

## NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (this "Agreement"), made this \_\_\_\_day of \_\_\_\_\_, 2016 ("Effective Date"), is entered into by \_\_\_\_\_ a \_\_\_\_\_ company organized under the laws of the \_\_\_\_\_ (Commonwealth of PR or the U.S.A), with its principal offices located at \_\_\_\_\_, \_\_\_\_\_ (state) (Proposer).

Whereas, in connection with the RFP process to be carried out by the Puerto Rico Highways and Transportation Authority ("PRHTA") regarding the implementation of a "MIGRATION FROM MICROSOFT EXCHANGE TO MICROSOFT OFFICE 365 "Cloud/SaaS " (Email communications will be improved by transferring the existing email service from an onsite server to a cloud based service), the PRHTA may provide certain confidential and proprietary information and materials to each other which they seek to keep confidential.

1. Definitions. For purposes of this Agreement, the following terms shall have the following meaning:

(a) "Affiliate" shall mean any entity controlling, controlled by, or under common control with the Proposer.

(b) "Recipient" shall mean the Proposer, including such Proposer's Affiliates, receiving Proprietary Information from the Disclosing Party.

(c) "Disclosing Party" shall mean PRHTA.

(d) "Trade Secrets" shall mean any information, without regard to form, including, but not limited to, technical or non-technical data, know-how, formulas, patterns, compilations, computer programs and software (including source and object code), devices, drawings, processes, methods, techniques, financial and product plans and data, lists of actual or potential customers or suppliers, and other business information which: i) derives economic value, actual or potential, from not being generally known to or readily ascertainable by proper means, by other persons who can obtain economic value from its disclosure or use; and ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(f) "Proprietary Information" shall mean information, without regard to form, regarding a Party and/or its Affiliates that is disclosed to, or becomes known to, the other Party as a result of the Parties' activities hereunder and is not generally known in the relevant trade or industry, including, but not limited to, the following:

(i) Trade Secrets;

(ii) Information concerning the operations, affairs and businesses of PRHTA.

(iii) To the extent they do not qualify as Trade Secrets under applicable law, technical or non-technical data, know-how, formulas, patterns, compilations, computer programs and software (including source and object code), devices, drawings, processes, methods, techniques, financial and product plans and data, lists of actual or potential customers and suppliers, and other business information;

(iv) To the extent they do not qualify as Trade Secrets under applicable law, any policies, plans, procedures, methods, designs, systems or processes used by either party to maintain the security of its business operations; and

(v) To the extent they do not qualify as Trade Secrets under applicable law, any other information which is marked confidential, restricted, proprietary or with a similar designation or, if unmarked, which the Recipient should reasonably know is confidential.

2. No obligation to Mark Proprietary Information. There shall be no obligation from the Disclosing Party to mark the information as proprietary; all information shall be deemed Proprietary Information unless otherwise indicated by the Disclosing Party.

3. Obligations of Confidentiality.

(a) Except as otherwise provided herein, the Recipient agrees to treat confidentially and to not disclose to any party any Proprietary Information of the Disclosing Party furnished to Recipient, whether such information is disclosed directly by the Disclosing Party or on the Disclosing Party's behalf.

(b) The Recipient shall use all Proprietary Information received by it solely in connection with the Potential Business Arrangement and for no other purpose whatsoever. The Recipient shall strictly limit access to any Proprietary Information to its employees, independent contractors, and agents who are under a contractual obligation to maintain the confidentiality of such information, and who have a need-to-know connection with the Potential Business Arrangement.

(c) The Recipient shall safeguard all Proprietary Information received by it using the same degree of care with which it protects the confidentiality of its own Trade Secrets and Proprietary Information, but in no event less than a reasonable degree of care.

(d) The Proposer shall be liable for any breach of the obligations of confidentiality and restriction on use contained herein by it, and its respective Affiliates, employees, officers, directors, agents, representatives, external or internal auditors or independent contractors (collectively, "Representatives") (including without limitation, its Representatives who, subsequent to the first date of disclosure of Proprietary Information hereunder, become its former Representatives).

4. Rights in Proprietary Information. Neither this Agreement, nor the act of disclosure, confers upon the Recipient any right, license, interest or title to the Proprietary Information of the Disclosing Party. Title to the Proprietary Information shall remain solely in the Disclosing Party, and the Recipient may not use the Proprietary Information except as contemplated by this Agreement.

5. Destruction of Information. Upon the request of the Disclosing Party, the Recipient shall collect and surrender, or confirm the destruction or non-recoverable data erasure of, all Proprietary Information and all copies thereof, regardless of form, and any such destruction shall be certified in writing to the Disclosing Party by an authorized officer of the Recipient supervising such destruction.

6. Exception to Confidentiality.

(a) The obligations of confidentiality and restriction on use contained herein shall not apply to any Proprietary Information that a Recipient is clearly able to demonstrate:

(i) Was in the public domain prior to the Effective Date of this Agreement or subsequently came into the public domain through no fault of the Recipient;

(ii) Was lawfully received by the Recipient from a third party, which third party was, to the knowledge of the Recipient, free of any obligation of confidentiality;

(iii) Was already in the lawful possession of the Recipient without an obligation to maintain its confidentiality prior to disclosure by the Disclosing Party;

(iv) Is required to be disclosed by applicable law, or in a judicial or administrative proceeding, but only so long as the Recipient, to the extent it is not legally prohibited, gives the Disclosing Party notice, prior to any disclosure, of any request to disclose Proprietary Information so that the Disclosing Party has an opportunity to object to the production or disclosure of the requested information. In the event that Proprietary Information is produced under such legal compulsion, such production shall be strictly limited to the requesting party as dictated by applicable law or court order, shall be limited in scope to the extent practicable, and shall not otherwise affect the confidential nature of such Proprietary Information:

(v) Can be proven to have been subsequently and independently developed, without violation of this Agreement, by employees, consultants or agents of the Recipient who did not have access to the Proprietary Information; or

(vi) Is disclosed by the Recipient in accordance with the prior written approval of the Disclosing Party, but only to the extent allowed and for the limited purposes specified in such written approval. Such permitted disclosure shall not otherwise affect the confidential nature of such Proprietary Information.

(b) For purposes of this Agreement, Proprietary Information shall not be deemed to be in the public domain or be in Recipient's lawful possession merely because it consists of components that are within the public domain.

7. Rights and Remedies.

(a) A Recipient shall notify a Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Proprietary Information or any breach of this Agreement by Recipient and will cooperate with such Disclosing Party in every reasonable way to help such Disclosing Party regain possession of the Proprietary Information and prevent its further unauthorized use.

(b) If either Party employs an attorney to enforce any rights arising out of or relating to this Agreement, the prevailing Party shall be entitled to recover reasonable costs of litigation, including, but not limited to, attorneys' fees.

8. Term. The obligations herein shall be effective during discussions or conversations regarding the RFP process and for a period of 3 years from the latter of the date of last disclosure of any Proprietary Information to Proponent pursuant to this Agreement and shall survive termination of their contract or future potential contract for a period of 3 years.

(PROPONENT)

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

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

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