

## Proprietary Information Disclosure Agreement

This AGREEMENT, effective as of \_\_\_\_\_, for the protection of USA's proprietary information, by and between \_\_\_\_\_, a \_\_\_\_\_ Corporation (hereinafter "Receiving Party") and United Space Alliance, LLC, a Delaware limited liability company (hereinafter "USA"), each or both of which also may be referred to hereinafter as "party" or "parties," respectively.

### PURPOSE

This Agreement sets forth the rights and obligations of the parties with respect to the use, handling, protection, and safeguarding of Proprietary Information, as defined below, which is provided by USA relating to \_\_\_\_\_ for the purpose of \_\_\_\_\_

[*e.g., review, evaluation and possible use in the preparation and submission of a proposal to the U.S. Government*].

### TERMS AND CONDITIONS

- 1. Definition of Proprietary Information.** "Proprietary Information" means any information related to the above-stated purpose which is identified as proprietary information, including, but not limited to, technical information in the form of designs, concepts, requirements, specifications, software, interfaces, components, processes, and also business and financial information, or the like.
- 2. Procedure to Protect.** To gain protection under this Agreement as Proprietary Information, USA will disclose information in written or other permanent form and will clearly and conspicuously mark such information as being proprietary (e.g., "Proprietary," "Confidential," "Competition Sensitive" or a substantially equivalent designation) using a legend of USA. Information stored in electronic form, disk, tape, or other storage media constitutes information in permanent form. Such electronic information will be adequately marked, if a proprietary legend displays when the information originally runs on a computer system and when the information is printed from its data file. If USA discloses information in some other form (e.g., orally or visually) the Receiving Party will protect such information as Proprietary Information to the extent that USA first identifies the information as proprietary at the time of original disclosure:
  - a) Summarizes the Proprietary Information in writing;
  - b) Marks the writing clearly and conspicuously with a proprietary legend; and
  - c) Delivers the writing to the Receiving Party within thirty (30) days following the original disclosure.
- 3. Limited Distribution.** The Receiving Party shall not, without the prior written consent of USA, disclose the Proprietary Information to any third party, and shall limit the disclosure of Proprietary Information within its own organization to only its employees who have a need to know USA's Proprietary Information and who have been advised of and agreed to be bound by the restrictions on disclosure and use set forth in this Agreement in order for the above-stated purpose to be accomplished. The Receiving Party will copy Proprietary Information only as reasonably necessary for it to complete the above-stated purpose of this Agreement, and the Receiving Party also shall reproduce the proprietary markings and any other legends contained thereon. The Receiving Party shall keep and maintain the Proprietary Information in a safe and secure place with adequate safeguards to ensure that unauthorized persons do not have access to the Proprietary Information.
- 4. Limitations on Use or Disclosure.** The Receiving Party shall use Proprietary Information only in connection with the above-stated purpose and no other purpose. For a period of five (5) years after receipt of Proprietary Information under this Agreement, the Receiving Party will hold Proprietary Information in confidence. Except as allowed under this Agreement, the Receiving Party will not disclose Proprietary Information to any nonparty during the protection period, despite any earlier termination of this Agreement. The Receiving Party will not use Proprietary Information that it receives under this Agreement for design or manufacture without first obtaining the written permission of USA.

5. **Duty of Care.** The Receiving Party shall safeguard the Proprietary Information by using at least those efforts used in the protection of its own proprietary information to prevent its unauthorized disclosure or use, provided that such standard of care is no less than reasonable care under the circumstances.
6. **Exceptions to Duty.** This Agreement does not restrict disclosure or use of information otherwise qualifying as Proprietary Information if the Receiving Party can show that any one of the following conditions exists:
  - a) The Receiving Party knew the information and held it without restriction as to further disclosure, as evidenced by competent and contemporaneous written documentation, when USA disclosed the information under this Agreement.
  - b) The Receiving Party developed the information independently without the use of or reference to Proprietary Information.
  - c) Another source lawfully disclosed the information to the Receiving Party and did not restrict the Receiving Party in its further use or disclosure.
  - d) The information was already in the public domain when USA disclosed it to the Receiving Party; entered the public domain after USA disclosed it under this Agreement, but through no fault of the Receiving Party; or became generally known, but through no fault of the Receiving Party.
  - e) The Receiving Party obtained the information in tangible form and without any restrictions on further disclosure or use from a nonparty.
  - f) The protection period has expired.

The fact that individual elements of the Proprietary 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 Proprietary Information is available to the public.

7. **Judicial Action.** In the event the Receiving Party is directed to disclose Proprietary Information pursuant to a valid judicial or other lawful Government order, such disclosure shall not be deemed to be a breach of this Agreement, provided the Receiving Party (a) provides prompt notice of such order to USA; and (b) cooperates with USA's efforts to contest or limit the scope of such order.
8. **Disclaimer of License.** Proprietary Information is and remains the property of USA. The Receiving Party does not receive any right or license under any patents, copyrights, trade secrets, or the like of USA.
9. **Disclaimer of Warranty.** USA does not warrant that a Receiving Party's use of information it receives under this Agreement will be free from claims by nonparties for infringement or misappropriation of intellectual property rights. Additionally, USA does not warrant that any information it discloses is complete, accurate, free from defects, or useful for the purposes of the Receiving Party. USA is under no obligation to supply Proprietary Information to Receiving Party hereunder.
10. **Modifications and Improvements.** The Parties agree that any and all modifications and improvements which both (a) directly pertain to the Proprietary Information and (b) are conceived in conjunction with discussion hereunder, shall be owned by USA, and the Receiving Party hereby assigns all right, title and interest therein to USA. Any and all modifications and improvements covered by this paragraph shall be considered USA's Proprietary Information hereunder.
11. **Notice Addresses.** The parties will transmit Proprietary Information, notices and authorizations under this Agreement addressed as follows:

<b>Company:</b> _____	<b>United Space Alliance, LLC</b>
<b>Address:</b> _____ _____	_____
<b>Attention:</b> _____	<b>Attention:</b> _____

A party may change its address or designee by written notice to the other party.

12. **Term and Termination.** This Agreement shall expire on \_\_\_\_\_. Either party, upon thirty (30) days written notice to the other party, may terminate this Agreement. However, this Agreement may be terminated immediately and the return of all Proprietary Information may be demanded upon written notice in the event that the Receiving Party commits a breach of its creditors, is dissolved, or ownership and control of the Receiving Party is transferred to a third party. Expiration or termination of this Agreement shall not affect the rights and obligations of either party with respect to Proprietary Information disclosed under this Agreement prior to expiration or termination. Upon termination or expiration of this Agreement, the Receiving Party shall cease all use of Proprietary Information received hereunder.
13. **Ownership of Documents/Return.** All materials disclosed under this Agreement, and any copies thereof, will remain the property of USA. Upon completion of the purposes, or upon request of USA, the Receiving Party shall promptly return to USA all such materials containing Proprietary Information or, if USA so requests, the Receiving Party shall destroy all such materials and certify in writing as to such destruction.
14. **Assignment.** This Agreement, and the rights and obligations hereunder, may not be transferred or assigned by one party without the prior written approval of the other party; provided, however, that USA may, without prior written consent and without recourse to USA, assign this Agreement or the rights and obligations hereunder, in whole or in part, to any successor entity, or to any entity with which USA may merge or to whom all or substantially all of USA's assets used for this Agreement are sold or transferred.
15. **Independent Contractors.** The parties are independent contractors. Each will bear all costs and expenses it incurs in connection with this Agreement. This Agreement does not obligate either party to enter into a contract, subcontract, teaming agreement, joint venture, partnership, or other business relationship with the other party. This Agreement is only for the purpose of protecting Proprietary Information.
16. **Precedence over Conflicting Legends.** The U.S. Government sometimes requires legends or markings on information, such as classification markings or legends. This Agreement does not change those requirements. The terms of this Agreement do, however, take precedence over other specific legends or statements that USA marks on Proprietary Information.
17. **Applicable Law.** In the case of a dispute, the parties will interpret, construe, and apply this Agreement using the law of the State of Florida, excluding from such law the rules regarding conflict of laws. In the event of a breach or threatened breach of any of the provisions of this Agreement by the Receiving Party, the Receiving Party acknowledges and agrees that USA shall have no adequate remedy at law and shall therefore be entitled to enforce any such provision by temporary or permanent injunctive or mandatory relief obtained in any court of competent jurisdiction 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 in equity.
18. **Export Control.** Receiving Party acknowledges that information, including without limitation Proprietary Information, disclosed hereunder may be subject to export control, and that compliance with appropriate U.S. Government regulations (e.g., International Traffic in Arms Regulations (ITAR), the Export Administration Regulations (EAR), etc.) may be necessary to obtain required approvals before disclosing such information to foreign persons, businesses or governments. Receiving Party agrees to comply with all applicable U.S. export control laws and regulations, specifically the requirements of ITAR, 22 CFR 120 et seq.; and the Export Administration Act, 50 U.S.C. Appx 2401 et seq.; including the requirement for obtaining any export license, if applicable. Without limiting the foregoing, Receiving Party agrees that it will not transfer any Proprietary Information, export controlled items, data, information or services, to include transfer to foreign persons employed by or associated with, or under contract to Receiving Party, without the authority of any export license or applicable license exemption. Receiving Party shall obtain the written consent of USA prior to submitting any request for authority to export any such information.
19. **Waiver.** The failure of either party to enforce any applicable provision of this Agreement, or to require at any time performance by the other party of any provision hereof, shall in no way be construed to be a waiver of such provision, nor in any way affect the validity of this Agreement or any part thereof, or the right of either party thereafter to enforce each and every provision.

20. **Severability.** If any part of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other part or provision of this Agreement, which other part or provision shall remain in full force and effect.
21. **Merger.** This Agreement contains the entire understanding between the parties, and supersedes all prior or contemporaneous communications, agreements, or understandings between the parties, whether written or oral, concerning the exchange and protection of Proprietary Information for the above-stated purpose. A modification will not bind any party unless there is a writing indicating such, and a signature from each authorized representative.

**IN WITNESS WHEREOF,** the parties have caused this Agreement to be executed in duplicate by duly authorized representatives, as follows:

Receiving Party

\_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

Disclosing Party

**UNITED SPACE ALLIANCE, LLC**

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

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

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

Date: \_\_\_\_\_