

NON-DISCLOSURE AGREEMENT (NDA) / TERMS AND CONDITIONS

By requesting the RFQ/RFP/RFI document, YOU (Company and authorised representative of the Company) acknowledge and agree to the below NDA Terms and Conditions:

- (a) YOU will use the RFQ solely in order to evaluate whether YOU wish to make a bid to supply the relevant services, and if so to formulate that bid and to take part in discussions and negotiations and otherwise communicate with ES regarding the subject matter of the RFQ in accordance with the terms of the RFQ.
- (b) YOU shall at all times keep confidential and not at any time, without the prior written consent of ES, disclose or reveal the RFQ or the existence or contents of any discussions, negotiations or other communications with ES (including without limitation any bid(s) submitted by YOU) ("Confidential Information") other than to those of our representatives, directors, officers, employees or advisers to whom disclosure is necessary for the purposes set out in paragraph (a) above (each a "Permitted Person"). YOU shall procure that each such Permitted Person is made fully aware, accepts and shall comply with terms of this letter and if any Permitted Person breaches the terms of this letter then such breach shall be deemed to be a breach by YOU and all rights of ES in respect of the breach may be exercised against YOU and/or the Permitted Person who is in breach of this letter. YOU agree that all specifications, reports, documents developed for/by ES based on the Confidential Information belong to ES, and ES shall have sole rights to all intellectual property that is developed and YOU hereby irrevocably waive any and all rights or claims against ES with respect to such use;
- (c) the disclosure of Confidential Information shall not (i) determine or create any obligations on ES (ii) create any relationship between us and ES and shall not be construed as a partnership or joint venture (iii) oblige ES to enter into any contract;
- (d) whether successful or not, YOU shall upon termination of the RFQ process, ensure that all forms of Confidential Information (including any and all copies thereof) in your possession or control (including all Permitted Persons) shall be returned to ES at any time upon written request of ES for any reason or destroyed and, upon written request, YOU shall certify in writing to ES that such action has been taken;
- (e) YOU acknowledge that ES is and/or may be subject to laws, regulations, and ordinances in Switzerland, the United Kingdom and other countries governing the privacy and confidentiality of personal information including laws and regulations of the EU/EAA (EU Directive 95/46/EC and General Data Protection Regulation EU) and/or of their member states, of Switzerland and of the United Kingdom ("Privacy Laws"). YOU shall comply with all applicable Privacy Laws relating to the collection, use and disclosure of any personal information. In addition to the foregoing, YOU hereby certify that YOU shall not transfer any personal information of ES outside Europe without the prior written consent of ES and YOU have implemented and shall maintain an effective information security program to protect personal information of ES, ES employees, members, directors, customers, and agents, which program includes administrative, physical and technical safeguards to: (i) ensure the security and confidentiality of such personal information; (ii) protect against any anticipated threats or hazards to the security or integrity of such personal information; and (iii) protect against unauthorized access to or use of such personal information. No limitation of liability shall apply to any liability arising out of or in connection with this provision;
- (f) notwithstanding the return or destruction of the Confidential Information, YOU agree that the provisions of this letter shall apply and be in force and effect from disclosure of the RFQ or from the disclosure of Confidential Information whichever is earlier and shall survive until such time as all Confidential Information disclosed hereunder becomes publicly known and made generally available through your action or inaction;
- (g) YOU acknowledge and agree that these NDA Terms and Conditions, and any and subsequent related agreements (if any), shall be governed by and construed in accordance with Swiss law and that the courts of Geneva, Switzerland shall have exclusive jurisdiction.