



MUTUAL NON-DISCLOSURE AGREEMENT

This **MUTUAL NON-DISCLOSURE AGREEMENT** (this "Agreement") is made and entered into as of the _____ day of _____, 20____ (the "Effective Date"), by and between **SPOTTERRF, LLC**, a Utah limited liability company having its primary business address at 720 Timpanogos Parkway, Orem, UT 84097 ("SpotterRF"), and _____, a _____ with a primary business address of _____ ("_____").

RECITALS

WHEREAS, the parties hereto wish to explore and discuss business opportunities of mutual interest; and

WHEREAS, in connection with such business opportunities, each party may disclose to the other party certain confidential information which the disclosing party desires the receiving party to treat as confidential; and

WHEREAS, the parties desire to set forth certain requirements regarding the treatment of such confidential information, all according to the terms and conditions set forth herein.

AGREEMENT

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

The above recitals are incorporated herein by reference.

1. **TERM.** This Agreement shall commence and be effective as of the Effective Date, and shall remain in full force and effect for a period of three (3) years. This Agreement may be terminated for any reason, or for no reason at all, by either party upon thirty (30) days' prior written notice to the other. During the term of this Agreement, and for an additional period of three (3) years from the termination or natural expiration of this Agreement, all Confidential Information (as defined below) of either party shall be safeguarded according to the terms and conditions set forth herein. Notwithstanding the termination or natural expiration of this Agreement, and notwithstanding the foregoing three (3) year time limit regarding Confidential Information generally, any trade secrets (as determined by applicable law) of either party shall be safeguarded according to the terms and conditions of this Agreement in perpetuity or for so long as such information remains a trade secret under applicable law.

2. **CONFIDENTIAL INFORMATION.**

2.1 Confidential Information Defined. “Confidential Information” means any and all information disclosed before, on, or after the Effective Date, by either party to the other party, either directly or indirectly, in writing, orally, by any other medium, or by inspection of tangible objects, including without limitation: patents and patent applications, trade secrets, mask works, ideas, samples, media, techniques, sketches, drawings, works of authorship, models, inventions, know-how, processes, apparatuses, algorithms, photographs, manuals and quickstart guides, formulae, documents, prototypes, samples, plant and equipment, research, product plans, products, services, customer lists, software programs, software source documents, developments, designs, drawings, engineering, hardware configuration, marketing materials, or finances. Information communicated orally shall be considered Confidential Information if such information is confirmed in writing as being Confidential Information within thirty (30) days of the initial disclosure. Confidential Information may also include information disclosed to a disclosing or receiving party by third parties.

2.2 Exceptions. Confidential Information shall not include any information which:

(i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party;

(ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party;

(iii) is already in the possession of the receiving party, free of any obligation of confidence, at the time of disclosure by the disclosing party as shown by the receiving party’s files, records, and other competent evidence immediately prior to the time of disclosure;

(iv) is obtained by the receiving party from a third party without a breach of such third party’s obligations of confidentiality; or

(v) is independently developed by the receiving party without use of or reference to the disclosing party’s Confidential Information, as shown by documents and other competent evidence in the receiving party’s possession.

2.3 Partial Disclosures; Combinations. Specific aspects or details of Confidential Information shall not be deemed to be within the public domain or in the possession of the receiving party merely because the Confidential Information is embraced by more general information in the public domain or in the possession of the receiving party. Further, any combination of individual elements of Confidential Information shall be considered Confidential Information and shall not be considered in the public domain or in the possession of the receiving party merely because one or more individual elements of such combination are in the public domain or in the possession of the receiving party; rather such combination shall only be considered in the public domain or in the possession of the receiving party if the combination of each of the individual elements of the combination is in the public domain or in the possession of the receiving party.

2.4 Disclosure by Court Order or Government. If a receiving party is required by court order or governmental authority to disclose Confidential Information, the receiving party shall promptly inform the disclosing party in writing so that the disclosing party may seek a protective order or other appropriate remedy. The receiving party shall cooperate with the disclosing party in connection with the disclosing party’s efforts to obtain any such order or other remedy. If no such protective order or other remedy is obtained, then the receiving party may furnish only that portion of the Confidential Information which the receiving party is advised by counsel is legally required to be disclosed and shall

exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to the Confidential Information.

3. USE AND DISCLOSURE.

3.1 Restrictions on Use and Disclosure. Each party agrees that it shall maintain the disclosing party's Confidential Information in strict secrecy and confidence. Each party shall not use the Confidential Information of the other party for any purpose except to evaluate and engage in discussions concerning potential business opportunities of mutual interest to the parties. Each party shall only permit access to Confidential Information of the other party to those of its officers, directors, employees, and/or authorized representatives who have a specific need to use the Confidential Information. All parties to whom Confidential Information has been disclosed shall be advised of the existence and scope of this Agreement and shall agree in writing to comply with the restrictions of this Agreement. The receiving party shall be responsible for the acts and omissions of its officers, directors, employees, and/or authorized representatives under this Agreement as if such acts and omissions were performed (or not performed) by the receiving party. If an act or omission of an officer, director, employee, and/or authorized representative of the receiving party would, if committed by the receiving party, constitute a breach of this Agreement, such act or omission shall constitute a breach of this Agreement by the receiving party.

3.2 Maintenance of Confidentiality. Each party agrees to use the same degree of care to prevent any unauthorized access, disclosure, publication, or other misuse or misappropriation of Confidential Information as the receiving party uses to protect its own confidential information of like nature but in no event less than a reasonable degree of care. Each party shall promptly notify the other of any unauthorized access, disclosure, publication, or other misuse or misappropriation of Confidential Information of which it becomes aware. The disclosing party shall use reasonable efforts to mark its Confidential Information with a legend indicating its confidential nature. Notwithstanding the foregoing, any information which by its nature is confidential and would be considered so under a reasonable standard, or is disclosed, or provided, under circumstances reasonably indicating it is confidential or proprietary, shall be considered and treated as Confidential Information regardless of whether the disclosing party has marked the information with a legend indicating its confidential nature. If any party makes copies of the Confidential Information of the other party, such copies shall also constitute Confidential Information and any and all confidentiality-related markings on such Confidential Information shall be maintained. Neither party shall reverse engineer, disassemble, or decompile any prototypes, software, or other tangible objects which embody the other party's Confidential Information.

4. NO OBLIGATION. Each party retains the right to determine, in its sole and absolute discretion, what information it will disclose. Nothing herein shall obligate either party to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate any discussions contemplated by this Agreement.

5. NO WARRANTY. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS, OR PERFORMANCE.

and remain in full force and effect as if no such forbearance or waiver had occurred. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

10. INJUNCTIVE RELIEF. Each party understands and agrees that any breach of this Agreement may cause irreparable injury and that actual damages may be difficult to ascertain, and in any event, may be inadequate. Accordingly, and without limiting the availability of any legal or equitable, including injunctive, remedies under any other provisions of this Agreement, each party agrees that in the event of any breach of this Agreement, the affected party shall be entitled to injunctive relief in addition to such other legal and equitable remedies that may be available.

11. GOVERNING LAW AND VENUE. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Utah, without regard to conflict of laws principles, with venue in the court of competent jurisdiction located in Utah County, Utah. Each party consents to the jurisdiction of such courts in any action or proceeding and waives any objection to such venue.

12. BINDING EFFECT. Each party represents and warrants that they have, or that their attorney or other representative has on their behalf, read this Agreement and that they fully understand its provisions. Each individual executing this Agreement on behalf of the respective parties represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of said party in accordance with any necessary corporate formalities, and that this Agreement is binding and enforceable upon said party, its heirs, successors, and permitted assigns, in accordance with the terms hereof.

13. CONSTRUCTION AND SEVERABILITY. Wherever possible, each provision of this Agreement will be interpreted in a manner that will render it effective and valid under applicable law. If any provision of this Agreement shall be prohibited by or becomes invalid under applicable law, that provision will be ineffective only to the extent of the prohibition or invalidity without invalidating the remainder of the provision or the remaining provisions of this Agreement. The parties agree to renegotiate in good faith any invalid provision in order that it be held valid and enforceable and any such provisions shall be in writing and reflect as closely as possible the original intent of the parties. If the parties are unable to agree on a substitute provision, the parties intend and desire that any court holding any provision of this Agreement to be invalid or unenforceable as written, shall substitute a provision that is enforceable and that most fully accomplishes the purpose of the invalid or unenforceable provision.

14. SURVIVAL. All matters that relate to the termination or expiration of this Agreement, or that in the normal course may not occur or be effectuated until after such termination or expiration, as well as all rights and obligations of the parties that by their nature may be expected to survive the termination or expiration of this Agreement, will survive any termination or expiration of this Agreement and will be given full force and effect notwithstanding any termination or expiration of this Agreement.

15. ENTIRE AGREEMENT. This Agreement contains the entire and integrated agreement of the parties hereto, and supersedes all prior negotiations, agreements, or commitments, whether oral or written, respecting the subject matter of this Agreement. No change, modification, or amendment to this Agreement, nor any representation, promise, or condition related hereto, shall be binding unless in writing and signed by both parties.

16. **ASSIGNMENT.** Neither this Agreement, nor any interest herein, may be assigned, in whole or in part, by either party without the prior written consent of the other party.

17. **COUNTERPARTS AND TRANSMISSION.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original instrument, but all of which shall constitute one and the same agreement. Facsimile or email transmission of any signed original document, and retransmission of any signed facsimile or email transmission, shall be the same as delivery of an original. At the request of either party, the parties shall confirm facsimile or email transmitted signatures by signing an original document.

[SIGNATURE PAGE FOLLOWS IMMEDIATELY]

SIGNATURE PAGE
to
MUTUAL NON-DISCLOSURE AGREEMENT
by and between
SPOTTERRF, LLC
and

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

SPOTTERRF:

_____:

SpotterRF, LLC

By: _____
Logan Harris, Contracts Administrator

By: _____

Name: _____

Title: _____