

**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT
FOR SAFEGUARDING SAFETY SENSITIVE INFORMATION PROVIDED BY WMATA
TO**

This Confidentiality and Non-Disclosure Agreement (“Agreement”) between the Washington Metropolitan Area Transit Authority (“WMATA” or “Discloser”), an interstate compact agency formed among the District of Columbia, Maryland, and Virginia, and codified at D.C. Code § 9-1107.01, located at 600 5th Street, N.W., Washington, DC 20001 and _____, _____ (“Recipient”) on behalf of itself and its contractors and subcontractors is entered into on the date last executed below (collectively the Recipient and the Discloser are the “Parties”).

WHEREAS, Recipient requires access to WMATA safety sensitive information for purposes of designing and constructing its project located at _____ (“Project”).

NOW THEREFORE, for good and sufficient consideration and with the intent to be bound, the Parties hereto agree as follows:

1. DEFINITIONS:

a. Confidential Information.

The parties agree that the Confidential Information referred to in this agreement includes all oral, written, or other forms of data, that Discloser provides to Recipient and Recipient’s representatives in order to design and construct its Project, including, but not limited to:

- b. Recipient shall treat all information received pursuant to this request as Confidential or propriety information which Discloser believes in good faith to be confidential, privileged, proprietary, a trade secret, or otherwise entitled to such description, identification or proprietary claims. The following will not be considered Confidential Information:
 - (i) Information that was already known to the Recipient without the obligation of confidentiality prior to disclosure of it to the Recipient by the Discloser;
 - (ii) Information that is disclosed to the Recipient without the obligation of confidentiality by a third party who has the right to make such disclosure;
 - (iii) Information that is or becomes lawfully available to the public or within the public domain (other than as a result of a disclosure by the Recipient in violation of this Agreement) and is obtained from public sources by the Recipient;
 - (iv) Information that is disclosed pursuant to the provisions of a Court Order.

2. **LIMITATION ON USE:** Discloser is providing the Confidential Information to Recipient for the sole purpose of Recipient designing and constructing the Project in a way that protects WMATA infrastructure from damage and in accordance with the WMATA Adjacent Construction Manual. Recipient agrees to use the Confidential Information solely for these purposes, and furthermore agree that commercialization of the data or information conveyed in any way shape or form is strictly forbidden.
3. **LIMITATION ON DISCLOSURE:** Recipient agrees to limit dissemination of the Confidential Information to those personnel of the Recipient who require access to the information to perform work for the Project and to *no other person, group, entity or organization*. Recipient agrees that all personnel who are granted access must be made aware of the obligation to strictly maintain the confidentiality of Discloser's Confidential Information and those personnel shall be bound by a written agreement that prohibits unauthorized disclosure or use of Confidential Information ("Recipient Employee Acknowledgement"). A copy of the Recipient Employee Acknowledgement shall be submitted to WMATA. In the event that sub-contractors, consultants or other non-employees of the Recipient require access to the Confidential Information, the Recipient shall direct them to WMATA for completion of a non-disclosure agreement.
4. **DUTY OF CARE:** Recipient will use the same degree of care to avoid unauthorized disclosure of Confidential Information that is employed with respect to its/his/her own Confidential Information of like importance and take any additional steps as are reasonably requested by the Discloser to prevent or stop a breach or threatened breach of this Agreement. Recipient agrees that it will not disclose Discloser's Confidential Information to any third party without Discloser's prior written approval, except as required by law. In the event that Recipient determines that it is required to disclose Discloser's Confidential Information to a third party, Recipient will provide Discloser with prompt written notice in order to allow Discloser to challenge such disclosure by obtaining a court order or other appropriate remedy. If any Confidential Information is required to be disclosed in litigation, Recipient agrees to seek a protective order limiting use of the information to the particular litigation.
5. **ACCURACY OF INFORMATION:** In providing any information hereunder, each disclosing Party makes no representations, either express or implied, as to the information's adequacy, sufficiency, or freedom from defect of any kind, including freedom from any patent infringement that may result from the use of such information, nor shall either Party incur any liability or obligation whatsoever by reason of such information, except as provided under this Agreement.
6. **UNAUTHORIZED DISCLOSURE:** Recipient shall immediately notify the Discloser if it becomes aware of any unauthorized use, access, copying, or disclosure of any of the Discloser's Confidential Information.
7. **REMEDIES:** The parties agree that unauthorized disclosure to third parties of Discloser's Confidential/Proprietary Information could be detrimental to the Discloser. Therefore, without limiting its other rights and remedies, the Discloser shall be entitled to request an immediate injunction against the Recipient should this Agreement be breached.
8. **APPLICABLE LAW AND VENUE:** This Agreement shall be governed and construed in accordance with the laws of the location in which the Project is located without regard to its choice of law provisions, unless there is a conflict with the WMATA Compact, in which case the Compact

shall govern. Any disputes between the parties shall be resolved in an appropriate court in the jurisdiction in which the Project is located.

9. **RETURN/DESTRUCTION:** Except as specified below, within ten (10) days of receipt of Discloser's written request, Recipient will return all tangible forms of the Confidential Information (including all hard and electronic copies thereof) to Discloser along with all copies and portions thereof, and certify in writing that all Confidential Information has been destroyed in accordance with industry best practices for destruction of such material, as elected by Discloser. Notwithstanding the preceding, within thirty (30) days of completion, cancellation, or any other termination of the Project, the Recipient shall return all tangible forms of the Confidential Information (including all hard and electronic copies thereof), along with all copies and portions thereof, or may choose to destroy all tangible forms of such Confidential Information in accordance with industry best practices for destruction of such material, and certify such destruction to WMATA.
10. **TERM:** This Agreement commences on the date this Agreement is executed by all of the Parties and terminates sixty (60) days after the termination of the Project or upon sixty (60) days' notice from either party of its intent to terminate the Agreement.
11. **COUNTERPARTS:** This Agreement may be executed in counterparts, each of which shall be considered the original. This Agreement contains the entire agreement of the parties as to all subject matters addressed herein.
12. **SEVERABILITY:** In the event that any provision of this Agreement may be held to be invalid or unenforceable for any reason, it is agreed that said invalidity or unenforceability shall not affect the other provisions of this Agreement, and that the remaining covenants, terms and conditions or portions thereof shall remain in full force and effect and any court of competent jurisdiction may modify the objectionable provisions as to make them valid, reasonable and enforceable.
13. **SURVIVAL:** The nondisclosure and destruction/certification obligations shall survive this Agreement and the termination of any future agreement or business relationship entered between the parties addressing or related to the subject matter of this Agreement.
14. **REPRESENTATION AND WARRANTY:** By signing below the signatory represents and warrants to WMATA that 1) they have the power and authority to bind the Recipient to the terms and conditions; and 2) that they acknowledge and understand the duties and obligations imposed on the Recipient to protect WMATA Confidential Information as contained in this Non-Disclosure Agreement.
15. This Non-Disclosure Agreement contains the entire agreement relative to the protection of information to be exchanged hereunder, and supersedes all prior or contemporaneous oral or written understandings and agreements regarding this issue. This Non-Disclosure Agreement shall not be modified or amended, except in a written instrument executed by the Parties.

RECIPIENT

WMATA