

ATTACHMENT A

E40201 – Fan Plant SCADA Head-End Upgrade

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

_____ (“Bidder”) has expressed interest in reviewing and responding to MTA Construction and Development Company’s (“MTA C&D”) request for information and request for Contract E40201, entitled ‘Fan Plant SCADA Head-End Upgrade’ (the “Procurement”).

Bidder understands that certain documents provided by MTA C&D in connection with this Procurement, including but not limited to documents utilized in connection with a virtual presentation, will contain information that is highly confidential, proprietary and/or security-sensitive in nature. To that end, Bidder understands and agrees as follows:

1. Bidder is being provided with both written and verbal information that is highly confidential, security-sensitive and/or proprietary to MTA C&D (collectively, the “Confidential Information”). Confidential Information in provided document form shall be designated with a Confidential Information marking; Confidential Information provided in verbal form shall be designated as falling under this category during the conversation.
2. Bidder agrees that any and all such Confidential Information will be kept in the strictest confidence, will only be used in connection with preparing a response to the Procurement and will not be disclosed to any persons other than those directors, officers, employees, agents and advisors who have a “need to know” in order to assist Bidder with its response to the Procurement (collectively the “Recipients”). Before providing any Confidential Information to Recipients, Bidder shall require Recipients to agree, in writing, to be bound by the terms of this Agreement to the same extent as if they were a party, and shall provide a copy of this Agreement to the Recipients and ensure that they understand the terms. Bidder shall assume full responsibility for enforcing this Agreement with its Recipients.
3. Bidder further understands and agrees to (and to ensure that its Recipients agree to):
 - (a) protect and preserve all Confidential Information using at least the same degree of care Bidder uses to protect and preserve its own confidential information, but no less than the industry-wide accepted standard of care;
 - (b) not disclose, give, sell or otherwise transfer or make available directly or indirectly, any Confidential Information to any third party for any purpose, except as permitted in writing by an authorized representative of MTA C&D;

(c) not use, transcribe or make records or copies of the Confidential Information except as permitted in writing by an authorized representative of MTA C&D;

(d) limit the dissemination of the Confidential Information to those Recipients whose duties justify the “need to know,” and then only provided that there is a clear understanding by such individuals of their obligation to maintain the confidential and proprietary nature of the Confidential Information in accordance with this Agreement; and

(e) immediately notify MTA C&D, in writing, if any Confidential Information has been disclosed in violation of this Agreement.

4. Bidder agrees to indemnify, defend and hold harmless MTA C&D, the MTA and their respective subsidiary and affiliate agencies, with respect to any liabilities, losses, damages, costs and expenses resulting from, or arising out of or in connection with, any breach of this Agreement, unauthorized disclosure or use of the Confidential Information by itself or any Recipients.
5. Bidder understands and agrees that the Confidential Information is of a unique and valuable character, and that damages to MTA C&D that would result from the unauthorized dissemination of the Confidential Information would be impossible to calculate. Bidder agrees that MTA C&D shall be entitled to immediate injunctive relief (including a temporary restraining order) preventing any potential dissemination and/or halting the actual dissemination of any Confidential Information by Bidder or Recipients in violation of the terms of this Agreement. Such injunctive relief shall be in addition to any other remedies available to MTA C&D, in law or in equity.
6. Bidder acknowledges and agrees that its right to use the Confidential Information is limited to only that effort reasonably required for it to participate in the Procurement, and for no other use.
7. Bidder agrees to immediately notify MTA C&D, in writing, of any loss or misplacement of any Confidential Information, in whatever form, or if it learns of any unauthorized use or disclosure of the above-referenced Confidential Information. In addition, Bidder agrees to fully cooperate with MTA C&D and provide any assistance necessary to protection against the unauthorized use or disclosure of such Confidential Information by third parties.
8. If Bidder or any Recipient is requested or required by subpoena, court order, discovery request, or similar process or applicable governmental regulation to disclose any Confidential Information, Bidder must notify MTA C&D

immediately upon receipt of the request so that MTA C&D may seek an appropriate protective order or procedure if it elects to do so. If MTA C&D advises Bidder of its intent to seek a protective order or other legal remedy associated with the production of this information, Bidder shall not disclose (and shall ensure that Recipient shall not disclose) any such information until a court of law or other legal body renders a determination on the issue and even then only after Bidder has consulted with MTA C&D, provided MTA C&D with a copy of the determination and confirmed that MTA C&D does not intend to seek subsequent legal measures to protect the information.

9. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of law principles. Any dispute arising out of this Agreement shall be brought exclusively by a State or Federal court located within the County of New York, State of New York, and Bidder hereby consents to the exclusive jurisdiction of such courts (and the appropriate appellate courts) and waives any objection to venue laid therein or convenience of any forum therein.
10. This Agreement (a) constitutes the entire agreement and supersedes all written and oral communications, between the parties relating to the subject matter hereof, and (b) may be modified or amended only by a written instrument specifically stating that it modifies this Agreement and duly executed on behalf of the parties hereto.
11. The confidentiality provisions of this Agreement shall survive and continue to be in full force and effect unless and until expressly released or terminated in writing by MTAC C&D.
12. The individual signing below on behalf of the Bidder represents and warrants that they are fully authorized to execute and deliver this Agreement on behalf

of the Bidder in accordance with its terms.

IN WITNESS WHEREOF, Bidder has executed this Agreement as of the date first written below through its duly authorized officer.

Name of Bidder: _____

By: _____
(Signature of authorized officer)

Name of Authorized Officer:_____

Authorized Officer Title:_____

Address:_____

E-mail Address: _____

Date:_____