

## NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT (the “Agreement”), dated as of \_\_\_\_\_, by and between MTA CONSTRUCTION AND DEVELOPMENT COMPANY, a New York public benefit corporation (“MTA C&D”), and \_\_\_\_\_, a \_\_\_\_\_ (“Recipient”) (MTA C&D and Recipient being collectively referred to herein as the “Parties”).

WHEREAS, MTA C&D has commenced a procurement (the “Procurement”) for MTA C&D Contract No. D81444, Program Management and Project Management Consulting (PMC) Services for MTA C&D Communications Based Train Control (CBTC) Program (the “Contract”); and

WHEREAS, the Contract calls for the provision of program management, design management, construction management, oversight and administrative services to support MTA C&D's CBTC program (the “Program”); and

WHEREAS, the Procurement contemplates (i) issuance by MTA C&D of a Request for Proposals (“RFP”), intended to solicit proposals for the Contract from consultants; and

WHEREAS, Recipient had indicated its intention to participate in the Procurement; and

WHEREAS, in the course of participating in the Procurement, Recipient may be provided by MTA C&D or its parent the Metropolitan Transportation Authority (“MTA”) or its affiliates Metro-North Commuter Railroad Company (“MNR”) and Long Island Rail Road Company (“LIRR”) (MTA C&D, MTA, MNR and LIRR individually and collectively “MTA Group”) with certain information about the MTA Group, its operations and facilities, and the Project, which is considered by the MTA Group as confidential, proprietary, trade secret, or security-sensitive information; and

WHEREAS, Recipient acknowledges that improper disclosure of any such information could undermine the integrity of the Procurement and the ability of MTA C&D to advance the Project; and

WHEREAS, the Parties therefore wish to enter into this Agreement to protect and safeguard the confidentiality of all such information received by Recipient in connection with the Procurement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties hereto agree as follows:

1. This Agreement extends to all documents and materials relating to the Procurement, the Contract and the Program (including, without limitation, software, data, prototypes, designs, plans, drawings, specifications, photographs, videotapes, agreements, contracts, financial information or other business or technical information) that MTA Group determines is proprietary, confidential, trade secret or security-sensitive and is marked by MTA Group as “Confidential Information”, disclosed by the MTA Group to Recipient pursuant to or in connection with its participation in the Procurement or, if Recipient is awarded the Contract, pursuant to the Contract (collectively, the “Confidential Information”). Without limiting the generality of the foregoing, Confidential Information shall be deemed to include all documents, analyses, studies or other

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materials prepared by Recipient that contain or reflect Confidential Information, including, without limitation, security assessments, evaluations and recommendations.

2. Recipient shall keep all Confidential Information confidential and shall not, without the prior written consent of MTA C&D, disclose or reveal any Confidential Information to any person other than other persons who are actively and directly participating on behalf of Recipient in the Procurement, or, if Recipient is awarded the Contract, participating on behalf of Recipient in the performance of the Contract, but only to the extent that such other persons have a need to know such Confidential Information for the purpose of advancing the Procurement or, if Recipient is awarded the Contract, performing the Contract, and who agree to be bound by the terms and conditions of this Agreement and sign and deliver to Recipient an Acknowledgment in the form attached to this Agreement as Attachment A. Recipient shall maintain a file containing all such signed Acknowledgments and provide copies thereof to MTA C&D upon MTA C&D's request.

3. Within seven (7) days after execution of this Agreement, Recipient shall, in a writing delivered to MTA C&D, describe where Confidential Information disclosed to Recipient will be kept or stored, and the methods and procedures to be used by Recipient to protect and safeguard all Confidential Information, and to prevent the unauthorized duplication or distribution thereof. Such methods and procedures shall be consistent with the requirements contained in the MTA Security Sensitive Information Handbook. MTA C&D reserves the right to periodically audit Recipient's security methods and procedures to ensure that they are being applied consistently and that they are consistent with such requirements.

4. MTA C&D may create an inventory of all Confidential Information disclosed to Recipient and, upon request by MTA C&D, Recipient shall check all Confidential Information provided to it against such inventory and confirm that it has taken steps to protect and safeguard Confidential Information in accordance with the terms hereof.

5. This Agreement shall survive any termination of the Procurement, the return or destruction of Confidential Information, or the termination of any other agreement, whether in effect prior to or after the date of this Agreement. This Agreement shall not merge with, or be terminated or superseded by any future agreement between the Parties unless such future agreement specifically so provides.

6. Recipient shall use all Confidential Information disclosed to it/him/her solely to advance the Procurement or, if Recipient is awarded the Contract, to perform the Contract, and for no other purpose.

7. MTA Group grants Recipient no right, title or interest of any kind in any intellectual property contained in or relating to the Confidential Information. At any time upon the written request of MTA C&D, Recipient shall, at its option, (i) promptly return all Confidential Information in its possession to MTA C&D without retaining any copies, summaries or extracts thereof, or (ii) promptly destroy all Confidential Information in its/his/her possession without retaining any copies, summaries or extracts thereof. In addition, all documents, analyses, studies or other materials prepared by Recipient that contain or reflect Confidential Information ("Confidential Material") shall be destroyed and no copies thereof shall be retained by Recipient. Within ten (10) business days of such written request by MTA C&D, Recipient shall confirm in

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writing that all Confidential Material has been destroyed, and all Confidential Information has been returned or destroyed as applicable.

8. As soon as Recipient learns that it may or will be legally compelled to disclose Confidential Information or Confidential Material (whether by interrogatories, subpoenas, civil investigations, or otherwise) or is requested to disclose Confidential Information or Confidential Material by a governmental authority or agency, or pursuant to freedom of information laws, Recipient shall promptly notify MTA C&D and keep MTA C&D well-informed of any developments with respect to that compulsion or request. Recipient shall cooperate with MTA C&D to enable MTA C&D to obtain a protective order or other similar relief or to narrow the scope of such legal compulsion or request.

9. In the event of any breach of this Agreement or threatened breach hereof, MTA Group shall be entitled to injunctive and other equitable relief, and Recipient shall not plead in defense thereto that there would be an adequate remedy at law, and Recipient waives any applicable right or requirement that a bond be posted by MTA Group.

10. If at any time, any person or firm who/which has received Confidential Information or Confidential Material from Recipient in accordance with the terms hereof, has been discharged or terminated by Recipient, or is no longer participating with Recipient in the Procurement or, if Recipient has been awarded the Contract, is no longer participating with Recipient in the performance of the Contract, Recipient shall terminate all access of such person or firm to Confidential Information or Confidential Material and shall cause such person or firm to surrender and relinquish all Confidential Information or Confidential Material it has received to Recipient.

11. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes any previous agreements, whether written or oral with respect to such subject matter. This Agreement may be executed in multiple counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. The Agreement may not be amended except by a written document signed by both of the Parties hereto.

12. No waiver of any provision of this Agreement, or of any breach thereof, shall be effective unless it is in writing and signed by the Party waiving such provision or breach hereof. No waiver of a breach of this Agreement (whether express or implied) shall constitute a waiver of any subsequent breach hereof.

13. All provisions of this Agreement are severable, and the unenforceability of any of the provisions of this Agreement shall not affect the validity or enforceability of the remaining provisions of this Agreement.

14. In the event Recipient is a joint venture, execution of this Agreement by the joint venture shall be deemed an agreement by all members of the joint venture to be bound by and observe the terms and conditions hereof.

15. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to its conflicts of laws principles.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

MTA CONSTRUCTION AND  
DEVELOPMENT COMPANY

RECIPIENT: \_\_\_\_\_  
(Print Name)

By \_\_\_\_\_  
Title:

By \_\_\_\_\_  
Title:

Date:

Date:

ATTACHMENT A  
ACKNOWLEDGMENT

Background

- A. MTA CONSTRUCTION AND DEVELOPMENT COMPANY (“MTA C&D”) and \_\_\_\_\_ (“Recipient”) have entered into a NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT (“Agreement”) dated as of \_\_\_\_\_.
- B. The Agreement relates to a procurement process for MTA C&D Contract No. D81444 (the “Procurement”) and performance of said Contract.
- C. The undersigned has received and read a copy of the Agreement.
- D. The undersigned is participating on behalf of Recipient in the Procurement or in performance of MTA C&D Contract No. D81444.
- E. Recipient may disclose Confidential Information (as defined in the Agreement) to the undersigned.

In consideration of the opportunity to participate in the Procurement or in performance of MTA C&D Contract No. D81444 the undersigned agrees as follows:

1. The undersigned shall keep all Confidential Information (as defined in the Agreement) confidential and shall not disclose or reveal any Confidential Information to any other person except as permitted by the Agreement, and shall comply with all other obligations of Recipient under the Agreement with respect to Confidential Information and Confidential Material (as defined in the Agreement).
2. The undersigned shall be bound to Recipient and MTA C&D, to the same extent as Recipient is bound, by all other terms and conditions of the Agreement applicable to Recipient under the Agreement and shall comply with all such terms and conditions.

NAME OF UNDERSIGNED: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_