



Zentrum für sichere Informationstechnologie – Austria Secure Information Technology Center - Austria

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NON-DISCLOSURE STATEMENT

of

Zentrum für sichere Informationstechnologie - Austria (A-SIT)
Weyringergasse 35, A-1040 Vienna, Austria

(referred to as “**A-SIT**”)

This statement is made on 18.04.2001.

1. RECITALS

A. The Business Purpose shall, for the purpose of this Statement, mean:

“The necessary tasks of A-SIT as a confirmation body according to the Austrian Federal Electronic Signature Law (*Bundesgesetz ueber elektronische Signaturen, BGBl 190 / 1999*)”

B. In this Statement, any party applying for a confirmation according to §18(5) of the Austrian Federal Electronic Signature Law and disclosing certain information to A-SIT shall be referred to as the “Disclosing Party”.

A-SIT THEREFORE AGREES AS FOLLOWS:

1. Confidential Information

All information, whether commercial, financial, technical or otherwise, including without limitation all secret or confidential information of the Disclosing Party in whatever form, together with all analyses, compilations, data, studies or other documents prepared by A-SIT which are derived from or in connection with such information or which contain or are based in whole or in part upon such information, shall be referred to in this Statement as “Confidential Information”.

2. Disclosure of Confidential Information

A-SIT acknowledges that Confidential Information is a valuable, special and unique asset belonging to the Disclosing Party.

A-SIT agrees that it will not disclose Confidential Information of the Disclosing Party to any person, firm, corporation, association or any other entity for any reason or purpose whatsoever, provided however, that A-SIT shall be permitted to disclose Confidential Information on a need-to-know basis to all staff, both support and management, employed by it, affiliated or associated non-commercial organisations, provided that the terms of this Statement are made known to such staff, who will be bound by the terms of this Statement.

A-SIT further agrees that Confidential Information may be disclosed to their professional advisers, agents and consultants provided that such professional advisers, agents and consultants sign an undertaking relating to confidentiality on the same terms and conditions as contained herein.

A-SIT agrees that it shall not utilise, employ, exploit or in any other manner whatsoever use Confidential Information disclosed by the Disclosing Party other than for the Business Purpose without the express written consent of the Disclosing Party.

A-SIT shall restrict Confidential Information received from the Disclosing Party to the officers and employees of A-SIT on a need to know basis and will not, save as expressly provided in this Statement, disclose Confidential Information to any other persons.

3. Title

All Confidential Information of the Disclosing Party is acknowledged by A-SIT to be the property of the Disclosing Party and the disclosure of Confidential Information shall not be deemed to confer on A-SIT any rights to such Confidential Information.

4. Standard of Care

A-SIT agrees that it shall protect Confidential Information of the Disclosing Party using not less than the same standard of care that it applies to its own Confidential Information and that Confidential Information shall be stored and handled in such a way as to prevent unauthorised disclosure.

5. Return of Confidential Information

Prior to issuing any confirmation according to §18 (5) of the Austrian Federal Electronic Signature Law the Disclosing Party may request return of Confidential Information. In such a case A-SIT will return or destroy Confidential Information according to the request and at the expense of the Disclosing Party. Such destruction will be confirmed by A-SIT in writing. After issuing a confirmation according to §18 (5) of the Austrian Federal Electronic Signature Law A-SIT cannot return or destroy Confidential Information upon request if such information is relevant for the monitoring of the technology in question.

6. Excluded Information

The obligations pursuant to this Statement shall not apply to any Confidential Information that:

- a) is in the possession of A-SIT prior to receipt from the Disclosing Party;
- b) is or becomes publicly known, otherwise than as a consequence of a breach of this Statement;
- c) is developed independently by A-SIT without access to the Confidential Information;
- d) is disclosed by A-SIT to satisfy the legal demand by a competent Court of Law or administrative body as set out by law, provided however that in these circumstances A-SIT shall advise the Disclosing Party prior to disclosure so that the Disclosing Party has an opportunity to defend, limit or protect against such production or disclosure, and provided further that A-SIT will disclose only that portion of Confidential Information which is legally required to be disclosed and A-SIT will exercise its reasonable efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded to any Confidential Information so required to be disclosed;
- e) consists solely of generalised ideas, concepts, know-how or techniques relating to computer hardware or software; or
- f) is received from a third party without similar restrictions and without breach of this Statement.

Except as provided above, the obligations of paragraphs 2, 3, 4 and 5 of this Statement shall survive the completion of the Business Purpose or the termination for whatever reason of this Statement.

7. Representations and Warranties

A-SIT represents and warrants to the Disclosing Party that it is an organisation duly organised and validly existing in the jurisdiction of its incorporation. A-SIT represents that it has full corporate power and authority to enter into this Statement and to do all things necessary for the performance of this Statement. A-SIT cannot warrant that Confidential Information has not been provided in breach of any other agreements between the Disclosing Party and third parties.

8. Entire Agreement and Severability

This Statement contains the entire agreement of A-SIT with respect to the subject matter of this Statement and supersedes all prior agreements, whether written or oral, with respect to the subject matter of this Statement.

In the event that any one or more of the provisions contained in this Statement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Statement, which shall be construed as if such invalid, illegal or unenforceable provision had never been set forth herein, and the Statement shall be carried out as nearly as possible according to its original terms and intent.

9. Notices

All notices, demands or other communications under this Statement shall be given or made in writing, and shall be delivered personally, or sent by certified or registered mail, with return receipt requested, addressed to the Disclosing Party or A-SIT at the address set out at the head of this Statement or at such other addresses as may be designated by notice from the Disclosing Party or A-SIT, with a copy sent by telefax at such number as A-SIT hereto shall designate from time to time. Any notice, demand or other communication given or made by mail in the manner prescribed is governed by the legal provisions for communication with Austrian government agencies.

10. Additional Provisions

A-SIT acknowledges that breach of this Statement and unauthorised disclosure of Confidential Information is likely to cause substantial and irreparable damages to the Disclosing Party.

A-SIT shall execute and deliver such other documents and do such other acts and things as may be necessary or desirable to carry out the terms, provisions and purposes of this Statement.

No amendment, interpretation or waiver of any provisions of this Statement shall be effective unless made in writing and signed by A-SIT.

The failure to enforce or to require the performance at any time of any one of the provisions of this Statement shall not be construed to be a waiver of such provision, and shall not affect either the validity of this Statement or any part hereof or the right of the Disclosing Party thereafter to enforce each and every provision in accordance with the terms of this Statement.

The headings of paragraphs are used for convenience only and shall not affect the meaning or construction of the contents of this Statement.

11. Governing Law

This Statement and the relationships of A-SIT and the Disclosing Party in connection with the subject matter of this Statement shall be governed by and determined in accordance with the laws of Austria and A-SIT and the Disclosing Party submit to the non-exclusive jurisdiction of the Courts of Austria in relation to any legal actions or proceedings arising out of or in connection with this Statement.