



## **MUTUAL NON-DISCLOSURE AGREEMENT**

**THIS NON-DISCLOSURE AGREEMENT (“NDA”)**, is effective as of the date listed below, \_\_\_\_\_ (“Effective Date”), and is by and between SP Global Institute (SPGI), (managing the ARCNet consortium), a 501(c)3 entity organized under the laws of the State of Ohio, having its principal place of business located at 5100 Springfield Street, Suite 500, Dayton, OH 45431 and \_\_\_\_\_, the “Party,” an entity organized under the laws of \_\_\_\_\_, having a principal place of business located at \_\_\_\_\_, on its own behalf and on behalf of its direct and indirect subsidiaries (“\_\_\_\_\_”) SPGI and the entity listed above may be referred to in this NDA individually as “Party” and collectively as “Parties.”

**WHEREAS**, both Parties enter into this Agreement for the purpose of collaboration in the ARCNet consortium. And, in pursuit of this effort, each Party anticipates necessary disclosure of confidential and proprietary information (hereinafter called “Proprietary Information”) to the other Party throughout and during the period the Parties are engaged as Member(s) and administrators of the ARCNet consortium (full term provided below paragraph 9.) As such, each party may be considered a “Discloser” and/or a “Recipient” from time to time.

**WHEREAS**, the Parties desire to provide for a procedure whereby such Proprietary Information shall be protected from unauthorized use and disclosure and to define the terms and conditions pursuant to which the Parties will have Proprietary Information discussions relating to, but not limited to each Parties’ products, technology, know-how, business plans and business results.

**NOW, THEREFORE**, for and in consideration of the foregoing, and of the promises and mutual agreements contained herein, the Parties agree as follows:

1. All Proprietary Information disclosed under this agreement shall be marked by the disclosing party as “Confidential” or “Proprietary” or in the case of orally received information or visually received information, shall be reduced to a written listing or summary marked with an appropriate restrictive legend and delivered to the receiving party within a reasonable time after said information is furnished.
2. “Disclosing Party” means the party who discloses Confidential Information to another party.
3. “Receiving Party” means the party who receives Confidential Information from the Disclosing Party.

4. "Proprietary Information" includes, without limitation, anything disclosed by Discloser to Recipient, either directly or indirectly, in writing, orally or by inspection of tangible property, including, without limitation, products and product development, manufacturing, marketing pricing and sales; business plans and strategies; investments; projections; operations; corporate partnerships; trade secrets; copyrights; patents; design specifications; know-how; devices; processes; technical data; analyses; compilations; forecasts; records; reports; studies and technical information relating to Discloser's products, information that is confidential information of a third party, products under development and/or planning, R&D and underlying technology and know-how, and which is designated as "Confidential," "Proprietary," or which is of a nature which would commonly be considered proprietary, or which is rendered such by the circumstances surrounding its communication. Any additional information derived from any of the foregoing and contained in any analyses, compilations, studies, or other documents prepared by the Recipient shall be deemed the Discloser's Proprietary Information.
5. Exculpatory Provisions: Recipient shall not be liable to Discloser for disclosure of Proprietary Information received hereunder and the other obligations imposed hereunder with respect to any item of Proprietary Information that is:
  - a. Now in, or hereafter comes into, the public domain without breach of this NDA;
  - b. Already known or independently developed by Recipient without use of or reference to the Proprietary Information and as evidenced by written records or other writings in existence and kept in the ordinary course of business or by actual proof of use by Recipient prior to receipt thereof;
  - c. Lawfully received on an unrestricted basis from a third party who acquired the Proprietary Information lawfully;
  - d. Subsequently is developed by an employee of Recipient to whom said Proprietary Information was not divulged either directly or indirectly, as evidenced by written records or other writings in existence and kept in the ordinary course of business or by actual proof of such development by Recipient after the receipt of said Proprietary Information; or,
  - e. That is released without restriction by the disclosing party to anyone, including the United States Government;
  - f. The receiving party may disclose Proprietary Information to the extent that it is ordered disclosed by a court of competent jurisdiction or a regulatory or government agency, provided that the receiving party (i) shall notify the disclosing party of such required disclosure as soon as possible, (ii) shall only disclose the minimum amount of Proprietary Information that is required, and (iii) upon the request and at the expense of the latter, shall cooperate with the disclosing party in contesting such disclosure.

6. **Covenant Not To Disclose:** Recipient agrees not to disclose, commercialize or use any Proprietary Information of Discloser for any purpose, except to evaluate and/or engage in discussions regarding the potential business relationship between the Parties. If the Parties subsequently enter into a business relationship and fail to agree in writing on provisions protecting confidential or Proprietary Information exchanged during such business relationship, then the provisions of this Agreement shall continue to apply with respect to information exchanged during the business relationship. Proprietary Information of Discloser may only be disclosed to employees or authorized representatives of Recipient who have a "need to know" such information solely in connection with the Purpose as identified in this Agreement, and the employees or authorized representatives of Recipient are parties to nondisclosure agreements containing terms at least as stringent as those contained in this Agreement. Recipient will be liable for any act or omission of such employees or authorized representatives that, if performed or not performed by the Recipient, would be a breach of this Agreement. Recipient shall notify Discloser in writing of all authorized representatives to whom any proprietary information has been disclosed. Recipient shall not reverse engineer, disassemble or decompile any tangible objects that embody Discloser's Proprietary Information and that are provided to Recipient hereunder. Recipient shall use at least the same degree of care in safeguarding Discloser's Proprietary Information as it uses in safeguarding its own. This Agreement shall apply to any Proprietary Information disclosed to Recipient after the Effective Date and to Proprietary Information disclosed earlier to the extent the Parties began discussions concerning the business purpose prior to the Effective Date. Neither party may make any public disclosure about this Agreement's subject matter; about past, present, or future discussions about the Agreement; or that this Agreement even exists without the other Party's prior written consent, except as otherwise required (or a Party's good-faith belief that disclosure is required) by any law, regulation, rule, court, or other governmental body.
7. **Proprietary Rights Legend:** Recipient shall not remove the proprietary rights legend from any Proprietary Information, including without limitation, copyright notices, trademarks or trade secret legend or other mark identifying the material as proprietary. Recipient shall not make any copies of the Proprietary Information of Discloser unless previously approved in writing. All such approved copies shall include the Proprietary Rights Legend as it appears on the original.
8. **Return of Materials:** All documents and other tangible objects containing or representing Proprietary Information transferred hereunder, and all copies thereof, shall be and remain the property of Discloser and shall be promptly returned to Discloser, or destroyed, upon Discloser's written request. Notwithstanding the foregoing, Recipient may retain Proprietary Information to the extent it is "backed-up" on its electronic information management and communications systems or servers. However, it is understood that the Proprietary Information shall not be accessible in the normal course of business (and may only be accessed with the assistance of the Recipient's IT department). Notwithstanding anything to the contrary contained in this Agreement, the obligations of this Agreement will continue to apply to any Proprietary Information so retained in accordance with this Agreement.

9. Term: This NDA shall terminate three (3) years from the Effective Date. The obligations of each Party under this NDA shall survive the termination or expiration of this NDA and shall continue in full force and effect with respect to any item that is considered Proprietary Information hereunder until such item becomes subject to Section 5 hereof or three (3) years from the date of termination, whichever occurs first. However, either party may terminate this Agreement on thirty (30) days prior written notice to the other party.
10. Remedies for Breach: Recipient hereby acknowledges that breach of this NDA would cause irreparable harm to Discloser and that remedies at law would be inadequate to redress any actual or threatened breach. Recipient agrees that, in addition to other relief, this NDA may be enforced by temporary and/or permanent injunctive relief and that any award for breach of this NDA shall include Discloser's costs and expenses of enforcement, including without limitation, reasonable attorney's fees.
11. Entire Agreement: This document constitutes the entire agreement between the Parties with respect to the subject matter. The Agreement is expressly limited to its terms and may be modified or amended only by a writing signed by both Parties. Nothing in this Agreement is intended to grant any rights to either Party under any patent, mask work right or copyright of the other Party, nor shall this Agreement grant any Party any rights in or to the Proprietary Information of the other Party, except as expressly set forth herein. The Parties agree that no obligation or contractual commitment of any kind, other than as set out in this Agreement, exists between the Parties, and that neither Party is under any legal obligation to enter into any transaction or agreement under this Agreement.
12. Any dispute between the Parties arising from or related to this Agreement or the subject matter hereof, including its validity, construction or performance thereunder, shall be resolved by the least costly alternate dispute resolution method. Arbitration may be used only in the event a less costly alternate dispute method does not render a final resolution. In the event the disputed issues cannot be resolved within a reasonable period of time, such dispute shall be settled pursuant to final and binding arbitration conducted in the English language by a single arbitrator in the State of Ohio by a mutually acceptable impartial and neutral arbitrator and governed by the law of the State of Ohio. If the Parties are not able to agree on an arbitrator within 10 days from the date of request is served, then the Judicial Arbitration and Mediation Services (JAMS) shall appoint an arbitrator. All costs charged by the mutually agreed upon Arbitration entity shall be equally shared by the Parties, and judgement upon the award may be entered in any court having jurisdiction thereof. For purposes of clarification, the parties agree neither to initiate nor to reopen any disputed matter in a court proceeding following arbitration but may use the assistance of the courts only to enforce any arbitration award.

13. Export Control: The Proprietary Information furnished to the Recipient may include United States origin technical data. Accordingly, the Recipient is responsible for complying with, and warrants to the disclosing Party that it will comply with, all U.S. export control laws and regulations, including the provisions of the Export Administration Act of 1979 and the Export Administration Regulations promulgated there under, the Arms Export Control Act, and the International Traffic in Arms Regulations, and the sanctions laws administered by the Office of Foreign Assets Control including any other U.S. Government regulation applicable to the export, re-export, or disclosure of such controlled technical data (or the products thereof) to Foreign Nationals, whether within or without the U.S., including those employed by, or otherwise associated with, the Recipient. The Recipient shall obtain the disclosing Party's written consent prior to submitting any request for authority to export any such technical data.
  
14. Notices: All notices or correspondence pertaining to this Agreement shall be in writing addressed and sent, by First Class Mail or by reputable Courier, postage or courier fees prepaid, to the relevant recipient at its address as set forth in the first paragraph of this agreement. Any notice sent as provided herein, shall be deemed to have been received by the other Party within ten (10) days from the date it was so sent.
  
15. Miscellaneous: This Agreement shall bind and inure to the benefit of the Parties hereto and their successors. If any portion of this Agreement shall be declared invalid by a court of competent jurisdiction of law, it shall automatically conform to the minimum requirements of law, and all other portions shall continue in full effect and force notwithstanding. Waiver or non-enforcement of any provisions herein shall not preclude enforcement thereof on future occasions.
  
16. This Agreement may be signed in one or more counterparts, each of which is an original once signed, but all of which taken together constitute one and the same agreement.

**IN WITNESS WHEREOF** the Parties hereto have caused this NDA to be executed by their duly authorized representatives as of the Effective Date hereof. Facsimile, photocopy and scanned (PDF) signatures on this agreement shall have the same force and effect as executed originals.

<p>_____ (Party)</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p><b>SP GLOBAL INSTITUTE (SPGI)</b></p> <p>By: <u>Timothy A. Shaw</u></p> <p>Name: <u>Timothy A. Shaw</u></p> <p>Title: <u>Vice President, SP Global Institute</u></p> <p>Date: <u>06/03/2020</u></p>
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