**Mutual Non-Disclosure Agreement**

THIS MUTUAL NON-DISCLOSURE AGREEMENT (“Agreement”) is made by and between **[Navy Collaborator]**, a United States Federal Government Laboratory of the Department of the Navy, located at **[Navy Collaborator address]**, and **[Non-Navy Collaborator]**, whose principal address is located at **[Non-Navy Collaborator address]** (hereinafter referred to individually as “Party” or collectively as the “Parties”) to facilitate the following described “Stated Purpose” by protecting non-public and proprietary information from misuse and unauthorized disclosure. This Agreement shall become effective upon the date of last signature by the authorized representatives of each of the Parties (“Effective Date”).

SUBJECT MATTER AND STATED PURPOSE:

a. The general subject of information to be exchanged is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

b. The Stated Purpose of this Agreement is to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND SPECIFIC REQUIREMENTS. As used in this Agreement, the following terms shall have the meanings as defined.

1.1. Information – includes, but is not limited to, knowledge relating to research, inventions, trade secrets, technology (including designs and specifications of components and systems, the composition of matter, methods and processes, machines and articles of manufacture, applications, and performance data), and business and financial records.

1.2. Disclosure of Information – the exchange of Information orally, visually, or on any human or machine readable medium including, but not limited to, oral and visual expressions, demonstrations, audio tapes, video tapes, drawings, computer memory devices, models, prototypes and samples.

1.3. Disclosing Party – the Party making a Disclosure of Information to the other Party. Either or both Parties may be a Disclosing Party.

1.4. Receiving Party – the Party receiving a Disclosure of Information from the other Party. Either or both Parties may be a Receiving Party.

1.5. Protected Information – Information provided by a Disclosing Party to a Receiving Party under this Agreement that has been clearly identified through the use of an appropriate marking that puts the Receiving Party on notice that the Disclosing Party considers the Information to be protected under the terms of this Agreement and such Information should not be disclosed to any non-Parties except as provided under the Agreement. Protected Information shall not include, and the identification of Information as Protected Information shall not affect the rights of the Parties to use or disclose, Information that:

1.5.1. was available in the public domain at the time of disclosure and receipt, or subsequently becomes available in the public domain from a source other than by a breach of this Agreement by the Receiving Party, or

1.5.2. was already known to the Receiving Party, as can be proved by written documentation, prior to the time the Disclosing Party disclosed the Protected Information to the Receiving Party, or

1.5.3. is or becomes available to the Receiving Party without restriction from another source that does not violate any obligation to the Disclosing Party, or

1.5.4. is independently developed by or for the Receiving Party by persons having no access to the Disclosing Party’s Protected Information, as evidenced by written documentation; or

1.5.5. is disclosed by the Disclosing Party to a third party without restriction; or

1.5.6. Is disclosed after three (3) years from the date of receipt of the Information.

The fact that individual elements of a Disclosing Party’s Protected Information may be in the public domain shall not relieve the Receiving Party of its obligations hereunder unless the specific combination or combinations of elements as disclosed in such Protected Information is available to the public.

1.6. Appropriate Markings – any reasonable method by which a Disclosing Party clearly identifies to a Receiving Party that Information is being disclosed under this Agreement, and such Information is considered by the Disclosing Party to be Protected Information. Protected Information that is disclosed in tangible form shall be clearly marked with a human readable legend, stamp or other written notification prominently affixed or attached to the medium in which the Information is conveyed. The marking shall reference and require compliance with this Agreement. Use of the marking “Protected Information” is preferred, but the Parties will also recognize other usual and appropriate markings such as “Sensitive Information,” “Proprietary Information,” “Non-Disclosure Information,” and “Business Sensitive Information.” The terms “Confidential,” “Secret,” and “Top Secret” are established security classifications within the U.S. Government and shall not be used to mark or identify Information as Protected Information.

1.6.1. If Protected Information is disclosed in an intangible form (orally, visually, or otherwise), the Disclosing Party shall, prior to disclosure, provide oral or written notice to the Receiving Party that it considers the Information to be Protected Information, and the Receiving Party shall treat such intangible Information as Protected Information. Within thirty (30) calendar days after notice and disclosure, the Disclosing Party shall provide an appropriately marked written summary of the intangible Information to the Receiving Party. If a properly marked written summary is not provided by the Disclosing Party within thirty (30) calendar days, the Information previously conveyed in intangible form will not be Protected Information under this Agreement.

1.6.2. If a Receiving Party has any objection to a marking placed on Information or to any summary of intangible Information transferred to it by the Disclosing Party as Protected Information, the Receiving Party shall, within ten (10) working days of receipt of such Information or summary of intangible Information, bring such objection to the attention of the Disclosing Party. If the Parties are unable to mutually resolve the objection, the Receiving Party shall immediately return the challenged Information or summary to the Disclosing Party.

2. AUTHORIZED ACCESS AND DISCLOSURE.

2.1. A Receiving Party shall not use or disclose Protected Information other than in accordance with the terms and conditions of this Agreement.

2.2. A Receiving Party shall take reasonable and appropriate measures to safeguard Protected Information from misuse, theft, loss, destruction, and unauthorized disclosure. Such measures shall be no less than that degree of care the Receiving Party normally takes to preserve and safeguard its own proprietary Information of a similar nature. Upon discovery of any misuse, theft, loss, destruction, or unauthorized disclosure of Protected Information, a Receiving Party shall promptly notify the Disclosing Party in writing and take action to prevent further disclosure and to recover any Protected Information already disclosed.

2.3. If Protected Information is included in any analyses, reports, or other documents or physical embodiments prepared by the Receiving Party, all such documents and embodiments shall be appropriately protected by the Receiving Party in the same manner as the Receiving Party protects the source Protected Information.

2.4. A Receiving Party may provide access to Protected Information to its own employees who reasonably require such access in order to accomplish the Stated Purpose of this Agreement and who are legally bound by law or written agreement to safeguard Protected Information to substantially the same extent as the Receiving Party is bound to do so under this Agreement. The status of **[Navy Collaborator]** employees as U.S. Government employees subjects them to the requirements and restrictions of the Trade Secrets Act (18 U.S. Code § 1905) which are deemed to be at least as extensive as the requirements and restrictions of this Agreement with regard to their duty to safeguard Protected Information. Prior to being granted access to Protected Information, employees of a Receiving Party shall be advised concerning the requirements and restrictions of this Agreement, directed to use and safeguard Protected Information properly, and not to disclose Protected Information without proper authorization.

2.5. A Receiving Party may provide access to Protected Information to its agents, service contractor employees, collaborators and other non-Parties to this Agreement who reasonably require such access in order to accomplish the Stated Purpose of this Agreement. Before any such non-Party organizations or individuals are granted access to Protected Information, the Receiving Party shall notify and obtain the concurrence of the Disclosing Party. The Receiving Party shall also require non-Party organizations and individuals (other than U.S. Government officers and employees who are covered by the Trade Secrets Act, 18 U.S. Code § 1905) to execute the Supplemental Agreement at Appendix I prior to providing such non-Parties access to any Protected Information.

2.6. A Receiving Party shall not disclose Protected Information or any matter derived from Protected Information to any person (including its own employees), nor shall a Receiving Party export any Protected Information from the United States, if such disclosure or export would violate the Arms Export Control Act, the International Traffic in Arms Regulation (22 C.F.R. Part 121 et seq.), the Export Administration Act, the Department of Commerce Export Regulations (15 C.F.R. Part 730 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R), or any other applicable law or regulation of the United States. A Receiving Party shall first obtain the written consent of the Disclosing Party before exporting or requesting authority to export Protected Information from the United States.

2.7. The Parties agree that Protected Information disclosed under this Agreement is proprietary to the Disclosing Party. Nothing contained herein shall be construed to grant or confer any rights other than to use the Protected Information for the Stated Purpose under the terms of this Agreement, nor shall anything herein be construed to grant license or other rights to any inventions, patents, trademarks, copyrights, technical information, trade secrets, or other intellectual property whatsoever.

2.8. In the event a Disclosing Party discloses a non-Party’s proprietary information, the Disclosing Party represents that it is authorized to disclose such proprietary information to the Receiving Party, and the Receiving Party agrees to treat such proprietary information as the Disclosing Party’s Protected Information.

2.9. The following individuals are designated as the principal points-of-contact for the transmittal and receipt of Protected Information under this Agreement:

|  |  |
| --- | --- |
| For **[Navy Collaborator]**: | For **[Non-Navy Collaborator]**: |
| Name | Name |
| Phone | Phone |
| Email | Email |

3. GENERAL PROVISIONS.

3.1. All Protected Information owned by a Disclosing Party shall remain the property of the Disclosing Party. Protected Information in tangible form may be retained in the possession of the Receiving Party after termination or expiration of this Agreement only to the extent expressly authorized by the Disclosing Party. Within thirty (30) days after termination or expiration of this Agreement, or upon receipt of a written demand from the Disclosing Party for the return of Protected Information, the Receiving Party shall promptly cease all use of the Disclosing Party’s Protected Information. The Receiving Party shall make a commercially reasonable good faith effort to return (or destroy, if so requested) all tangible forms of Protected Information received from the Disclosing Party. If destruction is requested, the Receiving Party will provide written notification to the Disclosing Party certifying that the destruction has been accomplished.

3.2. If samples, models, prototypes, computer programs, or other such embodiments are disclosed as Protected Information, the Receiving Party will not attempt to reverse engineer or otherwise analyze, modify, or adapt such items unless the written approval of the Disclosing Party is obtained prior to engaging in reverse engineering, analysis, modification, or adaptation.

3.3. Each Party shall bear its own costs and expenses incurred under or in connection with this Agreement. Nothing in this Agreement shall be construed as an obligation by either Party to deliver Protected Information to the other Party or to enter into a contract, subcontract, or other business relationship with the other Party.

3.4. This Agreement shall not be construed as a Teaming Agreement, Joint Venture, or any other such agreement nor shall it be construed as a commitment to procure or provide any specific products or services.

3.5. THE PARTIES AGREE THAT ALL PROTECTED INFORMATION AND EMBODIMENTS THEREOF ARE PROVIDED AND ACCEPTED ON AN “AS IS” BASIS. THE DISCLOSING PARTY MAKES NO WARRANTY OR REPRESENTATION OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE.

3.6. Either Party, upon thirty (30) days written notice to the other Party, may terminate this Agreement.

3.6.1. Duration. Unless sooner terminated, this Agreement shall expire three (3) years from the Effective Date.

3.6.2. Period of Obligation. Notwithstanding the termination or expiration of this Agreement, all obligations incurred by a Receiving Party with respect to protection, use, disclosure and return or destruction of Protected Information shall survive and remain in effect for three (3) years from the date of the delivery of the Protected Information to the Receiving Part.

3.7. This Agreement may not be assigned by either Party without the prior express written authorization of the other Party. All obligations incurred by a Receiving Party under this Agreement with respect to Protected Information shall be binding on its authorized successors and assigns.

3.8. This Agreement shall be governed by the Federal laws applicable to **[Navy Collaborator]** as an instrumentality of the United States Government.

3.9. In the event a Receiving Party is subjected to any legal process that seeks to require it to produce Protected Information for inspection or review in a judicial or administrative proceeding, the Receiving Party shall promptly provide notice and a copy of the legal process to the Disclosing Party in order that the Disclosing Party may have an opportunity to challenge the legal process or seek a protective order. If, in the absence of a protective order, a Receiving Party is compelled to produce Protected Information to a tribunal or be found liable in contempt and subjected to a penalty, the Receiving Party may disclose such Protected Information to the tribunal provided the Protected Information so disclosed is clearly marked as Protected Information.

3.10. This Agreement constitutes the entire agreement between the Parties, and supersedes any prior or contemporaneous agreements, representations and understandings of the Parties with respect to the disclosure of Information covered by this Agreement. It shall not be suspended, modified, or amended except by written agreement of the Parties. The provisions of this Agreement are independent of and separable from each other, and, no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that any other provision may be found invalid or unenforceable.

3.11. This Agreement may be executed in duplicate with each Party signing one original and providing a facsimile (fax) or other electronic copy of the signature page to the other Party. The Party receiving the electronic signature shall acknowledge receipt of the electronic signature. Each Party agrees to make its document with original signature available to the other Party upon request. The Parties further agree that the electronic signatures shall be treated as original signatures, and neither Party shall contest the validity of this Agreement based on the use of electronic signatures.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed by their duly authorized representatives who also warrant their authority to enter into the Agreement on behalf of their respective Parties:

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| --- | --- |
| For: **[Navy Collaborator]** | For: **[Non-Navy Collaborator]** |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Printed Name | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Printed Name |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title |
| DATED:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | DATED:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**APPENDIX I**

**SUPPLEMENTAL NON-DISCLOSURE AGREEMENT**

In consideration of being allowed access to Protected Information under the above basic Non-Disclosure Agreement between **[Navy Collaborator]** and **[Non-Navy Collaborator]**, the Undersigned agrees that:

The basic Non-Disclosure Agreement has been read and the requirements and restrictions with respect to the use, protection, disclosure, and return or destruction of Protected Information are understood. The terms of the Agreement with respect to the use, protection, disclosure, and return or destruction of Protected Information will be complied with by the Undersigned to the same extent as if the Undersigned were an original Party and signatory to the basic Non-Disclosure Agreement. When the Undersigned signs this Agreement as the representative of an Organization, the Undersigned will ensure that all individuals who are authorized access to Protected Information through the Organization will sign and enter into this Supplemental Non-Disclosure Agreement before being granted access to Protected Information.

IN WITNESS WHEREOF, the Undersigned has hereto subscribed individually and/or as representatives of the named Organization.

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| SIGNATURE | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| NAME (Print or Type) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name & Address of Organization |
| TITLE |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |
| DATE |  |