

Procurement

Non-Disclosure Agreement | NDA

VERWO and the Contractual Partner (hereinafter also referred to individually or collectively as 'Party' or 'Parties') intend to exchange confidential information and know-how that is not generally accessible and represents trade secrets of the respective Parties in the execution of various projects. The Parties are entering into the following Agreement in order to protect their mutual interests in respect of this confidential information and know-how.

1.0 Definitions

1.1 For the purpose of this Agreement, the term 'confidential information' refers to

- + all specifications, data, plans, models, films, images, documents, templates, samples, software and all other types of information about measures, equipment, facilities, procedures, structures and other matters concerning VERWO
- + that are disclosed to the Contractual Partner verbally, electronically or in writing or of which the Contractual Partner otherwise becomes aware, and
- + are either marked as confidential or are to be presumed to be confidential in light of the circumstances.

Confidential information also encompasses combinations of information, even if the individual pieces of information on which the combination is based do not meet the above criteria.

1.2 However, information is not confidential if it can be proven to

- + have been known to the Contractual Partner before it was disclosed, or
- + was public knowledge or generally accessible before it was disclosed, or
- + have become public knowledge or generally accessible after it was disclosed without the Contractual Partner being responsible for this disclosure, or
- + have been known or disclosed to the Contractual Partner at any point by an authorised third party.

The Contractual Partner bears the burden of proving such circumstances.

1.3 For the purpose of this Agreement, 'know-how' is the entirety of technical knowledge that is secret, essential and designated in an appropriate manner.

1.4 The affiliates of a Party or its majority shareholder are not considered third parties for the purpose of this Agreement.

2.0 Confidentiality and Non-Use

2.1 The Parties undertake not to disclose to third parties any confidential information and know-how (as defined in section 1) received from VERWO without the prior written consent of VERWO. In this case, the Contractual Partner is obliged to ensure that the third party receiving the information is subject to confidentiality and non-use obligations that are equivalent to the provisions of this Agreement.

2.2 The Contractual Partner undertakes not to utilise the work results or findings that it obtains or creates through its partnership with VERWO and are based on confidential information or know-how of VERWO, and not to apply for a patent or utility patent for them or render them accessible in any way to third parties.

In particular, this obligation encompasses the prohibition against offering, selling, delivering and otherwise rendering accessible to third parties (a) products containing work results or findings (as defined in the paragraph above) created as part of the project and (b) the work results and findings themselves.

The Contractual Partner can only be released from the obligations set out in section 2.2 with the prior written consent of VERWO. VERWO shall grant its consent if the products or work results and findings are to be used for applications outside of the territories in which VERWO or an affiliate of VERWO is operating.

2.3 The obligations set out in sections 2.1 and 2.2 shall remain in effect even after the completion of the project and for as long as the information remains confidential and the know-how remains secret.

2.4 VERWO retains all rights to confidential information and know-how unless the Parties have signed a written agreement concerning the transfer of rights or the granting of licences in favour of the recipient of the information. In any case, the Parties reserve the right to file applications for industrial property right protection for their confidential information and know-how.

3.0 Other provisions

In so far as legally permissible, the Contractual Partner shall impose the obligations of this Agreement upon those of its employees, freelancers and sub-contractors involved in the execution of the project in a suitable manner; these obligations must remain in effect even after the termination of their contractual relationships with the Contractual Partner. VERWO may request evidence of the measures that have been implemented.

These provisions also apply to affiliates and associates of the Contractual Partner in Switzerland and abroad. The Contractual Partner undertakes to accept claims resulting from a breach of this Agreement by such companies as it would if the Contractual Partner itself had breached the Agreement.

The Contractual Partner accepts this Agreement either expressly by means of a written declaration or implicitly by completely or partially fulfilling a contract or request. This Agreement cannot be terminated.

All ancillary agreements and amendments and supplements to this Agreement must be made in writing. This also applies to any waiver of the written form requirement.

If any individual provision of this Agreement should prove legally ineffective, this shall not affect the effectiveness of the remaining provisions of this Agreement. The Parties undertake to amend the ineffective provision in such a way that it becomes legally permissible conforming as closely as possible to its original economic purpose.

The place of jurisdiction for all disputes arising from or in connection with this confidentiality agreement is Lachen, Switzerland.

This Agreement is subject to Swiss law.

Version: January 2018