

DOCUMENT REQUEST FORM

SOLICITATION #: 22916

Solicitation Title: Grand Central Terminal Retail Property Management Services

TO REQUEST DOCUMENTS FOR THIS PROCUREMENT

Please complete this form in its entirety and email it to SOLMGT@NYCT.COM

Company Name: _____

Address: _____
(Street Address is Required)

Contact: _____
(Please enter the name of the contact for this project)

Title: _____ **Telephone:** _____

Email Address: _____
(Addenda Notifications will be sent to this Email Address)

Fax #: _____ **MTA Bidder/Supplier#:** _____

Tax ID/EIN

*If you would like to become an MTA Bidder or Supplier you will need to register on the My MTA Portal www.mymta.info Click on the following link to a Brainshark video that provides directions on how to create a new User ID for an existing Bidder/Supplier, or how to become a Bidder with the MTA:
<https://www.brainshark.com/1/player/en/mtabsc?pi=zHGzoilZ0zKECXz0&fb=0>

RFP NO. 22916 CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

Vendor Name:	
Vendor Address:	

The Purpose. The above-named vendor (the “**Vendor**”) is a prospective proposer for Request for Proposals No. 22916 issued by the Metropolitan Transportation Authority, its subsidiaries and affiliated agencies (collectively, the “**MTA**”), related to retail property management services (the “**Purpose**”). In order to provide additional information regarding the Purpose, the MTA may provide the Vendor with Confidential Information, the confidential nature of which shall be governed by the terms and conditions of this Confidentiality and Non-Disclosure Agreement (this “**Agreement**”). In return for access to Confidential Information, the Vendor agrees as follows:

1. Definitions.

- a. “**Confidential Information**” means any and all data, information and any other content, contained in any media including, but not limited to electronic, paper, or verbal interactions by either party or their Representatives regarding the Purpose that: (i) concerns SSI and/or PII, budget information, contract and leasing information, building plans, pricing models, assessments, information concerning MTA present and/or future business operations and processes, methods, research, procedures, operations, computer systems, technology, studies, information concerning current and/or former MTA employees, contractors and/or vendors, or other information of or about the MTA; (ii) is contained within notes, analyses, compilations, studies, interpretations, memoranda or other documents prepared by the Vendor or its Representatives containing, in whole or in part, any such information furnished by the MTA, and all reproductions of such information; (iii) results from any discussions between the MTA and the Vendor relating to the Purpose; (iv) is marked confidential, restricted, or proprietary at the time of disclosure or a reasonable period thereafter; or (v) by the nature of the information itself, or the circumstances surrounding its disclosure, should in good faith be treated as confidential.
- b. “**Personal Information**” or “**PII**” means information that could be used to: (i) identify a unique natural person; (ii) authenticate such natural person; or (iii) commit identity theft or impersonation.
- c. “**Representative**” means, with respect to any party, its affiliates and subsidiaries, and the directors, officers, employees, attorneys, including outside counsel, consultants, accountants and agents of such party or its affiliates.
- d. “**Security Sensitive Information**” or “**SSI**” means any documents and other materials designated as such that contain data that is capable of compromising the security or integrity of the MTA’s information security technology (“**IT**”), operations technology (“**OT**”) systems, and transportation system, including real estate assets that are confidential or sensitive in nature and must not be disclosed to the public, whatever the form or storage medium, disclosed prior to, or subsequent to, the date hereof. The SSI that is covered by this Agreement is any information including, but not limited to, MTA security operating procedures and emergency services plans; OT asset locations (e.g., servers, operations controls systems, communication rooms); station drawings and plans; and other materials related to the MTA IT, OT and transportation systems that is provided by, or on behalf of, the MTA.
- e. “**Third Party**” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, any other business entity, or a governmental authority (or any department, agency, or political subdivision thereof) other than the parties to this Agreement.

2. Duty of Confidentiality; Non-disclosure Standards.

- a. The Vendor shall (i) not use Confidential Information for any purpose other than in connection with the Purpose; (ii) disclose Confidential Information only to the Vendor’s Representatives who have a need-to-know such Confidential Information for the purpose of facilitating or assisting the Vendor in responding to the Purpose; (iii) protect all Confidential Information from unauthorized use, access, or disclosure with the same degree of care as the Vendor treats its own Confidential Information, which shall be no less restrictive than the Vendor’s duty hereunder and by applicable law; (iv) limit its storage, transmission and use of the Confidential Information to locations within the United States and which are in accordance with all applicable statutory and regulatory requirements; and (v) not disclose the Confidential Information to any Third Party without the prior, written consent of the MTA. The Vendor agrees that it shall (a) be fully responsible for any breach of this Agreement by the Vendor or any of its Representatives; and (b) promptly

notify in writing the MTA in case of any misuse or misappropriation of such Confidential Information that may come to its attention. Except for the permitted uses and disclosures expressly set out in this Agreement, no other uses or disclosures are permitted. If the MTA so requires, Vendor shall cause all of its Representatives to execute an acknowledgement of this Agreement in substantially the same form as Exhibit A attached hereto and made part hereof.

- b. The Vendor agrees to take all reasonable steps to protect the confidentiality of and avoid disclosure or use of SSI in order to prevent it from falling into the public domain or the possession of unauthorized persons. The Vendor will, at a minimum, password protect and encrypt all SSI that is stored by the Vendor in electronic format. The Vendor acknowledges its understanding that the transmission process for SSI is subject to change as per the direction of the MTA Chief Information Security Officer. Notwithstanding anything to the contrary, the Vendor further agrees to comply with all applicable federal, state, local, and foreign data protection laws, and all other applicable regulations and directives in connection with its collection, access, use, storage, disposal, and disclosure of SSI. The Vendor shall maintain a list of all of its personnel and any other third parties to whom the Vendor needs to disclose SSI, and such list shall include each individuals' name, title, reason for disclosure, and SSI anticipated to be disclosed. The MTA may ask to review this list at any time.
3. **Exceptions.** Except for Personal Information and SSI, for which there shall be no exception, Confidential Information does not include information that: (i) was already known to the Vendor at the time of disclosure; (ii) was or becomes available to the Vendor on a non-confidential basis from a Third Party, provided that such Third Party is not bound by an obligation of confidentiality to the MTA with respect to such Confidential Information; (iii) is or has become generally available to the public through no fault of the Vendor; (iv) is independently developed by the Vendor without access to, or use of, the Confidential Information, as evidenced through proper documentation; or (v) is required to be disclosed by law, court order by a court of competent jurisdiction, governmental demand, other compulsory legal process, provided that the Vendor notifies the MTA of such required disclosure promptly and in writing and cooperates with the MTA, at the MTA's reasonable request and expense, in any lawful action to contest or limit the scope of such disclosure, except to the extent that providing such prior notice to the MTA is prohibited by law or regulatory authority. Notwithstanding the foregoing, in the event the Vendor obtained information related to the Purpose prior to the execution of this Agreement, and such information would have been classified as Confidential Information, the Vendor agrees to cease any disclosure thereof as of the Effective Date, even if Vendor has previously disclosed such information to Third Parties.
4. **No Publicity.** The Vendor and its Representatives shall not, without the prior written consent of the other party, disclose to any Third Party the fact that Confidential Information has been disclosed under this Agreement, that discussions are taking place between the parties, the existence of a potential future transaction or any of the terms, conditions, status or other facts with respect thereto, except (i) as required by law and then only with the prior written notice as soon as possible to the other party to permit such party to object to such disclosure; or (ii) in the event both the Disclosing and Receiving Parties have a non-disclosure agreement with a Third Party also taking part in the Purpose, the existence of which is made known in advance to all parties in writing (email sufficient).
5. **No Obligation or Reliance.** Except as may otherwise be expressly stated herein, all Confidential Information is delivered on an "as is" basis and all representations and warranties, express or implied, are hereby disclaimed. The MTA shall not be responsible or liable for any decisions made by the Vendor in reliance upon any Confidential Information.
6. **Ownership.** Nothing contained in this Agreement shall be construed to (i) transfer any ownership in Confidential Information, or (ii) grant any license to use, sell, exploit, copy or further develop any Confidential Information or any MTA or Vendor trademark, trade name, or any other intellectual property rights.
7. **Relationship of the Parties; No Commitment.** This Agreement does not create any agency, partnership or joint venture relationship between the parties.

 - a. Nothing contained in this Agreement shall create or imply any obligation or commitment on or by either party to: (i) disclose any particular information, (ii) make any investment in or payment to the other party or in any business of the other party, (iii) enter into any other business arrangement or contract of any nature whatsoever with the other party; or (iv) purchase or sell any products or services to or from the other.

- b. Nothing contained in this Agreement (i) limits the right of either party to develop, procure or market systems, products, or services that may be similar to or competitive with those of the other party; provided that no unauthorized use or disclosure of the other party's Confidential Information is used in such activities; or (ii) will be construed to prevent either party from entering into negotiations or business relationships with any Third Party, even if such Third Party is a competitor of a party to this Agreement.
- 8. Prohibition on Identity Determination.** The Vendor acknowledges that Confidential Information may include PII. Vendor represents, warrants and agrees that it will (i) store, maintain, and transmit Confidential Information in accordance with all applicable legal requirements and best practices and in a manner that maintains the anonymity of persons whose information may be contained therein; (ii) not, under any circumstance, use Confidential Information disclosed pursuant to this Agreement, alone or in combination with any other information in the possession of or available to Vendor, regardless of the source or nature of such information, for the purpose of determining the identity of persons to whom Confidential Information disclosed pursuant to this Agreement pertains or to otherwise determine which persons one or more records comprising the Confidential Information pertains. This shall include, without limitation, using Confidential Information in combination with any other information in the possession of or otherwise available to the Vendor, regardless of the public or non-public nature of such.
- 9. Term.** This Agreement shall commence on the Effective Date and shall continue, unless earlier terminated in accordance with Section 10 (Termination). Notwithstanding the termination of this Agreement, the Vendor's obligations hereunder shall survive and continue indefinitely following the Effective Date unless the Confidential Information is subject to Section 3 (Exceptions) at no fault of either party.
- 10. Termination.** Either party may terminate this Agreement for any reason upon ten (10) days' written notice to the other party, subject to the continuing obligations of the Parties set forth in Section 9 (Term) above.
- 11. Return or Destruction of Materials.** All Confidential Information including, but not limited to, all copies and reproductions thereof and all documents and materials derived from such Confidential Information prepared by or for the Vendor or any of its Representatives, shall, irrespective of whether such is in writing or stored electronically, be returned to an MTA-designated location and/or recipient or irrevocably destroyed by the Vendor and its Representatives, at the MTA's election, promptly upon the earlier of: (i) the termination or expiration of this Agreement; (ii) either party's decision not to pursue the Purpose; or (iii) the MTA's request. The Vendor shall, and shall cause its Representatives to, irrevocably destroy its copies of any and all media containing all Confidential Information of the MTA such that recognition or reconstruction of the Confidential Information is precluded by: (i) cross-cutting shredding of hardcopy documents and physical destruction of diskettes, floppies, CDs, DVDs, and any other recordable media; (ii) deleting of electronic media, including electronic data stored in servers or cloud systems, by permanent deletion or non-retrievable/irreversible placement in overwrite status and wiping clean the device memory on all equipment and machines on which the MTA's Confidential Information is placed at the time of disposal, sale or recycling, as applicable; and (iii) sanitizing storage media, as well as temporary files and backup files on which the MTA's Confidential Information is stored. The MTA may request certification of destruction has been irrevocably completed from the Vendor, which shall be promptly provided.
- 12. Remedies.** Each party hereto acknowledges that any breach or anticipatory breach of this Agreement will cause the MTA irreparable harm for which there may be no adequate remedy at law, and that the MTA shall therefore be entitled to injunctive or other equitable relief without bond, in addition to any other remedy available to it at law or otherwise. The prevailing party in any action to enforce this Agreement shall be entitled to its reasonable costs and reasonable outside attorneys' fees.
- 13. Indemnification.** The Vendor will defend, indemnify and hold harmless MTA and its Representatives (collectively, "Indemnitees") from and against any and all claims and actions, including but not limited to those made by third-parties and Vendors' agents ("Claims") and any damage, loss, liability, costs and expenses of any kind (including reasonable attorneys' fees) actually incurred in connection therewith (collectively, "Loss") (i) arising from any use, disclosure and/or access to or of the Confidential Information that was not authorized by this Agreement, (ii) arising from any material breaches of the obligations of the Vendor under this Agreement, (iii) incurred by or asserted against Indemnitees and arising from the acts or omissions of Vendor and its Representatives in material breach of this Agreement, and (iv) otherwise arising out of or in connection with this Agreement.
- 14. No Assignment; Modifications.** This Agreement may not be (i) assigned by either party without the prior written consent of the other party, and/or (ii) amended or modified except by a written agreement signed by each party. This Agreement shall be binding upon and inure to the benefit of any successors and permitted assigns.

- 15. **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York, without regard to its principles of conflict of laws. Each party consents to the exclusive jurisdiction of the federal courts in the State of New York, County of New York, or the state courts of the State of New York, County of New York, in connection with any dispute arising under this Agreement, and hereby waives, to the maximum extent permitted by applicable law, any objection, including any objections based on *forum non conveniens*, to the bringing of any such proceeding in such jurisdictions.
- 16. **Severability.** In the event any term or provision of this Agreement is determined to be invalid, illegal or unenforceable for any reason, in whole or in part, by any court of competent jurisdiction, the remaining terms or provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by applicable law.
- 17. **No Waiver.** No waiver of rights under this Agreement shall be effective unless granted, in writing, by each party with an interest in such rights. Failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof.
- 18. **No Effect on Other Obligations.** Nothing in this Agreement limits any confidentiality obligation(s) of either party arising outside this Agreement.
- 19. **Original Document.** This Agreement may be executed in counterparts, each of which when so executed shall be deemed an original and all of which when taken together shall constitute one and the same instrument. Any signature delivered by facsimile or electronic transmission shall be deemed to be an original signature. In addition, the use of an electronic signature shall be of the same legal effect, validity and enforceability as a manually executed signature to the fullest extent permitted by law.
- 20. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof and supersedes any prior or contemporaneous oral or written representation regarding such subject matter.

IN WITNESS WHEREOF, the Vendor warrants that the signatory has the right to enter into this Agreement and hereby execute this Agreement on the date set forth below. The date of Vendor’s execution shall serve as the “**Effective Date**”.

VENDOR

By: _____ Date: _____
 Name:
 Title:

EXHIBIT A

REPRESENTATIVE ACKNOWLEDGMENT

I, _____, am a Representative of the Vendor, as defined in this Agreement. I agree to be bound by the terms of this Agreement, and shall immediately notify the Vendor if I inadvertently disclose any Confidential Information.

REPRESENTATIVE

By: _____ Date: _____
Name:
Title