

LIGHTSQUARED PROPOSED CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement (“Agreement”) is entered into and made effective as of [DATE] (the “Effective Date”) between [NAME OF COMPANY] (“Company”), having its principal place of business at [ADDRESS]; the John A. Volpe National Transportation Systems Center (“Volpe”), having its principal place of business at [ADDRESS]; and any company or interested third party that executes this Agreement (“Recipient”).

WHEREAS, Company has developed one or more GPS devices (the “Devices”);

WHEREAS, the Department of Transportation (“DOT”) has engaged Volpe to assist it in conducting a GPS Adjacent Band Compatibility Assessment involving the testing and evaluation of GPS devices in order to derive power limit criteria for compatible operation between GPS receivers and wireless applications (the “Study”);

WHEREAS, Company is participating in the Study and is interested in having its Devices so tested;

WHEREAS, Recipient is participating in the Study and will be provided with or otherwise have access to Confidential Information as defined hereunder;

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties now hereby agree as follows:

I. Purpose

The “Purpose” of this Agreement shall be for Company to provide Recipient with information concerning the Company’s Devices in connection with the Study. Confidential Information provided to Recipient in connection with the Study shall include Device schematics and component parts, detailed U.S. sales figures for each Device, and software test codes. Non-confidential information provided to Recipient in connection with the Study shall include the identity of the Devices (including the marketing name and model number of each Device when it was first available for consumer purchase), the corresponding test results obtained through Company’s participation in the Study, the antenna pattern of each Device, the date each Device was manufactured.

Recipient shall use this information solely to (a) evaluate the performance of the Devices and (b) produce reports or analyses of the performance of the Devices in conjunction with similar products in connection with the Study. The Purpose shall be limited in time to the term of this Agreement and shall not continue thereafter.

II. Confidential Information

As used in this Agreement, “Confidential Information” shall include, but is not limited to, all trade secrets, non-public information, data, interfaces and specifications relating to Company, its

business, or its Devices. Confidential Information consists of any information that the Company identifies as proprietary or confidential at the time of disclosure, and derivatives thereof to the extent that the derivative discloses the underlying Confidential Information. This Section will apply to Confidential Information (a) disclosed on paper or in electronic form only if the writing is marked “Confidential” or “Proprietary,” or (b) if not marked, which would be reasonably construed to be confidential in the context disclosed. Notwithstanding the foregoing, Confidential Information shall not include a Device’s identity (including the marketing name and model number of the Device when it was first available for consumer purchase), the corresponding test results obtained through Company’s participation in the Study, the antenna pattern of a Device, or the date a Device was manufactured.

Confidential Information shall not include any information that is:

- (a) already lawfully in the possession of or known to Recipient as of the Effective Date without any obligation of confidentiality;
- (b) already in the public domain at the time of disclosure to Recipient or which, after such disclosure, enters into the public domain through no fault of Recipient;
- (c) lawfully furnished or disclosed to Recipient by a non-party to this Agreement without any obligation of confidentiality and through no wrongful act of Recipient;
- (d) independently developed by Recipient; or
- (e) explicitly approved for public release by Company.

III. Non-Disclosure of Confidential Information

Recipient shall not disclose Confidential Information to any third party (other than to employees and outside counsel as set forth below). Recipient shall hold Confidential Information in strict confidence and shall take reasonable measures to protect Confidential Information from misuse and unauthorized disclosure, but in no event less than the measures it takes to protect its own confidential information. Any employee or outside counsel given access to any Confidential Information must agree not to use or disclose such Confidential Information except as permitted herein.

A disclosure of Confidential Information required under legal process shall not be considered to be a breach of confidentiality by Recipient or a waiver of such obligation by Company. Before any such disclosure, however, Recipient shall provide prompt written notice to Company to enable Company to seek a protective order or prevent disclosure.

IV. Non-Use of Confidential Information

Recipient shall not use Confidential Information except as required to carry out the Purpose of this Agreement. Recipient shall not make copies of Confidential Information in any manner that obstructs or obscures the confidentiality marking of Company. This Agreement does not grant Recipient a license or any other rights of any type under any patents, know-how, copyrights, trade secrets, trademarks, or other intellectual property owned or controlled by Company or its

Affiliates, including but not limited to, any name, trademark, trade dress, logo, or equivalents. “Affiliates” shall mean any entity that controls, is controlled by, or under common control with a party to this Agreement, where control is established by ownership of a majority of the voting equity securities of the controlled entity or by the ability to direct the general affairs of the controlled entity.

V. Return of Materials

All documents and other tangible forms of Confidential information, and all copies thereof, shall be and remain the sole and exclusive property of Company, and shall be promptly returned or destroyed by Recipient upon termination of this agreement. Recipient shall promptly certify that it has returned or destroyed all Confidential Information to the satisfaction of Company.

VI. Term and Termination

This Agreement shall terminate upon the earlier of [TIME PERIOD] after the Effective Date or upon receipt of written notice of termination from a party. The obligations of Recipient under this Agreement shall survive termination and shall not expire.

VII. Warranties and Representations

Company warrants that it has the right to disclose information disclosed hereunder. Company represents that Company’s information is accurate to the best of its knowledge and belief at the time the information is disclosed. Otherwise, all information disclosed hereunder is provided AS IS and without any warranty, express or implied, as to its accuracy or completeness, fitness for a particular purpose, merchantability and all warranties to such information are hereby disclaimed, whether express or implied.

The 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.

VIII. No Additional Obligations

This Agreement shall not be interpreted to obligate Company to provide any Confidential Information to Recipient, or to enter into any further contract or arrangement with Recipient, or to purchase or sell any products or services from or to Recipient, or to create any joint-venture or partnership.

IX. General Provisions

A. Prohibition on Assignment

Recipient agrees not to assign any rights or delegate any duties under this Agreement without Company’s prior written consent, and any attempt to do so is void and has no effect.

B. Binding Effect

This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

C. Governing Law

The laws of [STATE/COMMONWEALTH], without giving effect to its conflicts of law principles, govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Litigation or legal proceedings which arise out of or relate to this Agreement are to be conducted before a judge and not a jury.

D. Venue

The parties consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in [STATE/COMMONWEALTH] for the purposes of adjudicating any matter arising out of or relating to this Agreement.

E. No Waiver

The failure of Company to enforce a provision, exercise a right or pursue a default of this Agreement shall not be considered a waiver. The express waiver of a provision is to be effective only in the specific instance, and as to the specific purpose, for which it was given.

F. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement remain in full force and effect so long as the essential terms and conditions of this Agreement reflect the original intent of the parties and remain valid, legal, and enforceable.

G. Section Headings and Captions

The section headings and captions contained in this Agreement are for convenience only and do not affect the construction or interpretation of any provision of this Agreement.

H. Construction

This Agreement is to be construed without regard to the party or parties responsible for its drafting or preparation.

I. Counterparts

This Agreement may be executed in counterparts and delivered to each of the parties by facsimile. Facsimile or photocopy signatures are deemed as legally enforceable as the original. Each such counterpart is deemed an original instrument, but all such counterparts taken together constitute one and the same agreement.

J. Remedies

It is agreed that monetary damages may not be a sufficient remedy for breach of this Agreement. Company is entitled to seek injunctive relief without proof of actual damages. In addition, Company may seek other appropriate relief, including monetary damages.

Unless stated otherwise, all remedies provided for in this Agreement are to be cumulative and in addition to, and not in lieu of, any other remedies available to either party at law, in equity or otherwise.

K. Entire Agreement

This Agreement embodies the entire agreement and understanding of the parties and supersedes any and all prior oral agreements, arrangements, and understandings relating to the Purpose provided for herein.

L. Modification

No amendment, waiver or modification of this Agreement is binding unless it is in a writing that explicitly references this Agreement and is signed by authorized representatives of both parties.

* * *

The duly authorized representatives of the parties agree to the above provisions by signing below as of the Effective Date.

[NAME OF COMPANY]

[NAME OF RECIPIENT]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____