



National Radio Astronomy Observatory

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APPENDIX M

MUTUAL NON-DISCLOSURE AGREEMENT

This **MUTUAL NON-DISCLOSURE AGREEMENT** (“NDA”) governs the disclosure of information by and between **NAME OF COMPANY AND LOCATION**, and the National Radio Astronomy Observatory, managed by Associated Universities, Inc. (herein after “NRAO”) 520 Edgemont Road, Charlottesville, VA 22903, and is effective on the date of the first exchange of Proprietary Information between the parties, or the date of the second signature below, whichever is earlier (the “Effective Date”).

1. “Proprietary Information” means any trade secret or other confidential technical, business, financial or other proprietary information that is identified as Proprietary Information and is disclosed under this NDA by one party (the “Discloser”) to the other (the “Recipient”). The Discloser will clearly and conspicuously mark written or documentary, recorded, machine readable and other Proprietary Information in a tangible form using an appropriate legend. Proprietary Information stored in electronic form on disk, tape, or other storage media will be considered to be adequately marked if a legend indicating the information is proprietary displays when the information originally runs on a computer system and when the information is printed from its data file. A Discloser shall identify Proprietary Information originally disclosed in some other form (e.g., orally or visually) by (a) identifying the information as proprietary at the time of original disclosure, (b) summarizing the Proprietary Information in writing sufficiently specific to enable Recipient to identify the information considered proprietary by the Discloser, (c) marking the written summary clearly and conspicuously with an appropriate proprietary legend, and (d) delivering the written summary to the Recipient within thirty (30) days following the original disclosure. The Parties agree that it is their intent not to use the term “Confidential” when marking information under this Agreement in order not to have information exchange under this Agreement misconstrued as information classified pursuant to E.O. 12958 and marked as “Confidential” which must be handled in

accordance with the National Industrial Security Program Operating Manual (NISPOM).

2. Recipient will hold Discloser’s Proprietary Information in strict confidence and not disclose it to any third party, except with the Discloser’s prior written approval, and will use the Proprietary Information for no purpose other than evaluating or pursuing a business relationship with the Discloser, or more specifically, development and production for NRAO based application (“Purpose”). Each party shall only permit access to Proprietary Information of the other party to those of its employees or authorized representatives having a need to know and who have signed confidentiality agreements or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein.

3. Recipient’s obligations under this NDA with respect to any portion of Discloser’s Proprietary Information shall not apply to the extent that Recipient can document that: (a) the Proprietary Information was in the public domain at the time it was communicated to the Recipient by Discloser; (b) it entered the public domain subsequent to the time it was communicated to the Recipient by Discloser through no fault of the Recipient; (c) it was in the Recipient’s possession free of any obligation of confidence at the time it was communicated to the Recipient by Discloser; (d) the Recipient has independently developed it without either using Discloser’s Proprietary Information or breaching this NDA; (e) it was rightfully communicated to the Recipient free of

any obligation of confidence subsequent to the time it was communicated to the Recipient by Discloser; or (f) it was communicated by Discloser to an unaffiliated third party free of any obligation of confidence.

4. The Recipient may disclose Proprietary Information if compelled by a legal, judicial, administrative, or other governmental proceeding or as otherwise as required by law; provided that the Recipient shall give reasonable prior notice, if not prohibited by applicable law, to the Discloser and shall assist the Discloser, at Discloser's expense, to obtain protective or other appropriate confidentiality orders, and further provided that a required disclosure of Proprietary Information to an agency or Court does not relieve the Recipient of its confidentiality obligations with respect to any other party.

5. The obligations of this agreement shall continue to apply to Proprietary Information for as long as required by law and as to trade secrets for as long as the owner maintains them as confidential, but shall otherwise continue until the sooner of five (5) years after the exchange of such information or until superseded by a subsequent agreement between the parties relating the confidential treatment of the Proprietary Information. Upon written request of the other party, each party shall either promptly return to the other all documents, notes and other tangible materials representing the other's Proprietary Information and all copies thereof or destroy all other copies containing such Proprietary Information and certify such destruction in writing to the Discloser. This obligation to return or destroy materials or copies thereof does not extend to automatically generated computer back-up or archival copies generated in the ordinary course of Recipient's information systems procedures, provided that Recipient shall make no further use of such copies.

6. The parties recognize and agree that nothing contained in this NDA shall be construed as granting any property rights, by license or otherwise, to any Proprietary Information disclosed pursuant to this NDA, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or

that may issue, based on such Proprietary Information.

7. Proprietary Information shall not be reproduced in any form except as reasonably appropriate to accomplish the Purpose. Any reproduction of any Proprietary Information of Discloser by Recipient shall remain the property of the Discloser and shall contain any and all confidential or proprietary notices, legends, or marks that appear on the original, unless otherwise authorized in writing by the other party.

8. This NDA shall be governed by and construed in accordance with the laws of Virginia without reference to conflict of laws principles. This NDA may not be amended except by a writing signed by authorized representatives of each party.

9. Proprietary Information provided by a Discloser under the NDA may constitute material, nonpublic information of that Discloser, and trading in the securities of a Discloser (or the securities of its affiliates, subsidiaries or partners) while in possession of such material, nonpublic Proprietary Information may constitute a violation of the U.S. federal securities laws.

10. Any dispute, controversy or claim, whether based on contract, tort, statute or other legal or equitable theory (including any amendments or extensions thereto) (collectively, a "Claim") arising out of or relating to this NDA, or the breach thereof, shall be settled by final and binding arbitration in accordance with the International Institute for Conflict Prevention and Resolution ("CPR") Rules for Non-Administered Arbitration. The arbitration shall be heard and determined by a panel of three (3) three independent and impartial arbitrators, and each such arbitrator shall be an attorney having experience and familiarity with information technology disputes selected from the CPR Panels of Distinguished Neutrals. The arbitrators shall have exclusive authority to resolve any and all disputes relating to procedural and substantive questions of arbitrability, including but not limited to, choice of venue and choice of law issues, and the formation, interpretation, applicability, scope, and enforceability of this agreement to arbitrate. The arbitration

proceeding shall occur in a mutually agreed location, each party shall bear its own costs relating to such arbitration, and the parties shall equally share the arbitrators' fees. In no event shall any arbitration award provide a remedy beyond those permitted under this NDA, and any award providing a remedy beyond those permitted under this NDA shall not be confirmed, no presumption of validity shall attach, and such award shall be vacated. No Claim may be brought as a class action, combined or consolidated with any other proceeding, nor may any proceeding be pursued in a representative capacity or on behalf of a class. Neither party has the right to act as a class representative or participate as a member of a class of claimants with respect to any Claim. Any arbitration proceedings are confidential and will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

11. Either party may, without waiving any remedy under this NDA, seek from any court of competent jurisdiction any interim or provisional relief that such party deems necessary to protect its Proprietary Information and property rights

12. If any term or provision of this NDA is unenforceable, then the remainder of this NDA will not be affected, impaired, or invalidated, and the other terms and provisions of this NDA will be valid and enforceable to the fullest extent permitted by law.

13. Neither party shall communicate any information to the other in violation of the proprietary rights of any third party.

14. Neither party will assign or transfer any rights or obligations under this NDA without the prior written consent of the other party.

15. Neither party shall export, directly or indirectly, any technical data acquired from the other pursuant to this NDA or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

16. All notices or reports permitted or required under this NDA shall be in writing and

shall be delivered by personal delivery, electronic mail, facsimile transmission or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, five days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Notices shall be sent to the addresses set forth at the end of this NDA or such other address as either party may specify in writing.

17. Each of the parties agrees that the software programs of the other party contain valuable confidential information and each party agrees it will not modify, reverse engineer, decompile, create other works from, or disassemble any software programs contained in the Proprietary Information of the other party without the prior written consent of the other party.

18. This NDA supersedes all prior discussions and writings and constitutes the entire agreement between the parties with respect to the subject matter hereof.

19. Neither party shall, during the term of this NDA and for one (1) year after its termination, solicit for hire as an employee, consultant or otherwise any of the other party's personnel who have been directly involved with the Purpose, without the other party's express written consent.

20. This Agreement does not obligate either party to disclose any information to the other party. Each party will bear its own costs and expenses it incurs in complying with this NDA. The parties are independent contractors and this NDA does not obligate either party to enter into a contract, subcontract, teaming agreement, joint venture, partnership, or other business relationship with the other party.

21. All Proprietary Information is provided without representation or warranty of any kind.

22. U.S. export law as contained in the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulation (EAR) is applicable to any controlled technical data provided under this NDA. Any such controlled technical data is not to be placed in the public domain, exported from the U. S., or given to any

foreign person in the U.S., without the prior, specific written authorization of the Discloser and the U.S. Department of State or the U.S. Department of Commerce as applicable. A Foreign Person is any individual who is not a U.S. citizen or lawful permanent resident in possession of an Immigration and Naturalization Service I-551 "Alien Registration" (a.k.a. "Green Card").

23. Except as required by law, neither party shall issue any press release or make any other public statement relating to this NDA, any work done under this NDA, or any of the transactions contemplated by this NDA without obtaining the prior written approval of the other party as to the contents and the manner of presentation and publication of such press release or public statement.

24. Notices or changes are to be sent to the following;

NAME OF COMPANY POC:

NRAO:
Richard Sakshaug
Manager, Contracts and Procurement
520 Edgemont Road
Charlottesville, VA 22903
cap@nrao.edu

25. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, (INCLUDING LOSS OF ECONOMIC ADVANTAGE, BUSINESS, PROFITS, DATA OR INACCURACY OF DATA), IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY (WHETHER IN CONTRACT OR IN TORT, INCLUDING STRICT TORT LIABILITY, OR BASED ON A WARRANTY) UNDER WHICH THE LIABILITY MAY BE ASSERTED.

Each party, by signature of its authorized representative below, has entered into this NDA as of the Effective Date.

NAME OF COMPANY

Signature: _____

Name: _____

Title: _____

Date: _____

NATIONAL RADIO ASTRONOMY OBSERVATORY (NRAO), ON BEHALF OF ASSOCIATED UNIVERSITIES, INC.

Signature: _____

Name: _____

Title: _____

Date: _____

ATTACHMENT

DESCRIBE or LIST INFORMATION BEING SHARED