

CONFIDENTIAL DISCLOSURE AND NON-USE AGREEMENT

This Agreement is made and effective on February __, 2020 ("Effective Date") by and between The Johns Hopkins University Applied Physics Laboratory LLC, a Maryland limited liability company, with its principal office at 11100 Johns Hopkins Road, Laurel, Maryland 20723-6099 U.S.A. (hereinafter "JHU/APL"), and _____, with a place of business at _____ (hereinafter "_____").

RECITALS

WHEREAS, JHU/APL and _____ (the "Party" or "Parties") wish to disclose certain information to each other on a confidential basis regarding _____ (the "Purpose"); and

WHEREAS, each Party seeks to establish and set forth its obligations with respect to the other Party's Proprietary Information (hereinafter defined);

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein, the Parties hereto AGREE AS FOLLOWS:

1. DEFINITION AND MARKING OF PROPRIETARY INFORMATION

- (a) "Proprietary Information" is defined as any information disclosed to a receiving Party and indicated and/or marked by the disclosing Party to be "Proprietary" in accordance with the procedures set forth below.
- (b) All information which a disclosing Party considers confidential, proprietary, trade secret, or similar information shall be provided in writing or other permanent visual form (such as, a physical prototype, physical sample, photograph, videotape, or sound recording) and clearly marked as "Proprietary" at the time of delivery to the receiving Party. Information disclosed orally or by visual observation shall be treated as proprietary, provided that the disclosing Party indicates at the time of such disclosure the proprietary nature thereof and furnishes a written summary of such disclosure, marked as set forth above, to the receiving Party within fifteen (15) business days thereafter.

2. INFORMATION NOT CONSIDERED PROPRIETARY

Proprietary Information shall not include any information that:

- (a) is already known to the receiving Party at the time of disclosure as evidenced by written documents; or
- (b) is generally available to the public or becomes publicly known through no fault of the receiving Party; or
- (c) is received by the receiving Party from a third party who had a legal right to disclose such Proprietary Information without restriction; or
- (d) is developed independently of and without reference to Proprietary Information received by the receiving Party from the disclosing Party; or
- (e) is ordered disclosed by a court of competent jurisdiction or other quasi-judicial or regulatory body or by a government agency, provided that the receiving Party first promptly notifies the disclosing Party of such directive so that the disclosing Party may contest it.

3. LIMITATIONS ON DISCLOSURE AND USE OF PROPRIETARY INFORMATION

- (a) The receiving Party shall maintain all Proprietary Information and summaries, synopses or abstracts thereof in strict confidence during the term of this Agreement and for a period of three (3) years from the expiration or termination date of this Agreement, shall not disclose such Proprietary Information to any third party during said time period without the prior written consent of the disclosing Party, and shall not use the Proprietary Information for its own benefit or for the benefit of any third party during said time period except for the Purpose.
- (b) Each Party shall limit the disclosure of any Proprietary Information received from the other Party only to those of its employees, agents, representatives, and contract labor having a need to know about the same to achieve the Purpose of this Agreement and who are under an obligation to maintain the Proprietary Information in confidence and to use it solely for the Purpose described in the recital above under terms and conditions at least as restrictive as the terms and conditions of this Agreement.
- (c) The Parties agree that nothing herein shall obligate a Party to disclose information to the other Party.
- (d) The receiving Party agrees to exercise the same care and safeguards with respect to Proprietary Information disclosed by the disclosing Party as the receiving Party uses to maintain the confidentiality of its own information of like character, but in no event less than a reasonable degree of care. Neither Party shall be liable in damages for any inadvertent disclosure of Proprietary Information where at least a reasonable degree of care has been exercised, provided that, each Party shall immediately notify the other upon discovery of an unauthorized disclosure or use of Proprietary Information, cooperate with the other Party to retrieve the Proprietary Information, and take steps to prevent any further inadvertent disclosures.

4. NOTICE OF IMMUNITY UNDER THE ECONOMIC ESPIONAGE ACT OF 1996 (AS AMENDED BY THE DEFEND TRADE SECRETS ACT OF 2016 ("DTSA"))

Notwithstanding anything to the contrary set forth in this Agreement:

- (a) Pursuant to the DTSA (18 U.S.C § 1833(b)(1)), no individual shall be held criminally or civilly liable under federal or state trade secret law for the disclosure of a trade secret that is made: (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (2) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
- (b) A Party shall not be prohibited from (1) exercising their rights under federal, state, or local law (including, but not limited to, acting as or cooperating with a whistleblower), (2) cooperating in a government or administrative investigation, or (3) revealing alleged criminal wrongdoing to law enforcement.

5. EXCLUSIVE CONTACTS

Proprietary Information shall be furnished only to the following authorized representatives of the Parties, or to any successor representatives that are designated in writing by a Party:

(a) **JHU/APL**
Name:
Address: 11100 Johns Hopkins Road
Laurel, MD 20723-6099
Phone: 240-
E-mail: @jhuapl.edu

(b) **XXX**
Name:
Address:

Phone:
E-mail:

6. RETURN OR DESTRUCTION OF PROPRIETARY INFORMATION

Within thirty (30) days following a written request, the receiving Party shall return all Proprietary Information supplied by the disclosing Party and return or destroy all copies, summaries, synopses or abstracts thereof, provided, however, that one copy of same may be retained for archival purposes only.

7. RELATIONSHIP BETWEEN THE PARTIES

- (a) Nothing contained herein shall be construed, either expressly or implicitly, to grant to the receiving Party any rights to technology or a license under any patent, copyright, trademark or other intellectual property right now or hereafter in existence except for the limited Purpose set forth herein.
- (b) In the event the Parties make a later contract or agreement concerning anything covered by this Agreement, this Agreement shall continue to remain in full force and effect unless specifically stated to the contrary in such later contract.
- (c) This Agreement shall not constitute, create, give effect to or otherwise imply a joint venture, pooling arrangement, partnership, or formal business organization of any kind. Unless and until a final definitive agreement regarding a business relationship between the Parties hereto has been executed and delivered, neither Party will be under any legal obligation of any kind whatsoever with respect to such business relationship by virtue of this Agreement except for the rights and obligations specifically agreed to herein. Neither Party will be liable to the other for any of the costs, expenses, risks, or liabilities arising out of the other's efforts in connection with this Agreement. Nothing contained in this Agreement shall grant to either Party the right to make commitments of any kind for or on behalf of any other Party without the prior written consent of the other Party.
- (d) THIS AGREEMENT DOES NOT GRANT ANY WARRANTY, GUARANTEE, OR REPRESENTATION WITH RESPECT TO ANY EXCHANGED PROPRIETARY INFORMATION, EITHER EXPRESSED OR IMPLIED. NEITHER PARTY SHALL BE LIABLE IN DAMAGES, OF WHATEVER KIND, AS A RESULT OF THE OTHER PARTY'S RELIANCE ON OR USE OF THE PROPRIETARY INFORMATION PROVIDED HEREUNDER.
- (e) This Agreement constitutes the complete understanding between the Parties of each Party's obligations to the other Party relating to the Proprietary Information. This Agreement can be modified only by a written document that is executed by an authorized representative of the Parties and that refers to this Agreement.

8. TERM OF AGREEMENT

This Agreement shall expire one (1) year after the Effective Date written above (the "disclosure period") except that it may be terminated earlier by thirty (30) days prior written notice by either Party to the other. The provisions of Articles 3, 6, 7 and 9 of this Agreement shall survive such expiration or termination.

9. MISCELLANEOUS

- (a) In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining portions thereof shall remain in full force and effect.
- (b) The Parties acknowledge that money damages may not be an adequate remedy for any breach or threatened breach of this Agreement and the Parties agree that the non-breaching Party shall be entitled to seek injunctive relief in any court of competent jurisdiction as necessary in connection with any unauthorized use or disclosure of Proprietary Information and that the non-breaching Party shall be entitled to do so without the necessity of proving damages, posting any bond or other security, and without prejudice to or diminution of any other rights or remedies which may be available at law or equity.
- (c) The Parties hereto agree that they will not export, directly or indirectly, any export controlled material acquired from either organization pursuant to this Agreement to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other government approval without first obtaining such license or approval.
- (d) This Agreement shall be construed in accordance with and governed by the laws of the State of Maryland without giving effect to its internal principles of choice of law.
- (e) This Agreement may be executed in counterparts (including faxed copies and any electronic or digital format), each one of which is considered an original, but all of which constitute one and the same instrument.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by a duly authorized representative effective as of the Effective Date.

The Johns Hopkins University
Applied Physics Laboratory LLC

By: _____

By: _____

Typed Name: Nancy J. Kronman

Typed Name: _____

Title: Sr. NDA Manager

Title: _____

Date Signed: _____

Date Signed: _____

JHU/APL NDA #