



NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____, 200X between ___(Licensee)___, Inc., having offices located at _____, and the United States Government, Department of Justice (“DOJ”), having offices located at 12801 Fairlakes Parkway, Suite 100, Fairfax , Virginia 22033 (each a “Party” and collectively, “the Parties”).

WHEREAS, the DOJ possesses certain non-public, sensitive-but-unclassified information which the DOJ desires to protect against disclosure;

WHEREAS, in order to facilitate and effect the transition of radio spectrum from the public to the private domain, which effort will include without limitation taking all steps necessary to ensure compliance with the Commercial Spectrum Enhancement Act, DOJ may disclose certain non-public information to ___ (Licensee) ___ or to a ___ (Licensee) ___ Designee (see Sections A.4 and C.2 of this Agreement, below); and

WHEREAS, in order to facilitate and effect transition of radio spectrum from the public to the private domain, which effort will include without limitation taking all necessary steps to ensure compliance with the Commercial Spectrum Enhancement Act, ___(Licensee)___ may disclose to DOJ certain non-public information;

NOW THEREFORE, the Parties hereby agree as follows:

A. DEFINITIONS

1. The term “Information,” as used in this Agreement, means information of any kind, in whatever form, including without limitation business or law enforcement data, specifications, drawings, sketches, models, samples, reports, plans, forecasts, current or historical data, computer programs or documentation, and all other technical and financial data, whether stored or maintained electronically, in paper format, or otherwise.
2. The term “Sensitive Law Enforcement Information,” as used in this Agreement, is Information which is in the possession of the DOJ and is so marked pursuant to Section B below. It includes, without limitation, the Information specified on Exhibit A of this Agreement.
3. The term “Confidential Information,” as used in this Agreement, is Information which is in the possession of the ___ (Licensee) ___ and is so marked pursuant to Section B below.

4. The term “___ (Licensee) ___ Designee” means any agent, advisor, consultant, contractor, and/or subcontractor of ___ (Licensee) ___ whom ___ (Licensee) ___ has engaged to assist it in the spectrum transition effort and whom ___ (Licensee) ___ has designated in writing to the Department, in accordance with Section C.2 of this agreement, as an authorized recipient, for purposes of the spectrum transition effort, of non-public information from the Department.

B. INFORMATION MARKING

1. All information which is disclosed by the DOJ to ___ (Licensee) ___ or a ___ (Licensee) ___ Designee that DOJ believes should be protected hereunder as Sensitive Law Enforcement Information shall:
 - a. If in writing or other tangible form, be conspicuously labeled on every page as Law Enforcement Sensitive or with a similar legend (e.g., Sensitive But Unclassified) at the time of delivery and shall contain the following statement: “This information includes data that may not be disclosed outside of ___(Licensee)___ without the prior written approval of the DOJ.”
 - b. If oral, be identified as Sensitive Law Enforcement Information at the time of disclosure and, if subsequently reduced to writing by either the DOJ or ___ (Licensee) ___, whether electronically or otherwise, be labeled in accordance with Section B.1.a, above.
2. All information which is disclosed by ___ (Licensee) ___ to DOJ that ___ (Licensee) ___ believes should be protected hereunder as Confidential Information shall:
 - a. If in writing or other tangible form, be conspicuously labeled on every page as Confidential Information or with a similar legend at the time of delivery and shall contain the following statement: “This information includes data that may not be disclosed outside of DOJ without the prior written approval of the ___(Licensee)___.”
 - b. If oral, be identified as Confidential Information at the time of disclosure and, if subsequently reduced to writing by either the DOJ or ___ (Licensee) ___, whether electronically or otherwise, be labeled in accordance with in Section B.1.a, above.
3. The DOJ shall have the right at any time to correct, by written notification to ___ (Licensee) ___ and/or to a ___ (Licensee) ___ Designee, any failure by DOJ to designate information as Sensitive Law Enforcement Information. Immediately upon receiving said notification, ___ (Licensee) ___ shall treat such information as Sensitive Law Enforcement Information, and shall protect the information as such, in accordance with this Agreement.
- 4, ___(Licensee)___ shall have the right at any time to correct, by written notification to DOJ, any failure to designate information as Confidential

Information. Immediately upon receiving said notification, DOJ shall treat such information as Confidential Information and shall protect the information as such in accordance with this Agreement.

C. INFORMATION DISCLOSURE AND RESTRICTIONS

1. All disclosures of Sensitive Law Enforcement Information or Confidential Information pursuant to this Agreement shall be made by or under the supervision of the Designated Coordinator for each party. Designation of a ___ (Licensee) ___ Designee in accordance with this Agreement shall be made only by the ___ (Licensee) ___ Designated Coordinator. The Designated Coordinators are identified in Section D of this Agreement.
2. Subject to Section C.4 of this Agreement, ___(Licensee)___ shall:
 - a. Ensure that access to any Sensitive Law Enforcement Information released by the Department, whether directly to ___ (Licensee) ___ or to a ___ (Licensee) ___ Designee, is restricted only to:
 - i. ___(Licensee)___ Designees, but only after each employee of such ___(Licensee)___ Designee to whom such disclosure is to be made (1) has been notified that such Sensitive Law Enforcement Information will be received in confidence and shall be kept in confidence by such employee as set forth in this Agreement; and (2) has signed the attached “Acknowledgement” (Exhibit B) indicating that he or she has read this Agreement and understands that it governs the handling of Sensitive Law Enforcement Information;
 - ii. to those ___(Licensee)___ employees who have a need to know the Information, but only after any each employee to whom such disclosure is to be made (1) has been notified that such Sensitive Law Enforcement Information will be received in confidence and shall be kept in confidence by such employee as set forth in this Agreement; and (2) has signed the attached “Acknowledgement” (Exhibit B) indicating that he or she has read this Agreement and understands that it governs the handling of Sensitive Law Enforcement Information; or
 - iii. ___(Licensee)___ agents, advisors, consultants, contractors, and/or subcontractors, including without limitation any ___(Licensee)___ Designee, who have a need to know the information for purposes of assisting ___(Licensee)___ with respect to its provision of spectrum relocation support services to the DOJ, but only after any such agent, advisor, consultant, contractor, and/or subcontractor to whom such disclosure is to be made (1) has been notified that such Sensitive Law Enforcement Information will be received in confidence and shall be kept in confidence by such agents, advisors, consultants, contractors, and/or subcontractors as set forth in this Agreement; and (2) has signed the attached “Acknowledgement” (Exhibit B) indicating that he or she has

read this Agreement and understands that it governs the handling of Sensitive Law Enforcement Information.

- b. Maintain a current list of all individuals with whom any Sensitive Law Enforcement Information has or will be shared under this paragraph, including individuals employed by any ___ (Licensee) ___ Designee, and shall make that list available to the DOJ upon request.
 - c. Ensure that Sensitive Law Enforcement Information provided hereunder is used only for purposes directly related to ___ (Licensee) ___'s assistance to DOJ in facilitating and effecting the relocation of radio spectrum from the public to the private domain, including without limitation compliance with the Commercial Spectrum Enhancement Act.
 3. Subject to Section C.4 of this Agreement, DOJ shall:
 - a. Restrict disclosure of Confidential Information only to:
 - i. DOJ employees who have a need to know the Information. Prior to providing the Confidential Information, each employee to whom such disclosure is to be made, shall be notified that such Confidential Information is received in confidence and shall be kept in confidence by such employee as set forth in this Agreement.
 - ii. DOJ agents, advisors, consultants, contractors, and/or subcontractors who have a need to know the information for purposes of assisting DOJ with respect to its provision of spectrum relocation support services to the DOJ. Prior to providing the Confidential Information, each agents, advisors, consultants, contractors, and/or subcontractors to whom such disclosure is to be made, shall be notified that such Confidential Information is received in confidence and shall be kept in confidence by such agents, advisors, consultants, contractors, and/or subcontractors as set forth in this Agreement
 - b. Maintain a current list of all individuals with whom any Confidential Information has or will be shared under this paragraph, and shall make that list available to the ___ (Licensee) ___ upon request.
 - c. Use the Confidential Information provided hereunder only for purposes directly related to its assistance to ___ (Licensee) ___ in facilitating and effecting the relocation of radio spectrum from the public to the private domain, including without limitation compliance with the Commercial Spectrum Enhancement Act.
 4. The obligations imposed on ___ (Licensee) ___ and/or DOJ herein shall not apply to information – whether or not designated as Sensitive Law Enforcement Information or Confidential Information – which is:

- a. Received in the ordinary course of business from a third party without restriction and without breach of this Agreement;
 - b. Independently developed by ___ (Licensee) ___ or DOJ without the use of Sensitive Law Enforcement Information or Confidential Information;
 - c. Disclosed without restriction to a third party by the DOJ or ___(Licensee)___;
 - d. Approved for release in writing by the DOJ's or ___ (Licensee) ___'s Designated Coordinator;
 - e. Required to be disclosed by either Party pursuant to any law, including without limitation the Freedom of Information Act (FOIA), rule, regulation, or valid order of a court of competent jurisdiction, *provided* that (1) the disclosing Party notifies the other Party immediately upon becoming aware of any court or other proceeding in which the release of Sensitive Law Enforcement Information or Confidential Information is at issue or reasonably is anticipated to be at issue and; (2) undertakes all reasonable measures, including without limitation the seeking of a protective order, to prevent the release of the Sensitive Law Enforcement Information or Confidential Information. A special provision addressing FOIA follows.
5. ___ (Licensee) ___ understands that marking of any information as “Confidential Information” and its legend serve to put the Department on notice that ___ (Licensee) ___ considers the information to be confidential, but that such marking does not by itself render the information subject to withholding under the FOIA. Upon receipt of a FOIA request that includes within its scope information marked as “Confidential Information” and/or containing the ___(Licensee)___ legend, the Department will process the request in accordance with the notice and other requirements set forth in Executive Order 12600 as implemented in Departmental regulations found at 28 C.F.R. § 16.8.

D. DESIGNATED COORDINATORS

The Designated Coordinators for the parties are:

For the DOJ: _____

For ___ (Licensee) ___: _____

E. INFORMATION OWNERSHIP RIGHTS

- 1. Nothing in this Agreement shall be construed as granting or conferring any rights in any Sensitive Law Enforcement Information disclosed by the DOJ to ___ (Licensee) ___ or a ___ (Licensee) ___ Designee. All Sensitive Law Enforcement Information shall remain the property of the DOJ and shall be returned by ___ (Licensee) ___ or ___ (Licensee) ___ Designee to the DOJ upon request. No disclosure of any Sensitive Law Enforcement Information hereunder

shall be construed to be a public disclosure of such Sensitive Law Enforcement Information by the DOJ for any purpose whatsoever.

2. Nothing in this Agreement shall be construed as granting or conferring any rights in any Confidential Information disclosed by the ___ (Licensee) ___ to DOJ. Except as provided by the FOIA, all Confidential Information shall remain the property of the ___ (Licensee) ___ and shall be returned by DOJ to the ___ (Licensee) ___ upon request. No disclosure of any Confidential Information hereunder shall be construed to be a public disclosure of such Confidential Information by ___ (Licensee) ___ for any purpose whatsoever.

F. UNAUTHORIZED DISCLOSURE

1. In the event that ___ (Licensee) ___ or a ___ (Licensee) ___ Designee discloses, disseminates, releases or otherwise makes available any Sensitive Law Enforcement Information received from the DOJ, except as provided by this Agreement, such disclosure, dissemination, or release will be deemed a material breach of this Agreement requiring ___ (Licensee) ___ to immediately return any and all Sensitive Law Enforcement Information previously provided by DOJ to ___ (Licensee) ___. The provisions of this paragraph apply in addition to any other legal rights or remedies that the parties may have under Federal law.
2. In the event that the DOJ discloses, disseminates, releases or otherwise makes available any Confidential Information received from ___ (Licensee) ___, except as provided by this Agreement, such disclosure, dissemination, or release will be deemed a material breach of this Agreement requiring DOJ to immediately return any and all Confidential Information previously provided by ___ (Licensee) ___ to the DOJ. The provisions of this paragraph apply in addition to any other legal, rights or remedies that the parties may have under Federal law.

G. RELIABILITY AND ACCURACY OF SENSITIVE LAW ENFORCEMENT INFORMATION

While any Sensitive Law Enforcement Information provided by DOJ hereunder is believed to be reliable, no representation is made by the DOJ, or its agents, as to the accuracy or completeness of such information. By receipt of Sensitive Law Enforcement Information, ___ (Licensee) ___ agrees that the United States Government shall have no responsibility for any misstatement or omission of fact or for any opinion expressed, and ___ (Licensee) ___ hereby releases the DOJ and the United States Government from any liability in connection with loss or damage suffered by ___ (Licensee) ___ or its customers or clients resulting from ___ (Licensee) ___'s use of or reliance upon the information provided.

H. ENTIRE AGREEMENT; MODIFICATION

This Agreement constitutes the entire agreement between the parties and supersedes any prior or contemporaneous oral or written representation or understanding with regard to the subject matter hereof. This Agreement may not be modified except by a writing signed by both parties.

I. EFFECTIVE DATE; DURATION; TERMINATION

1. This Agreement shall be effective from _____, ~~200X~~ through May 30, 2010, unless amended, in writing, by mutual agreement of the parties. Notwithstanding the above, the provisions concerning non-disclosure of Sensitive Law Enforcement Information received under this Agreement shall survive the expiration of the term of this Agreement.
2. Upon expiration of the this agreement, or at any time prior thereto upon the written or oral request of DOJ, ___(Licensee)___ shall take all necessary steps to ensure that any and all individuals in possession of Sensitive Law Enforcement Information pursuant to Section C.1 of this agreement immediately cease to use Sensitive Law Enforcement Information received from the DOJ. In such event, ___ (Licensee) ___ shall either (a) appropriately destroy all such information, including copies thereof, and furnish DOJ with a written certification of destruction or (b) at DOJ's election, upon its request, return all such information to the DOJ.
3. Upon expiration of the this agreement, or at any time prior thereto upon the written or oral request of ___(Licensee)___, the DOJ shall take all necessary steps to ensure that any and all individuals in possession of Confidential Information pursuant to Section C.2 of this agreement immediately cease to use Confidential Information received from ___(Licensee)___ . In such event, the DOJ shall either
 - (a) Appropriately destroy all such information, including copies thereof and furnish ___ (Licensee) ___ with a written certification of destruction;
 - (b) At ___ (Licensee) ___'s election and upon its request, return all such information to the ___ (Licensee) ___; or
 - (c) Where required by law rule, or regulation, including without limitation the Federal Records Act and/or the Department's record retention policies, store the records until such time as the Department is permitted to dispose of or return them in accordance with subparts (a) or (b).

J. GOVERNING LAW

This Agreement shall be governed by Federal law.

IN WITNESS WHEREOF, agreeing to be bound, each of the parties here to have executed this Agreement as of the date set forth in Section I above.

___(**LICENSEE**) ___ **USA, INC.**

Signature: _____

Printed Name: _____

Title: _____

Date: _____

DOJ-WMO

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A

SENSITIVE LAW ENFORCEMENT INFORMATION

“Sensitive Law Enforcement Information” is information which, if disclosed, could harm or impede investigative activities, investigative techniques, communications capabilities, operational activities, or otherwise adversely impact or impair DOJ activities.

TYPES OF INFORMATION EXPECTED TO BE PROVIDED TO ____ (Licensee) ____:

- Specific technical characteristics of DOJ fixed and mobile frequency assignments as appropriate.

EXHIBIT B

ACKNOWLEDGEMENT

I, _____, hereby affirm that I have read the Non-Disclosure Agreement dated _____, 200X between ___(Licensee)___ USA, Inc., and the United States Department of Justice regarding Sensitive Law Enforcement Information and Confidential Information and understand that that Agreement governs and restricts my use and disclosure of such information.

Signature: _____

Printed Name: _____

Title: _____

Company: _____

Date: _____