

## NON-DISCLOSURE AGREEMENT No 3-1/75

This agreement is entered into on this ... day of ... 2020 (hereinafter **Effective date**) by and between

**secunet Security Networks AG**, a company existing and organised under the laws of **Federal Republic of Germany**, whose registered office is located at Kurfuerstenstraße 58, 45138 Essen, Germany, registered under number **HRB 13615**, represented by ... (hereinafter **Company**)

and

**Republic of Estonia**, represented by **IT and Development Centre of the Ministry of the Interior** (in Estonian: *Siseministeeriumi infotehnoloogia- ja arenduskeskus*), a government authority existing and organised under the laws of Estonia, whose registry code is 70008440 and office is located at Mäealuse 2/2, 12618 Tallinn, Estonia, represented by ... (hereinafter **SMIT**),

each also referred to separately as the **Party** and jointly as the **Parties**,

### Whereas,

in the course of procurement proceedings regarding the "High-speed Internet connection for border guard vessels" (hereinafter **Procurement Proceedings**) and/or therefrom arising fulfilment of a public contract (hereinafter **Procurement Contract**) (hereinafter Procurement Proceedings and Procurement Contract jointly referred to as **Project**), whose terms and consequences this agreement does not contemplate, the Company and SMIT may disclose to each other technical, commercial, financial and other information of confidential nature,

**the Parties concluded this non-disclosure agreement (hereinafter Agreement) to settle the terms of the disclosure, use and protection of the confidential information as follows:**

1. The purpose of this Agreement is to set forth the rules relating to the use and protection of Confidential Information (as defined below) disclosed by a Party (hereinafter **Disclosing Party**) to the other Party (hereinafter **Receiving Party**) or having become known to the Receiving Party as well as the confidentiality obligations of the Receiving Party with respect to the Confidential Information. Nothing in this Agreement shall be construed as compelling the Parties to disclose any Confidential Information to each other, or to enter into any further contractual relationship.
2. For the purpose of this Agreement the term **Confidential Information** shall mean any information disclosed by the Disclosing Party to the Receiving Party in connection with the Project, or which has become known to the Receiving Party, whether in writing, orally, visually, in the form of samples, models or otherwise, provided that such information, (i) if written, is clearly and conspicuously marked as being proprietary or confidential and that (ii) if oral, visual and in other non-written form, including information acquired during a visit to the premises of a Party or the place of fulfilment of any Procurement Contract, is designated as Confidential Information at the time of disclosure and is confirmed by the Disclosing Party as such in writing within thirty (30) days of its being disclosed. All the protection and restrictions applicable to Confidential

Information under this Agreement shall apply to the information disclosed in non-written form as from disclosure and during the said period of thirty (30) days. Confidential Information means also all notes, analyses, compilations, studies, interpretations or other documents prepared by the Receiving Party which contain, reflect or are based upon, in whole or in part, Confidential Information.

3. **Confidential Information** particularly includes, but is not limited to the following information, whether marked or designated as being proprietary or confidential or not:
  - 3.1. any terms of contract;
  - 3.2. information about IT solutions and configuration of hardware and software;
  - 3.3. information that would, if disclosed to the public domain, simplify attacks on or manipulations of national IT systems and databases;
  - 3.4. information that would, if disclosed to the public domain, damage national IT systems or databases or the reputation or reliability of national institutions;
  - 3.5. information, which shows the direct or indirect effects of implementation or non-implementation of any systems;
  - 3.6. information about individuals, national institutions or financial information;
  - 3.7. information about the technical specification disclosed in the course of the Project;
  - 3.8. information classified as a state secret or as classified foreign information;
  - 3.9. information in respect of which restriction on access is established by law or to which access is restricted pursuant to the procedure established by law;
  - 3.10. information that would, under the circumstances, appear to a reasonable person to be confidential.
  
4. In consideration of and subject to the foregoing, the Receiving Party in each case undertakes in respect of Confidential Information and for the duration of this Agreement:
  - 4.1. to keep the Confidential Information in strict confidence;
  - 4.2. to keep a record of all Confidential Information and of the location of such information, a copy of which record will be made available to the Disclosing Party at the latter's request;
  - 4.3. except with the prior written consent of the Disclosing Party, not to make or cause to be made any disclosure of such Confidential Information to any third party, and provided that such disclosure is made solely for the purpose directly related to the Project and then only on the condition that such third party is made aware of and undertakes in writing to observe the provisions of this Agreement. Any third party means any individual or company other than the Company and SMIT. Irrespective of the fact with which secunet-company this contract will be closed, no one of the following companies can be regarded as third party: secunet Security Networks AG, secunet International GmbH & Co. KG, secunet International Management GmbH, secustack GmbH and stashcat GmbH. The undersigned of secunet Security Networks AG is responsible for the above companies in accordance with the agreement;
  - 4.4. not to use Confidential Information otherwise than for the purposes of the Project, unless such use is specifically authorised in writing by the Disclosing Party;
  - 4.5. to protect Confidential Information, whether in storage or in use, with the highest degree of diligence, applying all necessary security, IT and other relevant measures at its own expense;
  - 4.6. not to disclose Confidential Information to any persons employed by it or otherwise engaged by it in the performance of its duties other than those for whom such knowledge is essential for the purposes of the Project and such disclosure to them shall be made only under conditions of strict confidentiality;
  - 4.7. not to copy or reproduce Confidential Information to writing except as may be strictly necessary for the purpose of the Project;

- 4.8. not to modify, reverse engineer, decompile, create other works from or disassemble any software programs contained in the Confidential Information without the Disclosing Party's prior written consent;
- 4.9. inform the Disclosing Party immediately in writing of any queries relating to Confidential Information or the need to disclose Confidential Information by law before answering to any such queries of disclosing Confidential Information under applicable laws;
- 4.10. inform the other Party immediately of any circumstances which might arise or have arisen that will or might constitute a breach of this Agreement or prevent the achievement of the purpose of the Agreement; and
- 4.11. in case of termination of this Agreement or in case either Party elects not to pursue the purpose contemplated by the Project or upon receiving a written request from the Disclosing Party, the Receiving Party shall immediately destroy all documents or files (and all copies of any of the foregoing, including "copies" that have been converted to computerized media in the form of image, data or word processing files either manually or by image capture) including or based on any Confidential Information, all tangible material embodying Confidential Information and all notes, summaries, memoranda, drawings, manuals, records, excerpts or derivative information deriving from Confidential Information, in whatever form of storage or retrieval, unless the Disclosing Party requests return thereof in which case the Receiving Party shall return the information carriers to the Disclosing Party. The return or destruction of documentation shall not be deemed to release either Party from its obligations arising from this Agreement.

4.11.1. This excludes:

- 4.11.1.1. information in need of protection and copies thereof if and for such retention period required by law and
- 4.11.1.2. routinely prepared backup copies of the electronic data traffic.

5. Notwithstanding the above, information disclosed or having become known to the Receiving Party shall not be considered Confidential Information where the Receiving Party can prove that such information:
  - 5.1. before the time of disclosure was, or thereafter became, part of the public domain otherwise than through an act of the Receiving Party, or by circumstances dependent on the Receiving Party or by an event the risk of which is borne by the Receiving Party;
  - 5.2. becomes known to the Receiving Party, without restriction, from a source other than Discloser without breach of this Agreement by Recipient and otherwise not in violation of Discloser's rights, or
  - 5.3. was already known to the Receiving Party at the date of receipt of Confidential Information pursuant to this Agreement, or
  - 5.4. was independently developed by the Receiving Party without making use of the Disclosing Party's Confidential Information, or
  - 5.5. has been approved for release or use (in either case without restriction) by written authorisation of the Disclosing Party.
6. Liability
  - 6.1. In case of a breach of the Agreement SMIT has the right to demand from the Company a contractual penalty up to the sum of 20 000 euros for every incident. In such a case, SMIT shall present a justified claim in writing.
  - 6.2. In addition to the contractual penalty, SMIT has the right to demand compensation for any damages incurred and exceeding the contractual penalty.
  - 6.3. The Party in breach of obligation shall pay the contractual penalty within 30 calendar days.

6.4. In case of a delay in the payment of the contractual penalty, the suffering Party may require the other Party to pay interest on delay in the amount of 0,1% of the unpaid amount per calendar day until conforming payment.

7. Each Party designates the below identified person(s) from within its own organisation to receive and disclose all Confidential Information which is subject to this Agreement and to maintain a log and/or file thereof:
- 7.1. For SMIT
  - 7.2. For Company

Any alteration in the name or address of the above individual by one Party shall be notified to the other Party in writing.

8. This Agreement shall not be construed as granting or conferring, either expressly or impliedly, any rights under patents, copyright or any other form of intellectual property rights belonging to the Disclosing Party in respect of Confidential Information, the ownership of which shall remain vested in the Disclosing Party at all times.
9. All Confidential Information and carriers thereof, submitted by one Party to the other shall remain the property of the Disclosing Party.
10. In providing Confidential Information hereunder, the Parties make no representation, warranty, assurance, or inducement, expressed or implied, as to its adequacy, sufficiency or freedom from defect of any kind, including, but not limited to, freedom from patent infringement that may result from the use of such information, nor shall the Parties incur any responsibility or obligation by reason of such information.
11. This Agreement is entered into for the duration of ten (10) year as of the Effective date.
12. Neither Party shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the other Party hereto, except to a successor in ownership of substantially all of the assets of the assigning Party if the successor in ownership expressly assumes in writing the terms and conditions of this Agreement. Any attempted assignment without written consent will be void.
13. Each Party shall use every reasonable endeavour to ensure that its employees and other persons, when disclosure of Confidential Information has been specifically authorized by the Disclosing Party, shall observe the obligations contained herein as if such employees and other persons were a Party to this Agreement.
14. Any Confidential Information disclosed by the Parties under this Agreement which is classified information i.e. information classified as state secret or otherwise provided with a military or police security classification by the competent national military, police or other relevant authority, shall be identified by the Disclosing Party as classified information at the time of disclosure and the disclosure, protection, use and handling of such information shall be in accordance with security procedures prescribed by the respective national legislation.
15. The present Agreement shall be construed in all respects in accordance with the laws of Estonia. Any dispute that the Parties cannot settle amicably relating to this Agreement shall be exclusively and finally settled by the competent courts of Estonia.

16. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes and cancels all prior representations, negotiations, commitments, undertakings, communications, whether oral or written, understandings and agreements between the Parties, with respect to or in connection with any of the matters or things to which such Agreement applies or refers.

17. This Agreement can only be changed by a written amendment agreed upon by the Parties hereto and signed by authorized representatives of the Parties.

IN WITNESS whereof the Parties have caused this Agreement to be signed by their duly authorized representatives on the date first above written.

For and on behalf of

For and on behalf of

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