**MUTUAL NON-DISCLOSURE AGREEMENT**

This **NON-DISCLOSURE AGREEMENT**, made and entered into as of the date last executed, by and between [Company Name] with a place of business at [Company or Person’s Address] and **University of Alaska Fairbanks**, a separately accredited university, that is part of the University of Alaska System of Higher Education, with an official address of University of Alaska Fairbanks 505 South Chandalar Drive Fairbanks, AK 99775, either or both of which may be hereinafter referred to as the “Party” or “Parties” respectively, or either of which may be referred to as “Discloser” or “Recipient”, respectively.

WHEREAS, for the mutual benefit of both Parties, either Party may wish to disclose to and/or receive from the other, from time to time, during the term of this Agreement, certain information for the purpose(s) of or use(s) as set forth herein as "Defined Purpose” which the disclosing Party (Discloser) considers to be valuable, proprietary and confidential, hereinafter referred to as Confidential Information.

WHEREAS, both Parties desire to set forth their understandings and agreements concerning the disclosure and use of such Confidential Information;

**NOW, THEREFORE, the Parties do mutually agree as follows:**

1. Defined Purpose – Parties plan to provide each other with certain trade secrets and Confidential Information regarding [Description of information to be disclosed] for purposes that may include, but not be limited to evaluation of information, furthering scientific understanding, and/or expanding technical understanding.

2. To the extent that information disclosed by either Party during the term of this Agreement is deemed by the Discloser to be proprietary, confidential or competition sensitive and is to be protected in accordance with the terms of this Agreement (Confidential Information), the Discloser shall reduce such information to tangible form and identify it as Confidential Information by marking such information with an appropriate legend or stamp identifying the information to be proprietary or confidential. No sheet or page of any written material will be labeled Confidential Information which is not, in good faith, believed to contain Confidential Information. For purposes of this Agreement, information stored in electronic form on disk, tape, or other storage media constitutes information reduced to tangible form.  If a Party originally discloses information in some other form (*e.g*., orally or visually), that information will be protected under this Agreement upon condition that the Discloser identifies the oral or visual disclosure as proprietary at the time of disclosure, summarizes the Disclosed Information in writing, marks the writing with an appropriate legend, and delivers the writing to the Recipient within fourteen (14) days of the oral or visual disclosure.

3. The Parties each agree to employ reasonable efforts to keep in confidence and prevent the disclosure to any person who does not have a “need to know” the Confidential Information to carry out the Defined Purpose. The Parties shall not disclose the Confidential Information outside their legal entity except that it may disclose the Confidential Information to their affiliated U.S. entities or any person(s) within such affiliated U.S. entities to the extent necessary for the Defined Purpose. The Recipient shall not use Confidential Information for purposes other than the Defined Purpose. The Recipient shall exercise the same degree of care to guard against disclosure or use of such Confidential Information as the Recipient employs with respect to its own protected information of like importance, but in no event less than reasonable care.

4. Except as provided herein, each Party shall for a period of two (2) years from its date of receipt under this Agreement, preserve, protect, and not disclose to non-parties any Confidential Information disclosed to it by the other Party.

5. The foregoing restrictions imposed by this Agreement upon the use and disclosure of a Discloser’s Confidential Information shall not apply to information that:

(a) was in the public domain at the time of disclosure, or is subsequently made available to the general public without restriction by the Discloser;

(b) was known to the Recipient at the time of disclosure without restrictions on its use or independently developed by the Recipient party without the breach of this Agreement, and there is adequate documentation to demonstrate either condition;

(c) is used or disclosed with the prior written approval of the Discloser;

(d) was disclosed without restriction to the Recipient party from a source other than the Discloser who is not under any obligation of confidentiality with respect to such information;

(e) is used or disclosed after the protection period specified in Article 4 above has expired; or

(f) is disclosed in response to a court order.

If any portion of either Party’s Confidential Information falls within any one of the above exceptions, the remainder will continue to be subject to the foregoing prohibitions and restrictions.

6. In the event any governmental or judicial order requires the disclosure of Confidential Information as in 5(g) above, the Recipient shall promptly but in any event prior to such disclosure notify the originator of the Confidential Information of the requirement and provide reasonable assistance (not including financial or legal assistance) if the originator decides to oppose such governmental or judicial order. The Recipient shall not be liable for any disclosure of Confidential Information made pursuant to such governmental or judicial order if it has complied with the provisions of this paragraph.

7. Upon expiration or termination of this Agreement, neither party shall have the duty to return or destroy all documents concerning the Confidential Information, or to certify in writing their destruction.

8. Prior to disclosure of Confidential information to an employee, each party shall fully advise such employee that he or she is required to hold in confidence all information and that such information is not to be disclosed to persons outside his or her organization or to any co-employee not directly concerned with furthering the Defined Purpose. To the extent permitted by law, the parties shall maintain between themselves and their officers, employees and consultants duly binding agreements by such persons as may be necessary to fulfill their obligations under this Agreement.

9. Any notices required by this Agreement and any other written communications relating to this Agreement shall be directed to the attention of the following named representatives:

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| --- | --- |
| **[Company Name]**  **Address line 1**  **Address line 2**  **Email Address** | **University of Alaska Fairbanks**  **PO Box 757265**  **Fairbanks, AK 99775-7265**  **uaf-nda@alaska.edu** |

Any change in the identity of a primary point of contact by either Party shall be made in writing with the other Party.

10. This Agreement may be terminated at any time by either party giving thirty (30) days prior written notice to the other party. Unless earlier terminated, this Agreement and the exchange of Confidential Information shall expire one (1) year from the date of execution of this non-disclosure agreement and any information exchanged after such termination or expiration shall not be protected under this Agreement. The parties’ obligation to protect Confidential Information pursuant to Article 4 above shall survive any such expiration or termination.

11. No rights or obligations other than those expressly recited herein are to be implied from this Agreement. This Agreement shall not be construed to obligate a Party to disclose Confidential Information to the other Party. The disclosure of Confidential Information hereunder shall not be construed as granting a license under any patent or patent application or any right of use or ownership in the Confidential Information. Nor shall such disclosure constitute any representation, warranty, assurance, guarantee or inducement by the Discloser with respect to infringement of patents or rights of third parties. No warranty or representation as to the accuracy, completeness or technical or scientific quality of any information or suitability for the Recipient’s intended use is provided herein. WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, THE PARTIES MAKE NO REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY CONFIDENTIAL INFORMATION DISCLOSED HEREUNDER.

12. The Parties to this Agreement are independent contractors, and each will bear its own expenses it incurs in connection with this Agreement.  Neither Party has the right to make commitments of any kind for or on behalf of the other Party.  This Agreement is not intended to be, nor shall it be construed as a joint venture, partnership, teaming agreement, or other formal business relationship.  This Agreement shall not be construed in any manner to be an obligation to enter into any contracts or subcontracts between the Parties.

13. This Agreement shall be construed in all respects in accordance with, and any dispute arising hereunder shall be governed by and enforced in accordance with the laws of the State of Alaska, without regard to its principles of conflicts of laws. By signing this Agreement, both Parties agree to be subject to the laws and jurisdiction of the Fourth Judicial District of the State of Alaska, and further agree that Fairbanks, Alaska is the appropriate venue for any dispute arising from this Agreement.

14. A Recipient will comply with all applicable United States and foreign laws and regulations concerning export control.  In the event it is necessary to disclose technical data that are regulated under export controls, the Discloser will clearly mark such data as “Export Controlled” and provide sufficient notice and information, including its Commerce Control List and/or USML classification, to allow the Recipient to comply with any applicable export controls. Neither Party shall export directly or indirectly any technical data or products received or the direct product of such technical data acquired from the other Party under this Agreement except in compliance with the applicable export control laws and regulations of the United States and any foreign country, including obtaining any necessary licenses or approvals.

15. Neither Party shall assign or transfer any of its rights or obligations hereunder in whole or part without the prior written consent of the other Party, except to another U.S. corporate division or affiliate of the Party so long as sufficient assets, personnel and other resources necessary to perform the obligations hereunder remain available.

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16. This Agreement contains the entire understanding between the Parties and is the complete and exclusive expression of the Agreement between the Parties with respect to the exchange and protection of Confidential Information for the Defined Purpose.  This Agreement supersedes all prior or contemporaneous communications, agreements or understandings between the Parties on the subject matter of this Agreement.  A modification to this Agreement may only be made in writing and must be signed by authorized representatives of both Parties.

The Parties hereto, by and through their duly authorized representatives, execute this Agreement in duplicate, each of which shall be deemed an original.

| **University of Alaska Fairbanks** | | | **[Insert Company Name]** | | |
| --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |
| *SIGNATURE* | | | *SIGNATURE* | | |
|  | Nettie LaBelle-Hamer |  |  |  |  |
| *TYPED NAME* | | | *TYPED NAME* | | |
|  | Interim Vice Chancellor for Research |  |  |  |  |
| *TITLE* | | | *TITLE* | | |
|  |  |  |  |  |  |
| *DATE* | | | *DATE* | | |

UAF Employee, Faculty, Staff for whom this Non-Disclosure Agreement was signed:

I have read, understood, acknowledge, and agree to comply with the terms of this Agreement:

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(PI Name) (signature)DATE

UAF Export Control Review:

UAF NDA Internal Number: