AMENDMENT TO EXHIBIT 1

Request for Confidential Treatment

The Alfred Mann Foundation for Scientific Research submits this amendment to Exhibit 1 of its application for experimental authorization (FCC File No. 0255-EX-PL-2004) by replacing the original Exhibit 1 with the following:

Pursuant to Sections 0.457 and 0.459 of the Commission's rules,[1] the Alfred Mann Foundation for Scientific Research ("AMF") requests the Commission to withhold from public inspection and accord confidential treatment to (1) the letter, dated December 6, 2004, from Cheryl A. Tritt, Counsel for AMF, to Julius Knapp, FCC; and (2) Exhibit 2, as amended, of the accompanying application (the "Application") for experimental authorization (collectively, the "Documents"). The Documents contain highly sensitive commercial and technical information, which customarily would be guarded from competitors. The disclosure of this information likely would cause substantial competitive and financial harm to AMF, and is therefore exempted from mandatory disclosure under Exemption 4 of the Freedom of Information Act ("FOIA Exemption 4")[2] and Section 0.457(d) of the Commission's rules.[3]

In support of this request for confidential treatment and pursuant to the requirements under Section 0.459(b) of the Commission's rules, AMF provides the following information:

(1) Identification of information for which confidential treatment is sought:

The letter, dated December 6, 2004, from Cheryl A. Tritt, Counsel for AMF, to Julius Knapp, FCC, and Exhibit 2, as amended, of the Application.

(2) Identification of the circumstances giving rise to the submission:

The information for which confidential treatment is sought is being submitted in response to Question 7 of FCC Form 442, which requires a narrative statement describing the complete program of research and experimentation proposed under the Application.

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[1] 47 C.F.R. §§ 0.457, 0.459.

[2] 5 U.S.C. § 552(b)(4). *See Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290-91 (D.C. Cir. 1983).

[3] 47 C.F.R. § 0.457(d).

(3) Explanation of the degree to which the information is commercial or financial, or contains trade secrets or is privileged:

The Documents contain highly sensitive information, including technical specifications, concerning the testing and development of innovative and proprietary medical equipment.

(4) Explanation of the degree to which the information concerns a service that is subject to competition:

The Documents contain highly sensitive information concerning the testing and operation of medical devices, the development and manufacturing of which are subject to competition from a number of medical equipment manufacturers.

(5) Explanation of how disclosure of the information could result in substantial competitive harm:

Disclosure of the information in the Documents could provide AMF's competitors with direct and material information as to its medical research activities and development of innovative medical devices. This information has not been publicly disclosed. Knowledge of the unique technical specifications of AMF's experimental program could allow competitors to benefit from its efforts and develop or improve upon similar equipment, while avoiding research and development expenses.

(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure:

AMF has instituted an internal policy prohibiting employees from divulging any proprietary or confidential information, which would include the subject matter of the Application.

(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties:

Information contained in the Documents is not generally available to the public. Consistent with and except as provided under appropriate nondisclosure agreements or requirements, there has been no disclosure of this information to any third parties.

(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure:

AMF requests confidential treatment of the Documents for an indefinite period. During the operational lifetime of the medical devices under development, equipment manufacturers and other competitors could use the otherwise confidential information to their competitive advantage and to AMF's detriment.

(9) Any other information that the party believes useful in assessing the confidentiality request:

The information contained in the Documents qualifies for confidential treatment under FOIA Exemption 4, which sets forth a two-prong standard for protecting information that both: (1) constitutes trade secrets and commercial or financial information, and is (2) privileged or confidential.[4] The term "commercial" in the first prong of the standard includes not only information regarding basic commercial operations, but also "information about work performed for the purpose of conducting a business's commercial operations."[5] Information provided voluntarily satisfies the standard's second prong as being "confidential" if "'it is of a kind that the provider would not customarily release to the public.'"[6]

As for the first prong of the FOIA Exemption 4 standard, Exhibit 1 contains technical details and elements of AMF's medical research with respect to the development of innovative medical equipment. As such, the information involves work performed for the purpose of conducting commercial operations.

As for the second prong of the FOIA Exemption 4 standard, the information in the Documents is not of the type customarily released to the public precisely because such information could be used to AMF's competitive disadvantage. Where disclosure could result in competitive harm to the information provider, the Commission generally finds that the information is confidential.[7] Disclosure of the information in the Documents would provide AMF's competitors with insight into its medical research and development of new equipment. The courts have held that information is confidential under FOIA Exemption 4 for voluntarily submitted information if it is of the kind that the provider itself would not

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[4] *See* 5 U.S.C. § 552(b)(4).

[5] *See Southern Company*, 14 FCC Rcd 1851, 1860 ¶ 17 (WTB 1998) (*citing Public Citizens Research Group v. FDA*, 704 F. 2d 1280, 1290 (D.C. Cir. 1983)); *see also Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, 24818 ¶ 3 (1998).

[6] *Southern Company*, 14 FCC Rcd at 1860 ¶ 17.

[7] *See, e.g., id*. (upholding confidentiality for applicant's list of sites and construction information because "other businesses could use this comprehensive data to [the applicant's] competitive disadvantage"); *Jeffrey A Krause On Request for Inspection*, 11 FCC Rcd 10819, 10820 ¶ 4 (1996) (recognizing confidential status of technical aspects and design of equipment used in provision of interactive video and data service because release of such information would likely cause substantial competitive harm in that it would "lessen the value of their technologically innovative product by enabling others to utilize the information to develop similar products"); *Ward & Mendelsohn, P.C*, 88 FCC2d 1049, 1052 ¶ 10 (1981) (upholding confidentiality of sales contracts for satellite transponders because "competition exist[ed] among the sellers to secure advantages in negotiating the terms and conditions of transponder sales").

customarily release to the public. As stated above, AMF's customary practice, as evidenced by its internal non-disclosure policies, is to prohibit public release of this type of highly sensitive information.[8]

To provide adequate protection from public disclosure, the Commission should strictly limit distribution of copies of the Documents within the Commission on a "need to know" basis. In the event that any person or entity outside the Commission requests disclosure of the Documents, AMF requests that it be so notified immediately so that it can oppose such request or take other action to safeguard its interests as it deems necessary.

[8] *See Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992) (holding that the test for determining confidentiality under FOIA Exemption 4 is an objective one, under which "the agency invoking Exemption 4 must meet the burden of proving the provider's custom"); *Mobile Relay Associates*, 14 FCC Rcd 18919, 18922-23 ¶ 8 (WTB 1999) (upholding confidentiality of applicant's customer lists, in part, because applicant showed "the care it takes to protect this information, including policies that prohibit the information from normally leaving its business premises or being made available to third parties").