this Agreement to be signed on the dates set forth below:

For and on behalf of the United Nations:

For and on behalf of _____:

(Authorized signature)

(Authorized signature)

(Name and Title)

(Name and Title)

(Date)

(Date)