

Participation Agreement

1. Background

- 1.1 Lilly means Eli Lilly and Company, an Indiana corporation.
- 1.2 Lilly is interested in having Participant respond to a particular request for information, proposals, or quotations and has furnished Participant a unique, password-protected username that allows Participant access to Lilly's eSourcing system, including this Participation Agreement.
- 1.3 Other capitalized terms used in this Participation Agreement are defined below.

2. Preservation of Prior Written Agreements

- 2.1 This Participation Agreement is not intended to supersede or revise any prior written agreements between the parties that apply to this request. If a prior written agreement conflicts with Section 3 of this Participation Agreement, Section 3 applies only to the extent it does not conflict. Section 4 does not apply to any Confidential Information that is within the scope of Participant's obligations of confidentiality and nonuse under a prior written agreement.

3. Intent to Respond

- 3.1 By indicating its intent to respond to a particular request in the manner indicated in Lilly's eSourcing system, Participant represents that it has a bona fide interest in participating in the request and accepts this Participation Agreement.
- 3.2 Participant may withdraw from the request process for any reason prior to submitting a response. Participant may withdraw for any reason after submitting a response except to the extent that the request requires the submission to comprise a firm offer remaining open for a specified amount of time. Lilly requests the courtesy of written notice if Participant chooses to withdraw, although none is required. Participant's failure to submit a response to the request or to furnish any additional information requested by Lilly within the time designated by Lilly is deemed a withdrawal.
- 3.3 Participant bears all its own costs of responding to the request, including the costs of preparing its submission and responding to any additional requests for information.
- 3.4 Lilly may do any of the following in its sole discretion:
 - 3.4.1 Withdraw the request.
 - 3.4.2 Exclude any Participant.
 - 3.4.3 Issue any other requests for information, proposals, or quotations, including requests that are similar to this one.
 - 3.4.4 Accept or reject any or all responses to the request.

4. Lilly's Confidential Information

- 4.1 In the course of the request, Participant may have access to Lilly's Confidential Information such as information regarding research and development plans and results; new compounds and processes; evaluation procedures (including clinical and field testing); product formulations; manufacturing methods; applications to government authorities; pricing and cost figures; construction plans; sales, marketing, and advertising studies and plans; customer lists; computer information and software; special techniques unique to Lilly's business; information subject to a right of privacy; and information Lilly maintains under a system of protection against unauthorized access. In particular, Participant acknowledges that Lilly's Confidential Information includes all prices and other Participant-specific terms of any response to the request that Participant may furnish.
- 4.2 Participant will neither
 - 4.2.1 disclose Lilly's Confidential Information except as authorized below or by Lilly in writing, nor
 - 4.2.2 use Lilly's Confidential Information for any purpose other than responding to the relevant request.
- 4.3 Participant may disclose Lilly's Confidential Information to:
 - 4.3.1 its Representatives who need to know the information for the purpose of responding to the request and who have contractual obligations that prohibit any disclosure and use of Lilly's Confidential Information prohibited by this Participation Agreement regardless of whether the person remains a Representative. Participant is responsible to Lilly for any unauthorized disclosure or use of Lilly's Confidential Information by Participant's Representatives.

4.3.2 to the extent compelled by applicable law. If permitted by applicable law, Participant will give Lilly reasonable advance notice of the disclosure.

4.3.3 to its attorneys or accountants who have a professional obligation to maintain such information in confidence. Participant is responsible to Lilly for disclosure or use by any such persons of Lilly's Confidential Information not authorized by Lilly.

5. Choice of Law

5.1 This Agreement will be governed in all respects by the laws of Indiana, excluding its rules on conflict of law.

6. Definitions

6.1 Affiliate of a party means any entity that controls, is controlled by, or is under common control with that party. One entity is deemed to control the other if and only if it directly or indirectly:

6.1.1 owns more than fifty percent (50%) of the equity in the other; or

6.1.2 controls more than fifty percent (50%) of the voting rights of the other.

6.2 Confidential Information means information deemed confidential or proprietary by a party (the "disclosing party"), including information deemed confidential by virtue of a duty or obligation owed to a third person. The confidential nature of information is not affected by the manner of its communication to or acquisition by the other party, its Affiliates, Representatives, or independent contractors (the "receiving party"). Confidential Information does not include any information that:

6.2.1 was or becomes generally known to the public by means other than a breach by the receiving party of a contractual, legal, or fiduciary duty of confidentiality owed to the disclosing party, its Affiliates, or its Representatives;

6.2.2 is in the lawful possession of the receiving party prior to acquisition as a result of this Agreement;

6.2.3 was or becomes available to the receiving party on a non-confidential basis from a third person that is not bound by any contractual, legal, or fiduciary duty of confidentiality to the disclosing party, its Affiliates, Representatives, or independent contractors with respect to that information; or

6.2.4 is developed entirely by Representatives of the receiving party who have no access to the disclosing party's Confidential Information.

6.3 Representative means an officer, director, employee, or independent contractor of a party or of a party's Affiliate.