

NON-DISCLOSURE AGREEMENT Reg. No.:

concluded pursuant to the provisions of Article 269, paragraph 2 and Article 271 of the Act no. 513/1991 Coll. The Commercial Code as amended (hereinafter referred to as the **"Commercial Code"**)
between the parties of the agreement:

eustream, a.s.

Registered office:	Votrubova 11/A, 821 09 Bratislava, Slovak Republic
Incorporated in:	Business Register of the District Court Bratislava I., Slovak Republic, Section: Sa, Insert No: 3480/B
Represented:	Ing. Viliam Križan, Head of Procurement, Logistics and Services
	Mgr. Silvia Horaničová, Strategic Procurement Manager
Company ID:	35 910 712
VAT ID:	SK2021931175
Tax ID:	2021931175
Bank details I.:	VÚB, a.s.
SWIFT (BIC):	SUBASKBX
IBAN:	SK72 0200 0000 0000 0110 1153
Bank details II.:	Tatra banka, a.s.
SWIFT (BIC):	TATRSKBX
IBAN:	SK78 1100 0000 0029 3570 0511
Contact person:	Ing. Martin Mikula, Procurement Expert

(hereinafter referred to as the **"Disclosing Party"**)

and

[To be specified by Bidder]

Registered office:
Incorporated in:
Represented:
Company ID:
VAT ID:
Tax ID:
Bank details I.:
SWIFT (BIC):
IBAN:
Contact person:

(hereinafter referred to as the **"Receiving Party"**)

(The Receiving Party and the Disclosing Party hereinafter commonly referred to as the **"Agreement Parties"** or individually **"Agreement Party"**).

Preamble

In connection with the tendering procedure ref. no. 22-0180-OVS for awarding the contract for sale of gas generators SGT-A35/Industrial RB 211 24G DLE and power turbines RT 62, the Disclosing Party will disclose to the Receiving Party some information and documents that are necessary for the preparation and submission of a tender under the aforementioned contract award procedure (hereinafter referred to as the “**Purpose**”).

Some of the information or documents that the Disclosing Party will disclose to the Receiving Party in relation to the Purpose may be of a confidential nature. The Disclosing Party aims in maintaining the confidentiality of all such information. Therefore, the Disclosing Party will provide such information or documents to the Receiving Party under the terms and conditions set forth in this Non-Disclosure Agreement (hereinafter referred to as the “**Agreement**”).

The purpose of this Agreement is to ensure the confidentiality of the confidential information as defined herein, and the declaration of the Agreement Parties on the legal nature of the provided information.

The Agreement Parties, taking into account the aforementioned, have hereby agreed to the following Agreement:

Article I. Subject of the Agreement

1. This Agreement governs the terms and conditions under which the Disclosing Party will disclose confidential information to the Receiving Party in relation to the performance specified above for the Purpose set forth herein. The Agreement Parties have further agreed that the obligations under this Agreement shall apply accordingly also to confidential information that has eventually been disclosed prior to the conclusion of this Agreement.
2. For the purpose of this Agreement, “**confidential information**” shall mean and include any and all information, data or knowledge disclosed by the Disclosing Party to the Receiving Party or provided in connection with the purpose defined herein above, regardless of whether it is in tangible or intangible form, whether expressed orally, in writing or in any other form, even if not explicitly designated as confidential or protected by laws on unfair competition, industrial property or copyright, (hereinafter referred to as “**confidential information**”).
3. The Receiving Party undertakes maintain confidentiality of all confidential information that is in particular commercial and financial information and data, prices, market intelligence information, information on earnings and/or revenues, costs, invoiced amounts, technical information, drawings, studies, ideas and know-how, which the Receiving Party has acquainted with, or obtained, within cooperation with the Disclosing Party, including the information relating the previous, current and/or future research, development or business activities, products and/or services of the Disclosing Party.
4. The confidential information disclosed under this Agreement is, and even after disclosing thereof shall remain, sole property of the Disclosing Party. Nothing contained in this Agreement or any disclosure of confidential information by either Agreement Party shall be construed as granting permission or assigning any right to use the confidential information disclosed to the Receiving Party in any manner other than as provided in this Agreement.
5. The Receiving Party is obliged to keep the confidential information received from the Disclosing Party in secrecy, to treat it as strictly confidential and protect it from disclosing to any third party exempt for those third parties cooperating with the Receiving Party in elaboration of the tender provided however such third parties are subject to a confidentiality obligation of no less restrictive terms than this Agreement. For avoidance of doubt, the Receiving Party is authorized, under the conditions of this Agreement, to disclose the confidential information to those third parties who cooperate with the Receiving Party in preparation of a tender under the contract award procedure for gas generators and power turbines.
6. The Receiving Party agrees that, if it discloses the confidential information to a third party, the Receiving Party shall be liable for such third party’s breach of confidentiality as if it had breached confidentiality itself.

7. Should the Receiving Party discover that the confidential information has been disclosed to an unauthorized party, it is obliged to inform the Disclosing Party on such disclosure without delay and take steps needed to prevent damage or to limit it to the lowest minimum possible.
8. Notwithstanding any other obligations and/or undertakings under this Agreement, the Receiving Party undertakes to:
 - (a) ensure that the obligation resulting from this Agreement shall be observed by all employees and cooperating third parties. The cooperating third party and Receiving Party's employees having access to the confidential information, have to be properly bound in a provable manner to keep the confidential information as confidential to the same extent and terms as stipulated by this Agreement at least.
 - (b) limit/restrict the access to the confidential information only to those employees, advisors or subcontractors, who need such access to this information with regard to the Purpose, and assure that the respective persons shall observe in full the obligations resulting from this Agreement to the extent as if they were Receiving Party's agreement parties;
 - (c) neither reproduce, keep or spread confidential information nor allow the confidential information to be reproduced, kept or spread except for the cases when the reproduction, keeping or spreading of such information is required for the Purpose;
 - (d) protect business interests of the Disclosing Party and take the same measures for protecting the confidential information, implementation of which would be expected from a cautious and prudent person in relation to its own business interests and confidential information;
 - (e) return all confidential information, copies and material evidences of any form thereof back to the Disclosing Party and remove the confidential information from all search systems and databases or destroy it immediately upon the order of the Disclosing Party and, upon request of the Disclosing Party, provide immediately a confirmation by appropriate managing employee or director, which confirms its returning, removing or destroying upon circumstances thereof;
 - (f) be liable and accountable to the Disclosing Party for compliance with the terms and conditions set out in this Agreement and indemnify the Disclosing Party in full and relieve it from the liability for damages (including any fees and expenditures for a legal representative) that will arise in consequence of a breach of this Agreement;
 - (g) in the cases designated by the Disclosing Party, use an encryption or other appropriate protection for transmission of confidential information;
9. The Receiving Party acknowledges that the Disclosing Party is not responsible for the accuracy and completeness of the confidential information it has provided for, and it is not possible to apply any liability against it based on the incorrectness or incompleteness of the confidential information, unless the error or omission is caused intentionally by the Disclosing Party.
10. The obligations set out in this Agreement shall not apply to the confidential information which:
 - (a) are publicly known at the time of disclosure, or which will become upon rightful and authorized accessing public available otherwise than by breach of this Agreement;
 - (b) the Receiving Party has independently created or acquired in other way than by breach of this Agreement;
 - (c) the Receiving Party has obtained, at any time, from a third party without restriction in its disclosure or use;
 - (d) the Receiving Party must disclose pursuant to a generally binding legal regulation or upon a resolution of a court, an order of a law enforcement authority or public authority issued in accordance with applicable generally binding regulations provided however that the Receiving Party notified the Disclosing Party of such mandatory disclosure of the confidential information immediately after it had become aware of such legal obligation to disclose the information; or

(e) the Disclosing Party has granted the Receiving Party an express consent in writing to disclosing the confidential information;

11. The Agreement Parties further acknowledge and agree that:

- (a) the obligations set out in this Agreement are reasonable and necessary in order to protect legible commercial, business and technical interests of the Disclosing Party, and the extinction of these obligations shall not affect any rights that the Disclosing Party may have in relation to the confidential information pursuant to applicable legal regulation regarding the intellectual property rights;
- (b) a breach of the obligations set out in this Agreement by the Receiving Party may cause serious damage to the Disclosing Party and indemnity may be insufficient in order to be reasonable mean of cure, and thus the Agreement Parties agree that they have right (besides other rights upon the law or upon this Agreement including monetary indemnification) for obtaining an interim measure or binding junction of the court to prevent the breach of obligations under this Agreement;
- (c) neither representation nor warranty is made as to the accuracy or completeness of any confidential information that may be disclosed, and it is agreed that neither Agreement Party shall be directly or indirectly liable to the other Agreement Party for the other party's use of the confidential information.

12. If the Receiving Party violates any of its obligations defined in paragraph 5 of this Article hereof and causes so a damage or obtains a financial benefit, the Disclosing Party shall be entitled to compensation for the total damage incurred.

13. The Receiving Party is also liable to the Disclosing Party for damage incurred in the form of costs for paying a fine imposed, for example, pursuant to Act No. 18/2018 Coll. On The Protection Of Personal Data in applicable wording, or in the form of costs for legal representation if the said costs arise as a result of a breach of the obligations stipulated in this agreement.

14. The Receiving Party declares that it has an adequate legal basis for provision of personal data, and has informed the concerned persons in advance about such provision of their personal data to the Disclosing Party as well as about the fact that the information on the processing of personal data in the information systems of the Disclosing Party is published on the website headquarters of the Disclosing Party (<https://www.eustream.sk/>). The Receiving Party undertakes to demonstrate the existence of an adequate legal basis at any time upon the request of the Disclosing Party.

15. Should the Receiving Party violate any of the obligations set forth in this Agreement, the Disclosing Party shall be entitled to claim a contractual penalty of EUR 10,000 from the Receiving Party for every one obligation breach separately. If a contractual penalty is claimed, the Receiving Party is obliged to pay the contractual penalty within 10 days from the date of receipt of a written notification, by which the Disclosing Party claims for the contractual penalty, by the Receiving Party. This is without prejudice to the right of the Disclosing Party to compensation for damage caused by breach of this Agreement by the Receiving Party and the rights arising out of unauthorized interference with intellectual property (copyright, industrial property rights) under applicable law.

Article IV. Commons and Final Provisions

- 1. If any provision of this Agreement is invalid or unenforceable or becomes so, the remaining provisions hereof shall remain in force unaffected.
- 2. The failure to exercise any rights by either Agreement Party shall not be deemed a waiver of such rights, nor shall the partial exercise of any right prevent further exercise of such rights.
- 3. Upon cancelation of the purpose for which the confidential information has been provided, or upon termination of this Agreement, the Receiving Party undertakes to hand over all original material carriers of confidential information in written or electronic form without delay upon receipt of a written request from the Disclosing Party. No obligations of the Agreement Parties regarding archiving the confidential information pursuant to applicable legal regulations shall be affected by this clause.

4. If no written request according to paragraph 3 of this Article hereof is delivered to the Receiving Party within ninety (90) days from the date of cancellation of the purpose for which the confidential information was provided, or from the date of termination of this Agreement, the Receiving Party is obliged to dispose the original material carriers of the confidential information in a safe manner without delay.
5. This Agreement shall enter into force and effectiveness on the date of which it is signed by both Agreement Parties and shall expire 10 years after its signing.
6. This Agreement is entered in contemplation of and shall be construed in accordance with the laws of the Slovak Republic without giving effect to any choice or conflict of law provision or rule (whether of Slovakia or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of Slovakia.
7. Any disputes arising from this Agreement shall be settled by the relevant court of the Slovak Republic.
8. Any amendment to this Agreement shall be binding on the Agreement Parties provided only, if it is made in writing, numbered and signed by the authorized representatives of each Agreement Party.
9. This Agreement is executed in two counterparts, one counterpart for each Agreement Party.
10. The Agreement Parties hereby declare that they have entered into this Agreement freely, seriously and without error, have not been in distress or under conspicuously unfavorable conditions, have read the Agreement, understood its content and they sign it as a sign of agreement with its content.

In Bratislava on:.....

In on:.....

Providing Party:

Receiving Party:

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Mgr. Silvia Horaničová
Strategic Procurement Manager

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Ing. Viliam Križan
Head of Procurement, Logistics and Services

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