

3/2/2016

## NON-DISCLOSURE AGREEMENT

By and Between

[INSERT NAME OF COMPANY]

and

UNITED STATES DEPARTMENT OF TRANSPORTATION

As of [ ], 2016 (“**Effective Date**”), this Non-Disclosure Agreement (this “**Agreement**”) is entered into by and between [INSERT NAME OF COMPANY] (the “**Company**”), a [Insert business form], having a place of business at [INSERT ADDRESS], and the United States Department of Transportation (DOT).

**WHEREAS**, the Company is presently engaged in the development and sale of receivers and associated components that operate in connection with the Global Positioning System, Global Navigation Satellite System, and so-called L-Band augmentation systems (collectively, GPS).

**WHEREAS**, the DOT’s Office of the Assistant Secretary for Research and Technology (OST-R) and Federal Aviation Administration (FAA) have requested that the Volpe National Transportation Systems Center (the Volpe Center), a Federal Agency within the Office of the Secretary (OST), conduct a GPS Adjacent Band Compatibility Assessment (the Study) by developing GPS spectrum radio frequency interference (RFI) protection criteria that can be used to determine if future proposals for non-space, commercial uses in the bands adjacent to the GPS signals will cause interference to GPS receivers. This includes determining the frequency dependent interference protection for GPS receivers for a candidate waveform among a number of waveforms, such as Broadband and/or Long Term Evolution (LTE) cellular-like waveforms. The goal is to establish interference protection masks, with respect to signals transmitted in adjacent bands, for GPS receiver categories other than certified avionics and to help define power limits and other relevant criteria for allowable adjacent band (to GPS signals) non-space, commercial uses that protect existing and evolving use of GPS.

**WHEREAS**, the Company may elect to voluntarily provide certain proprietary and confidential information that may consist of, but is not limited to, technical characteristics of GPS receivers and GPS receiver test plan(s) and results (collectively, the Disclosed Information) to DOT, but only if DOT enters into this Agreement and maintains the confidentiality of the Disclosed Information as set forth herein.

**WHEREAS**, DOT agrees with the Company that portions of the Disclosed Information (a) require confidential treatment and nondisclosure; (b) would not be customarily disclosed to the public by the Company; and (c) that any unauthorized disclosure of such information could cause the Company substantial competitive harm.

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**NOW THEREFORE**, in consideration of the premises and covenants in this Agreement, the parties, intending to be legally bound, agree as follows:

**1. DEFINITION OF CONFIDENTIAL INFORMATION.**

a. As used in this Agreement, the term “**Confidential Information**” includes:

any proprietary, confidential, and/or other nonpublic information provided by the Company including, but not limited to, Disclosed Information, provided to the Volpe Center and identified as “Confidential Information” or with a similar marking indicative of its confidential nature by the Company, its employees, contract workers, agents, representatives, consultants, or its Affiliates (as defined in the following paragraph), in any form, including writing, graphic, pictorial or electronic format, which information may include, but is not restricted to or required to include, information relating to (i) the Company’s know-how, inventions, commercial and technical aspects of products, processes and services; (ii) status and capabilities of the Company’s business; and (iii) marketing and planning programs, products specifications, plans, drawings, financial, operational and technical data.

b. In addition, Confidential Information includes all copies of any information described in the paragraph above, and any notes, summaries, abstracts, excerpts, or other documents in any form, containing all or any part of the content of any Confidential Information as defined above.

c. Affiliate means any entity that, directly or indirectly, controls, is controlled by, or is under common control with Company, where control is established by majority ownership of the voting equity securities of the controlled entity or by the ability to direct the general affairs of the controlled entity.

d. Confidential Information does not include the identity, including the name or model number, of any device provided to DOT for evaluation in the Study. Confidential Information also does not include any data or analysis generated or prepared by-DOT or its agents in the course of or as a result of the Study, unless DOT determines that-such data or analysis can be analyzed by a non-party to this Agreement to extract or reveal the Confidential Information provided in furtherance of the Study. DOT will consult with the Company before making such determinations where DOT is uncertain whether such analysis by a non-party could yield Confidential Information.

**2. HANDLING OF CONFIDENTIAL INFORMATION.**

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a. DOT agrees to hold all Confidential Information in strict confidence, and to disclose it only as follows:

(i) to DOT employees or Disclosed Contractors (as hereinafter defined) having the need to know in furtherance of the Study (including counsel and other advice concerning the study), as determined within DOT's sole discretion, and to the extent otherwise authorized under this Agreement, specifically including the Limitation of Use provisions in Paragraph 4; and

(ii) to employees of the Volpe Center's in-house support services contractor and the Volpe Center's Disclosed Contractors; provided, that such disclosure shall only be to those who have a need to know for the furtherance of the Study and to the extent authorized under this Agreement, specifically including the Limitation of Use provisions in Paragraph 4.

b. For the purposes of this Agreement, Confidential Information shall not be disclosed to any contractor or agent of DOT or the Volpe Center whose identity has not been disclosed on Exhibit A to this Agreement (each a "**Disclosed Contractor**") and who is not contractually bound to DOT to protect the Confidential Information of the disclosing party under terms and conditions that are at least as restrictive as those set forth in this Agreement. In its sole discretion, DOT reserves the right to amend Exhibit A to this Agreement in writing, and will provide prompt notice to the Company of any such amendment.

c. For the purposes of this Agreement, the term "**Receiving Party**" shall refer to: (1) DOT; and (2) the individuals and entities described in this Paragraph 2, subsections (a) and (b) above.

d. Subject to subsection (e) below, no Receiving Party shall further disclose any Confidential Information to any third person, except as specifically provided in Paragraphs 2 and 4. The Receiving Party shall hold all information in strict confidence and take all necessary care to safeguard the confidentiality of all such Confidential Information. Among other things, without limitation, the Receiving Party shall not disclose Confidential Information associated with a specific GPS/Global Navigation Satellite System (GNSS) receiver (Make/Model/Series), including DOT-generated data or analysis that qualifies as Confidential Information as defined in Section 1, in any external reports, documents, presentations, or other communications without first obtaining express written consent from the Company.

e. Notwithstanding anything to the contrary in this Agreement, the Company agrees that DOT may provide Confidential Information and other information related to the Study, including the GPS/GNSS receiver Make/Model/Series, unprocessed measurement data, analysis, and the Study Result, to other U.S. Government agencies with spectrum management oversight responsibilities

(including, without limitation, the National Telecommunications and Information Administration (NTIA) and the Federal Communications Commission (FCC)), as well as the National Executive Committee for Space-Based Positioning, Navigation, and Timing (PNT ExCom) and its member agencies. DOT agrees to notify any such Federal agency of the confidential nature of the Confidential Information, and therefore the potential prohibition against disclosure or use in accordance with applicable confidentiality laws, such as the Trade Secrets Act, 18 U.S.C. § 1905, and the potential exemption from release under the Freedom of Information Act. DOT further agrees to contemporaneously notify the Company of the disclosure to the extent permitted by applicable law or regulation.

**3. OWNERSHIP OF CONFIDENTIAL INFORMATION.**

a. All of the Company's Confidential Information shall remain the sole and exclusive property of the Company. This Agreement does not require the Company to provide any information for use in connection with the Study and does not grant any Receiving Party any proprietary rights in any Confidential Information supplied by the Company.

b. DOT acknowledges and agrees that the Company is voluntarily disclosing Confidential Information to DOT solely for purposes of the Study. The Company, or its Affiliates, reserves all worldwide copyright in the Confidential Information and any documents, drawings, or other copyrightable materials provided to DOT under this Agreement even if such materials are not marked with a copyright notice. Except as necessary to perform the Study, no Receiving Party shall make copies of Confidential Information in any manner without the Company's express written permission. Neither the execution of this Agreement, nor the furnishing of any Confidential Information, shall be construed to grant a Receiving Party by implication, estoppel, or otherwise, a license or any other rights of any type under any patent, patent application, utility model, know-how, copyright, trade secret, trademark, any name, trade dress, logo or equivalents, or other intellectual property owned or controlled by the Company or its Affiliates. No Receiving Party shall use Confidential Information to reverse engineer, disassemble, decompile or design around the Company's, or its Affiliates', proprietary services, products and/or intellectual property.

**4. LIMITATION ON USE.**

a. The Company shall mark or otherwise identify any Confidential Information disclosed hereunder with an appropriate restrictive legend. A Receiving Party shall use the Company's Confidential Information solely for the purposes of the Study, including: (i) conducting computer simulations and modeling; (ii) performing analysis to develop recommendations related to GPS RFI protection criteria; (iii) developing testing plans for GPS receivers, if required; (iv) conducting testing of specific GPS receivers, if required, and (v) publishing

summary results and recommendations, provided that such summary results and recommendations do not incorporate or reference: (1) any Confidential Information or (2) any test results or performance results that identify or allude to any Company Products (as defined below) and are not aggregated with the test results or performance results of other satellite navigation receivers of third parties. For the purposes of this Agreement, the term “**Company Products**” means any receivers or portions thereof, including any filter or any antenna, that are designed by Company, manufactured by or for Company, sold or distributed by Company, or that bear a trademark owned by the Company or its Affiliates. Notwithstanding any contrary language in this Agreement, the Company shall have a reasonable opportunity to review the above summary results, recommendations, analysis and reports (the “**Study Result**”) that will be published or disclosed outside of DOT at least fifteen (15) calendar days prior to publication or disclosure outside of DOT to verify that the Study Result bears any appropriate restrictive legends and to redact any of the Company’s Confidential Information, or performance data that specifically identifies, or could lead to the identification of, any Company Products, from publication or disclosure outside of DOT; provided, that DOT may, in its reasonable discretion, require that such review be conducted as an in camera review and be limited to those portions of the Study Result referencing Confidential Information.

b. The Company acknowledges that a Receiving Party will disclose Confidential Information to the extent required to comply with Federal law, a court order, administrative subpoena or order, proper requests from a law enforcement agency or committee of Congress, or applicable governmental regulation or statutory requirement (such as might arise from a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. §552); in such case, the Receiving Party will provide the Company prompt notice of any request for contemplated disclosure of Confidential Information so as to give the Company a reasonable opportunity to intervene to preserve the confidentiality of its Confidential Information to the full extent permitted under applicable laws and regulations.

c. Data generated and first produced by a Receiving Party that incorporates or uses Confidential Information shall be used only for the authorized purposes described in the Agreement. DOT shall respond to FOIA requests for derived data containing Confidential Information in the same manner as prescribed in this Agreement for the treatment of Confidential Information.

d. These provisions are consistent with and do not supersede, conflict with or otherwise alter obligations, rights, or liabilities created by existing statute or Executive Order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other

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whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this Agreement and are controlling.

e. The following Executive Orders and statutory provisions are controlling in the case of any conflict with an agency NDA, as of October 20, 2015:

- Executive Order No. 13526;
- Section 7211 of Title 5, United States Code (governing disclosures to Congress);
- Section 1034 of Title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosures to Congress by members of the military);
- Section 2302(b)(8) of Title 5, United States Code, as amended by the Whistleblower Protection Act of 1989 (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats);
- Intelligence Identities Protection Act of 1982, 50 U.S.C. 421, et seq. (governing disclosures that could expose confidential Government agents);
- The statutes that protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of Title 18 United States Code; and
- Section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)).

**5. PUBLICATION OF THE STUDY RESULT.** The parties acknowledge that the Volpe Center is performing the Study and, at the conclusion of the Study, the Volpe Center will prepare and publicly release the Study Result. Subject to the Company's opportunity for a reasonable review of the Study Result pursuant to the terms of, and to ensure compliance with, Paragraph 4 and Paragraph 5, publication of the Study Result is within the control and discretion of the Volpe Center. The Volpe Center will use its reasonable best efforts, consistent with governing law, to present the Study Result in a form that prevents a non-party to this Agreement from observing or extracting any Confidential Information and otherwise conforms to the requirements of this Agreement.

**6. RETURN OF CONFIDENTIAL INFORMATION, SURVIVAL OF OBLIGATIONS.** Upon written request by the Company, or upon termination of this Agreement for any reason, DOT shall return all Confidential Information (in tangible, electronic, or other returnable form) (including any and all copies thereof) in its possession to the Company within thirty (30) calendar days of the date of the request or termination of the Agreement or furnish a certificate of destruction thereof, unless the Confidential Information is required to be maintained by DOT or a Receiving Party by law or regulation. Any information maintained beyond the thirty (30) day period contemplated above shall be destroyed as soon as is permitted under the law or regulation. Notwithstanding the termination of this Agreement, Receiving Parties shall continue to comply with the obligations under Paragraphs 2, 3, and 4 of this Agreement until DOT has returned or destroyed all Confidential Information as required by this Paragraph 6. In

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addition, a Receiving Party's obligation to refrain from disclosing any Confidential Information to third persons, except as specifically authorized by this Agreement, shall survive the termination of this Agreement.

**7. EXCLUSIONS.** A Receiving Party's obligations under this Agreement shall not apply to information that was:

- a. lawfully received from an independent third party without any breach of confidentiality by that third party or any Receiving Party; or
- b. disclosed pursuant to the requirement of a governmental agency or court order if the Company has been provided with prompt notice and an opportunity to object to such disclosure or to seek a protective order; or
- c. at the time of receipt from the Company is publicly available in printed or electronic publication; or
- d. after receipt from the Company becomes part of the publicly available information in a printed or electronic publication through no fault of a Receiving Party; or
- e. rightfully in a Receiving Party's possession prior to receipt from the Company without violation of any obligation of confidentiality.

**8. TERM.** The term of this Agreement is five (5) calendar years from the date the last party signs this Agreement. The term of this Agreement may be extended beyond the five-year period, provided that: (1) the parties agree in writing to any given extension; (2) the extension is for a definitive duration; and (3) the extension is signed or executed before expiration of the current term. The term of this Agreement may be extended more than once.

**9. GENERAL PROVISIONS.**

- a. Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any prior understanding or written or oral agreement relative to said matter.
- b. Force Majeure. No party to this Agreement shall be in breach of this Agreement for any failure of performance caused by any event beyond its reasonable control and not caused by the fault or negligence of that party, its contractors, employees or agents.
- c. Severability. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and shall remain in full force and effect.

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d. ALL CONFIDENTIAL INFORMATION UNDER THIS AGREEMENT IS PROVIDED TO RECIPIENT "AS-IS" WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO ITS ACCURACY, COMPLETENESS OR PERFORMANCE. Both parties represent and warrant they will comply with all applicable federal, state and local laws, rules, regulations, statutes, ordinances, codes, orders and/or programs (whether in effect as of the Effective Date of this Agreement or enacted during the term of this Agreement).

**10. NOTICES.** All notices hereunder shall be in writing, shall be sufficiently given and shall be deemed given when delivered to the applicable address stated below by registered or certified mail, return receipt requested. The addresses to which notices shall be delivered are as follows:

for [INSERT NAME OF COMPANY]:

*[INSERT ADDRESS]*

Attention: [INSERT COMPANY POINT OF CONTACT]

Tel.:

E-mail:

For DOT:

United States Department of Transportation  
Office of the Assistant Secretary for Research and Technology (OST-R)  
Volpe National Transportation System Center  
55 Broadway, Kendall Square  
Cambridge Massachusetts 02142-1093

Attention: Stephen Mackey

Tel: (617) 494-2753

E-mail: Stephen.Mackey@dot.gov

**11. GOVERNING LAW.** This Agreement shall be governed by and interpreted in accordance with the Federal laws of the United States.

**12. COMPLETE AGREEMENT.** This Agreement consists of [insert number] pages.

**13. ASSIGNMENT.** A receiving party may not assign any duty or obligation imposed upon it under this Agreement without the prior written consent of the Company.

**IN WITNESS WHEREOF,** each individual signing this document represents that he or she has the authority to execute this Agreement on behalf of his or her respective agency,



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institution or business and each such individual have set forth his or her signature as follows:

**[INSERT NAME OF COMPANY]**

**United States Department of Transportation**

By:

By:

Name:

Gregory D. Winfree  
Assistant Secretary for Research and Technology

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

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