
NJ TRANSIT Information Security Mutual Non-Disclosure Agreement

This Mutual Non-Disclosure Agreement (hereinafter the “Agreement”) is effective as of the date last below written by and between NJ Transit Corporation (hereinafter referred to as “NJ TRANSIT ”) with its principal address at One Penn Plaza East, Newark, NJ 07105 and _____, with its principal place of business at _____, its employees, agents, contractors, and legal representatives (hereinafter referred to as the “Vendor”) (collectively the foregoing parties are referred to hereinafter as the “Parties” or individually referred to as a “Party”).

RECITALS

The Parties hereto intend to have discussions to explore a possible business relationship between them.

In connection with those discussions, a Party may be given access to and become acquainted with “Confidential Information” (defined hereinafter in Section II) of the other Party to properly evaluate the desirability of actually entering into a business relationship.

The Parties hereto want to mutually protect their respective Confidential Information.

NOW, THEREFORE, in consideration of the promises and mutual covenants, conditions and limitations contained herein, the Parties do hereby agree as follows:

I. Purpose

Each Party hereto acknowledges, understands, and agrees that any “Confidential Information” it receives is to be solely and exclusively used for discussing and evaluating a potential business relationship between the Parties to this Agreement. This Agreement does not, however, require either Party to disclose or receive Confidential Information. Each Party acknowledges to the other Party that other than the duties, liabilities, and obligations set forth herein that the review of Confidential Information will cause no additional duties, liabilities, or obligations to the other Party, specifically including actually forming into a business relationship.

II. Definition of Confidential Information

“Confidential Information” means, subject to the exclusions of Section IID, all information, including data, disclosed directly or indirectly, through any means of communication (including in oral, written or digital form) or observation, by or on behalf of the “Disclosing Party” to or for the benefit of the “Receiving Party” and all information or data derived there from, that relates to the Disclosing Party’s business affairs, to the extent such matter or information is reasonably designated as confidential or proprietary information of the Disclosing Party before it is delivered to the Receiving Party. In order for written or printed materials to be deemed Confidential Information, it must be marked “Confidential Information of name of Disclosing Party”; and in order for verbal or observed information to be deemed Confidential Information, the Receiving Party must be verbally advised of the confidential nature of such information. The Vendor acknowledges that NJ TRANSIT computer networks and the architecture of the same are for the purposes of this Agreement Confidential Information.

The terms “information” and “data” as used in this definition include but are not limited to the following categories: (a) technology (e.g. trade secrets, manufacturing processes, know-how, methodologies, technical architecture and related information, computer programs and related documentation); (b) financial (e.g. operating costs, sales, investors); (c) business (e.g. business strategies, marketing plans, customer lists, employees, suppliers); and (d) personal (e.g., Social Security Numbers, medical histories, etc) .

Without limiting the generality of the definition of Confidential Information, it is expressly acknowledged that the following are included in the definition of Confidential Information:

1. Any information that is marked as classified (Confidential, Secret, Top Secret or any higher national security classification) in accordance with the National Security Act of 1947;
2. Any information that is marked as Security Sensitive Information (SSI); Protected Critical Infrastructure Information (PCII); or Chemical Vulnerability Information (CVII) pursuant to the applicable federal statutory and regulatory scheme;
3. Any information that may be protected pursuant to any other federal or state statutory or regulatory scheme intention to protect information, or by order, resolution or determination of a court or administrative board or other administrative body;
4. Any information that has been deemed confidential and not subject to disclosure pursuant to the New Jersey Open Public Records Act (OPRA) and/or any applicable Executive Order;
5. Any information that has been deemed confidential by the New Jersey Office of Homeland Security and Preparedness or the New Jersey Domestic Security Preparedness Task Force.

Access to the above detailed information by the parties to the agreement shall be determined in the following manner:

- For Paragraph (1), that the individual or individuals needing access have the appropriate security clearance and a Need to Know;
- For Paragraphs (2) and (3), that the individuals or individuals needing access meet the statutory/regulatory requirements for access, including, but not limited to, having a Need to Know as determined by the holder of the information;
- For Paragraph (4), that the individuals or individuals needing access understand the non-disclosure requirements of OPRA as determined by the holder of the information; and
- For Paragraph (5), that the individual or individuals needing access meet the requirements, if any, established by the OHSP or the Domestic Security Task Force.

Confidential Information does not include any information or data that:

1. Is publicly known through no wrongful act or breach of obligation of confidentiality;
2. was lawfully known by the Receiving Party prior to the time it was communicated by the Disclosing Party or learned by the Receiving Party;
3. The Receiving Party can demonstrate through written records was independently developed by employees or agents of the Receiving Party without use of any Confidential Information communicated to the Receiving Party;
4. Was rightfully obtained by Receiving Party from a third party not known by the Receiving Party to be in breach of any obligation of confidentiality; or
5. Was in response to a valid order by a court or other governmental body, was otherwise required by subpoena, or was necessary to establish the right of either Party under this Agreement.

III. Protection of Confidential Information

The Confidential Information, including permitted copies, shall be deemed to be the exclusive property of the Disclosing Party (or if applicable its licensee). The Receiving Party shall:

1. Only use the Confidential Information as provided by this Agreement;
2. Hold in trust any and all Confidential Information and only disclose the Confidential Information to such of its employees, officers, directors who need to know it for the purpose of the business relationship discussions recited above and who have been advised of the terms of Agreement;
3. Protect and store the Confidential Information in a manner consistent with its own Confidential Information, but in no event with less than a reasonable standard of care;
4. Not reproduce the Confidential Information in any form except as required to accomplish the purpose of the business relationship discussions recited above;
5. Not use the Confidential Information for any purpose or in any manner that would constitute a violation of any laws or regulations, including without limitation, the export control laws of the United States;
6. Notify the Disclosing Party within twenty-four (24) hours after its discovery of any loss or unauthorized disclosure or use of the Confidential Information;
7. Have no right, title or interest to the Confidential Information except as expressly provided by this Agreement;
8. Not reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the Confidential Information;
9. Not remove, modify or obliterate any copyright, confidentiality, privilege, trademark or other proprietary rights notice provide with or on the Confidential Information; and
10. Subject to the provisions of **Section V** below, upon the written request by the Disclosing Party or upon termination of this Agreement, promptly return to the Disclosing Party all documents and other tangible materials representing the Disclosing Party's Confidential Information and all copies and reproductions of all or any part of the Confidential Information.

IV. Disclosure to Third Parties

The Receiving Party shall not disclose the Confidential Information to any third party (including the Receiving Party's agents, representatives, independent consultants/contractors and subcontractors) unless, prior to any disclosure, the Receiving Party has obtained the Disclosing Party's written permission, and the third party has executed a nondisclosure agreement provided by the Disclosing Party which requires the third party recipient to consent to abide by the terms of this Agreement. The Receiving Party shall not allow the Confidential Information to be accessed through any other means, including but not limited to through the internet or other "shareware" distribution process.

V. Public Records Requests/Disclosure Compelled by Law or Judicial Proceeding

1. The Vendor acknowledges that the NJ TRANSIT is a public agency subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq. ("OPRA"), and the common law Right to Know. OPRA is generally construed in favor of granting public access to documents maintained in the course of its official business.
2. In the event that the NJ TRANSIT receives an appropriate request pursuant to OPRA and/or the common law Right to Know the subject matter of which is Confidential Information pursuant to this Agreement then, (a) NJ TRANSIT agrees to promptly notify the Vendor of same, independently determine whether it believes the documents should be maintained as confidential

and, depending on its determination, assert its position in the appropriate forum; and (b) the Vendor agrees to provide NJ TRANSIT and its counsel such assistance and cooperation as is reasonably required in order to respond to such a disclosure request.

3. Notwithstanding the requirements of this Agreement, it shall not be a violation of this Agreement and NJ TRANSIT shall have no liability to the Vendor for releasing documents in response to a request pursuant to OPRA and/or the common law Right to Know if NJ TRANSIT determines, in its best judgment, that such documents were required to be released under OPRA and/or the common law Right to Know.
4. Notwithstanding the requirements of this Agreement, NJ TRANSIT may release the Confidential Information if directed to do so by operation of law, pursuant to a lawfully issued subpoena, or pursuant to a ruling by a court or arbitrator of competent jurisdiction. NJ TRANSIT shall promptly notify the Vendor of such ruling or directive upon being made aware of same.

VI. Remedy

The Receiving Party acknowledges that these covenants are reasonable and necessary for the protection of the proprietary interests of the Disclosing Party. The Receiving Party also acknowledges that disclosure of Confidential Information in violation of this Agreement may cause irreparable harm to the Disclosing Party, the amount of which is difficult to estimate, making any remedy at law or in damage inadequate. The Receiving Party agrees that if there should be any breach or threatened breach of this Agreement, the Disclosing Party shall be entitled to an ex parte injunction prohibiting such conduct on a temporary or permanent basis, specific performance or other appropriate remedy for any such breach. This right is in addition to any other remedies available to the Disclosing Party in law or equity. Notwithstanding the foregoing, all claims asserted against the State of New Jersey shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

VII. Ownership of Confidential Information

All rights in and title to the Confidential Information supplied remain with the Disclosing Party. Neither this Agreement nor the furnishing of any Confidential Information will be construed as granting to the Receiving Party (either expressly, by implication or estoppel, or otherwise) any license or immunity under any copyright, patent, trade secret, trademark, or other intellectual property right now or hereafter owned or controlled by the Disclosing Party, except solely to effectuate the purpose described in Section I of this Agreement.

VIII. Special Provision for Vendor

In the event that as part of this Agreement the Vendor is required or requested by NJ TRANSIT to be on-site at NJ TRANSIT or to have access to any computer communications network maintained by NJ TRANSIT then the following provisions shall apply to Vendor:

Vendor will only allow its employees, which were approved in advance by NJ TRANSIT (hereinafter referred to as "Authorized Vendor Employees") to access NJ TRANSIT's network under NJ TRANSIT supervision;

Vendor shall ensure that the Authorized Vendor Employees are not security risks or known to be of moral or financial disrepute or a party suspended or debarred from doing business with the State of New Jersey or the United States;

Upon the request of NJ TRANSIT, the Vendor will provide NJ TRANSIT with any information reasonably necessary for NJ TRANSIT to evaluate security issues in relation to any of the Authorized Vendor Employees; and

Upon the request of NJ TRANSIT, Vendor agrees to require the Authorized Vendor Employees to consent to background checks and/or fingerprinting as required pursuant to any applicable rules, regulations, operating procedures, policies, or statutes requiring the same.

IX. Term

The Confidential Information disclosed pursuant to this Agreement will be subject to the terms of this Agreement for a period of ten (10) years from the date of the last person to execute this Agreement.

X. General

1. **Governing Law.** This Agreement and any litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations, and rules of evidence of the State of New Jersey without reference to its conflict of laws principles. Any litigation arising out of or in connection with this Agreement shall take place in a state or federal court of competent jurisdiction in New Jersey.
2. **Entire Agreement.** This Agreement is the complete agreement of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous agreements relating to its subject matter. The provisions of this Agreement may not be modified, amended or waived except in by a written instrument signed by both Parties.
3. **Disclaimer.** THE DISCLOSING PARTY PROVIDES THE CONFIDENTIAL INFORMATION SOLEY ON AN "AS IS" BASIS. The Disclosing Party will not be liable for any damages arising out of the use of the Confidential Information disclosed pursuant to this Agreement. Neither this Agreement nor the disclosure of any Confidential Information pursuant thereto grants the Receiving Party any right nor license pursuant to any trademark, copyright or patent now or hereafter owned or controlled by the Disclosing Party.
4. **Assignment.** This Agreement may not be assigned, in whole or in part, by either Party without the prior written consent of the other Party, except to any of its affiliates. No permitted assignment shall relieve a Party of any of its responsibilities under this Agreement. Any assignment in violation of this Section shall be void. This Agreement shall be binding upon the Parties and their respective successors and assigns.
5. **Unenforceability and Severability.** If any provision of this Agreement is found to be unenforceable, that provision will be severed and the remainder of this Agreement will continue in full force and effect.
6. **Notices.** Any notices required or permitted hereunder will be given in writing to the addresses specified in the introductory paragraph. Such notice will be deemed given from the date sent by hand delivery, registered or certified mail, postage prepaid; confirmed facsimile or by commercial overnight courier with verification of receipt.
7. **Counterparts.** This Agreement is being executed as two duplicate original counterparts, with one original counterpart being retained by each party and all such counterparts shall together constitute but the same instrument.

IN WITNESSETH WHEREOF, the Parties have executed this Agreement, effective as of the day and date last below written.

Name: _____

Title : _____

NJ TRANSIT Corporation

Date: _____

Name: _____

Title: _____

Company Name: _____

Date: _____

Effective Date: