

## **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. Participant's Confidential Information**

- 5.1 In the course of the request, Lilly may have access to Participant's Confidential Information, and will neither disclose Participant's Confidential Information or use it for any other purpose other than for Lilly's request for participation.

**6. Choice of Law**

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

**7. Definitions**

- 7.1 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:
  - 7.1.1 owns more than fifty percent (50%) of the equity in the other; or
  - 7.1.2 controls more than fifty percent (50%) of the voting rights of the other.
- 7.2 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:
  - 7.2.1 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;
  - 7.2.2 is in the lawful possession of the receiving party prior to acquisition as a result of this Agreement;
  - 7.2.3 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
  - 7.2.4 is developed entirely by Representatives of the receiving party who have no access to the disclosing party's Confidential Information.
- 7.3 Representative means an officer, director, employee, or independent contractor of a party or of a party's Affiliate.

## **RFx Terms and Conditions**

In these Terms and Conditions, "Lilly" means Eli Lilly and Company, and "you" or "your" refers to any potential supplier who submits a response to this RFx.

By responding to the RFx or indicating an Intent to Bid, you agree to the following:

1. You shall only contact the Lilly contact provided in this RFx document.
2. This RFx is not a contract for products or services and Lilly will not be responsible for time and materials utilized by you or any other person in the preparation of responses.
3. All information, including quoted pricing, furnished in any proposal submitted by you will remain valid and applicable for a minimum of ninety (90) days from the date that the proposal is received by Lilly.
4. This RFx may result in awards to more than one supplier based on the ability of supplier(s) to meet Lilly's needs described in this RFx.
5. It is your responsibility (not Lilly's) to clarify any issues and to complete the RFx on time and in full. Failure to do so may be taken into account by Lilly in the supplier selection process.
6. Lilly will not review or evaluate generic materials submitted in response to its specific requirements in this RFx.
7. Lilly reserves the right to reject all proposals and to resubmit this RFx to the marketplace.
8. Failure to respond to the questions in the RFx or failure to follow the directions may result in your disqualification from this supplier selection process or prejudice the assessment of your bid. If a particular question is not applicable to your organization, please explain why. Do not skip any questions.
9. In the event that you are awarded a contract, your response to this RFx may be attached to the actual contract and all parts of your proposal would become binding unless otherwise provided in the contract.
10. This RFx and all your rights and those of Lilly shall be governed, construed, and enforced in accordance with Indiana law and shall be subject to the exclusive jurisdiction of the Courts of Indiana.
11. You must at all times meet and comply with all applicable laws, rules, regulations and codes with respect to this RFx and the proposed products and services which may be provided as a result of your response to this RFx.
12. You shall indemnify and hold harmless Lilly, its officers, directors, employees, and agents from and against all claims, liabilities, obligations, damage or expenses which resulted, directly or indirectly, from or in connection with any negligent act, error, or omission, or wilful misconduct related to this RFx by you or any subcontractor of yours or your respective employees or agents.
13. In providing any supply as a result of this RFx, you and your employees must follow all Lilly policies and procedures in their entirety regardless of whether they conflict with your own standard operating procedures. If you are selected as a supplier, you will be provided with a copy of Lilly's relevant policies and procedures with which you must comply.
14. Lilly reserves the right to review throughout the supplier selection process and/or the term of any resultant contract any and all of your documentation pertaining to products or services supplied or to be supplied to Lilly.
15. You represent and warrant that all schedules, proposals, documents, financial statements and materials provided and to be provided by you to Lilly do not contain any untrue statement of material fact or omit any material fact which may make the statements contained therein misleading. In the event that financial statements are provided to Lilly, you warrant that the financial statements present fairly and accurately in all material respects your financial position,

the results of your operations and costs and expenses for the periods specified and have been prepared in conformity with Generally Accepted Accounting Principles. Upon request by Lilly, you agree to provide Lilly with updates to any due diligence or RFx material as part of Lilly's ongoing vendor management program.

16. You agree that you shall not, without the prior written consent of Lilly in each instance, use in advertising, publicity or otherwise the name of Lilly, or any affiliate, partner or employee of Lilly, nor any trade name, trademark, trade device or simulation thereof owned by Lilly, or represent, directly or indirectly, that any product or any service provided by you has been approved, recommended, certified, or endorsed by Lilly. Should any proposal made by you under this RFx be accepted in whole or in part by Lilly, you and Lilly agree not to advertise any affiliation with each other and not to publicly reveal the existence of any agreement between you and Lilly or any of the terms of any such agreement, without the prior written consent of Lilly.
17. You acknowledge that the issuance and subsequent receipt of this RFx does not obligate Lilly to purchase any product or services. Lilly will not be bound to purchase product or services until such time as a contract is executed.
18. In relation to the independence of your bid and your pricing, you certify that:
  - a. The prices in your proposal have been arrived at independently without any consultation, communication, or agreement with any other bidder or competitor, except those specifically listed in your proposal, if any.
  - b. The prices in your proposal have not been and will not knowingly be disclosed by you, directly or indirectly, to any other bidder or competitor before the conclusion of any contract arising from this RFx.
  - c. No attempt has been made by you or will be made by you to induce any other person or concern to submit or not to submit a proposal.
19. Except for any information provided by the person identified in Section 1 of this RFx, and the RFx, you certify that you received no assistance in preparing your response from any current or former employee of Lilly whose duties relate(d) to this RFx.
20. In relation to gifts and gratuities, you certify that:
  - a. You, your employees and/or agents shall not give or offer to give any bribe, improper payments, or inappropriate gift, including expensive entertainment, to any Lilly employees or members of their families or other third parties engaged by Lilly.
  - b. In the event that you are approached by anyone suggesting fraudulent or unethical behavior with regard to your business activities with Lilly, or if any request is made to you, your employees and/or agents by any Lilly employee or member of their families for gifts or gratuities of any kind, you agree immediately to notify Lilly Procurement Management.
  - c. You certify by submission of your proposal that you know of no gifts or gratuities, of any kind whatsoever, paid to any Lilly employee or any member of their families by you, your employees and/or agents during the past five (5) years, except as otherwise set forth in writing to Lilly Procurement Management with your RFx response.