

## NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

THIS NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT (the "Agreement") is entered into as of April \_\_\_, 2022, by and between \_\_\_\_\_ a corporation with a business address of \_\_\_\_\_ ("Recipient") and MTA Construction and Development Company, a public authority formed under the laws of the State of New York, with a principal place of business at 2 Broadway, New York, NY 10004 ("MTA C&D").

**WHEREAS**, MTA C&D is a subsidiary agency of the Metropolitan Transportation Authority (the "MTA"), and is the agency responsible for the management of the construction projects that benefit the MTA and its subsidiary and affiliate operating agencies; and

**WHEREAS**, MTA C&D has issued a Request for Information for the modification of Work Trains to operate on sections of the MTA subway system outfitted wayside Communication Based Train Control ("CBTC") equipment; and

**WHEREAS**, Recipient is interested in submitting a response to the RFI (the "Purpose"); and

**WHEREAS**, in connection with this Purpose, MTA C&D will need to provide Recipient with certain confidential and sensitive information which, if disclosed to outside recipients without MTA C&D's consent, would harm MTA C&D, New York City Transit ("NYCT"), MTA and its affiliates and subsidiaries, and New York City Transit ("NYCT") and MTA C&D's CBTC suppliers.

**WHEREAS**, MTA C&D is willing to share this information with Recipient to achieve the Purpose if Recipient adheres to the terms and conditions set forth in this Agreement;

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. Confidential Information.** For purposes of this Agreement, "Confidential Information" means any and all information shared with Recipient by MTA C&D, its agents and consultants, and the MTA and any of its affiliate or subsidiary agencies, agents and consultants, in connection with: (i) the Purpose; (ii) any other MTA C&D project or contract; and (iii) any MTA C&D policy, procedure, operation or business issue that is not otherwise generally known to the public. Confidential Information need not be marked or identified as "confidential" or "proprietary" and includes, but is not limited to data, prototypes, designs, plans, specifications, calculations, estimates, manuals drawings, charts, photographs, policies, procedures, agreements, financial information and other business or technical information, whether communicated verbally, in writing or in any other form.
- 2. Use of the Confidential Information.** Recipient shall treat all Confidential Information as strictly confidential and understands that Recipient may use the Confidential Information

solely in connection with the Purpose described above. Recipient shall not use, display, disclose, publish, rely upon, disseminate or otherwise make the Confidential Information available to anyone in any form other than to those MTA C&D employees (and certain consultants approved by MTA C&D) who have a “need to know” the contents of the Confidential Information in order to accomplish the Purpose.

3. **Reproduction of Confidential Information.** Subject to the language in paragraph 2 above, Recipient shall not transcribe, duplicate, reproduce sell or otherwise transfer or make available, directly or indirectly, the Confidential Information for any reason.
4. **Securing the Confidential Information.** Recipient agrees to protect the Confidential Information, using at least the same degree of care that Recipient uses to protect and preserve the confidential and proprietary nature of its own confidential information, but no less than the industry-wide accepted standard of care. Recipient agrees to immediately notify MTA C&D in writing of any loss, unauthorized disclosure or misplacement of any Confidential Information, in whatever form, and to fully cooperate with MTA C&D and provide any assistance necessary to mitigate the situation.
5. **Compelled Disclosure of Confidential Information.** If at any time Recipient or Recipient’s Employer receives a subpoena, discovery request, court order, Freedom of Information Law request, or any other request or demand authorized by law seeking disclosure of the Confidential Information, he shall immediately notify MTA C&D and work cooperatively with MTA C&D to take all reasonable steps necessary to prevent disclosure, including the step of seeking protective treatment of the Confidential Information. Recipient shall not disclose any Confidential Information in response to such request until a court of law or other legal body renders a determination on the issue and then only after he has consulted with counsel from MTA C&D, provided MTA C&D’s counsel with copy of the court or legal body’s determination and confirmed in writing that MTA C&D’s counsel does not intend to pursue subsequent legal measures to protect the information.
6. **No Warranty.** MTA C&D makes no representation or warranty, express, implied or otherwise, regarding the accuracy or completeness of the Confidential Information or its suitability for Recipient’s authorized use or for any purpose whatsoever (including the Purpose). MTA C&D shall have no liability to Recipient, Recipient’s Employer (or any other person, entity or other third-party including) resulting from the use of the Confidential Information or any reliance on the accuracy or completeness thereof by Recipient or Recipient’s Employer.
7. **Indemnification.** Recipient understands and agrees that its compliance with this Agreement is of the utmost importance to MTA C&D. Recipient shall be liable for, and indemnify, defend and hold harmless, MTA C&D, MTA and their subsidiary and affiliate agencies, and each of the foregoing’s employees, agents, consultants, Board members, contractors and vendors (the “Indemnified Parties”) from and against any and all liabilities, losses, damages, costs and expenses (including attorneys’ fees and costs) incurred by the Indemnified Parties resulting from, or arising out of or in connection with, any breach of

this Agreement, unauthorized disclosure, or use of the Confidential Information directly or indirectly related to the actions of Recipient.

8. **Remedies.** Recipient acknowledges that the Confidential Information is of a unique and valuable character, and that the damages to MTA C&D that would result from the unauthorized dissemination of the Confidential Information would be impossible to calculate and would cause irreparable harm to MTA C&D. Recipient agrees that MTA C&D shall be entitled to injunctive relief to prevent the dissemination of any Confidential Information in violation of the terms of this Agreement, and that this injunctive relief shall be in addition to any other remedies available to MTA C&D hereunder, whether at law or in equity. Recipient further agrees that this relief shall be in addition to any relief permitted under any relevant contract between the MTA and Recipient, (the “MTA Agreements”).
9. **Ownership of Confidential Information.** All Confidential Information shall remain the property of the MTA C&D. By disclosing information to Recipient, MTA C&D does not grant any express or implied license or right to Recipient to use the Confidential Information for any reason except for the Purpose by disclosing information to the Recipient, MTA C&D grants no right, title, interest, license or other rights (express or implied) to Recipient with respect to the Confidential Information and MTA C&D retains all rights therein.
10. **Return of Confidential Information.** Upon the sooner of: (i) the termination of this Agreement; (ii) the completion of the Purpose; or (iii) the request of MTA C&D, Recipient shall immediately return and redeliver to the MTA C&D all tangible Confidential Information, including electronic files, documentation, notes, plans, drawings, derivative works and copies thereof, or, if so requested by MTA C&D, provide MTA C&D with written certification that all such Confidential Information has been destroyed.
11. **Retroactivity of Compliance.** This Agreement shall be effective as of the date of Recipient’s signature below and shall continue to be in effect until terminated in writing by MTA C&D. Recipient has represented to MTA C&D that s/he has not disclosed any Confidential Information provided to him prior to the date this Agreement has been signed and is not otherwise in breach of this Agreement as of the date of signing.
12. **Severability.** If any provision of this Agreement is found invalid or unenforceable, the rest of the Agreement, including all of its remaining terms, will remain in full force and effect as if such invalid or unenforceable terms had never been included.
13. **Waiver.** Any waiver by MTA C&D or Recipient of a breach of any provisions of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
14. **Entire Agreement.** This document contains the entire agreement between the parties with respect to the subject matter hereof, superseding any prior or contemporaneous agreements with respect to the subject matter hereof, with the exception of the MTA Agreements and any other relevant contracts between the MTA and Recipient or Recipient’s Employer. In

the event of any conflicting terms between prior agreements and this Agreement, the more stringent terms shall control.

15. **Modifications.** No modification, supplement, amendment or waiver of this Agreement shall be binding unless executed in writing and signed by both parties hereto.
16. **Third-Party Rights.** Nothing contained in this Agreement shall create any relationship between the Parties and any third-party. Further, nothing in this Agreement shall create any rights for any third-party or any obligation on the part of the Parties to any third-party.
17. **Choice of Law and Jurisdiction.** This Agreement shall be governed by, construed under, and enforced pursuant to the laws of the State of New York, without regard to conflict of law principles. Any dispute or claim arising out of or relating to this agreement shall be brought exclusively in the federal or state courts located within the County of New York, State of New York. Each party to this agreement consents to the exclusive jurisdiction of such courts (and the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein or convenience of any forum therein.
18. **Authority.** Each individual executing this Agreement on behalf of any party represents and warrants that he or she is fully authorized to execute and deliver this Agreement on behalf of such Party in accordance with its terms.
19. **Notices.** All notices, demands and communications required under this Agreement shall be in writing and served by personal delivery, US Mail (registered or certified mail, postage pre-paid, return receipt requested), commercial delivery service or by e-mail at the following addresses:

- a. If sent to MTA C&D, the correspondence shall be directed to:

Gregoire Sulmont  
Senior Vice President, Signals & Train Controls  
MTA Construction and Development Company  
2 Broadway, 2<sup>nd</sup> Floor  
New York, New York 10004  
Email: gregoire.sulmont@mtacd.org

with a copy to:

Marc Metson  
Vice President and Associate General Counsel  
MTA Construction and Development Company  
2 Broadway, 8<sup>th</sup> Floor  
New York, New York 10004  
Email: marc.metson@mtacd.org

b. If to the Recipient, the correspondence shall be directed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

20. **Counterparts.** This Agreement may be executed simultaneously or in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same Agreement. Facsimile or electronic copies of shall be deemed originals.

21. **No Assignment.** This Agreement does not create any agency, joint venture or partnership relationship between the parties. Neither party may assign or transfer this Agreement (in whole or in part) without the prior written consent of the other. This Agreement, and the rights and obligations of the parties hereunder, will be binding upon and inure to the benefit of the parties' respective successors, assigns, heirs, executors, administrators, agents and representatives.

22. **Headings.** The various captions and section headings contained in this Agreement are used only as a matter of convenience and in no way define, limit or extend the scope or intent of any of the provisions of this Agreement.

**IN WITNESS WHEREOF**, the parties executing this Agreement agree to be bound by its terms.

**MTA CONSTRUCTION AND  
DEVELOPMENT COMPANY**

By: \_\_\_\_\_  
Gregoire Sulmont  
SVP, Signals & Train Controls  
  
\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
By: \_\_\_\_\_  
(Print Name)  
  
\_\_\_\_\_  
(Signature)