



## RECIPROCAL INFORMATION NONDISCLOSURE AGREEMENT

THIS RECIPROCAL INFORMATION NONDISCLOSURE AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, (the "Effective Date") by and between \_\_\_\_\_, whose address is \_\_\_\_\_ and **SPECTRUM Management, L.L.C.**, a Delaware Limited Liability Company with an office located at 2545 Tarpley Road, Carrollton, Texas 75006, shall be effective upon execution by both parties hereto. In consideration of the covenants and undertakings herein contained and the mutual benefits to be derived herefrom, the parties hereto agree as follows:

**Section 1. Purpose.** This Agreement is made to permit the parties hereto to receive from each other certain technical and business information for purposes of conducting ongoing negotiations towards establishing a business arrangement, under terms that will protect the confidential and proprietary nature of such information. Proprietary information of third persons furnished or disclosed to either party by the other shall, for purposes of this Agreement, be deemed the disclosing party's information and, accordingly shall be subject to the terms and conditions herein.

**Section 2. Information.** Each party may find it beneficial to disclose to the other party certain confidential and proprietary information. Information shall mean:

- (a) all data or information that is competitively sensitive, and not generally known to the public including, but not limited to, product planning information, marketing strategies, plans, finance, operations, customer relationships, customer profiles, sales estimates, business plans, and internal performance results relating to the past, present or future business activities of a party, its parent corporation, its subsidiaries and affiliated companies and the customers, clients and suppliers of any of the foregoing;
- (b) any scientific or technical information, design, process, procedure, formula, or improvement that is commercially valuable and secret in the sense that its confidentiality contributes to a party's competitive advantage over its competitors; and

(c) all confidential or proprietary concepts, documentation, reports, data, specifications, computer software, source code, object code, flow charts, databases, inventions, information, know-how, show-how and trade secrets, whether or not patentable or copyrightable.

Information includes without limitation, all documents, inventions, substances, engineering and laboratory notebooks, drawings, diagrams, specifications, bills of material, equipment, prototypes and models, and any other tangible manifestation of the foregoing which now exist or come into the control or possession of the party. Information shall be subject to the restrictions of Paragraph 3, if it is in writing or other tangible form, only if clearly marked as proprietary when disclosed to the receiving party or, if not in tangible form, only if summarized in writing so marked and delivered to the receiving party within thirty (30) days of such disclosure, in which case the Information contained in such summary (not information contained solely in the non-tangible disclosure) shall be subject to the restrictions herein.

**Section 3. Obligation of Confidentiality.** Each party agrees to hold Information it receives from the other party in confidence for a period of three years after the term of this Agreement; to use such Information only for the purpose set forth in Paragraph 1 above; and, upon receipt of a written request therefore from the disclosing party, to promptly return such Information to the disclosing party, together with all copies thereof then in its possession. Provided however, each party shall be permitted to keep one copy of documents in a legal file for archival purposes (which copy shall be controlled by the officer responsible for Business Development). The parties further agree that they shall not disclose any Information to anyone except those employees to whom such disclosure is necessary for the purposes authorized herein or to a professional advisor who either through operation of law or by agreement at least as restrictive as this Agreement is bound to retain the confidentiality of such Information. Each party shall appropriately notify each employee or professional advisor to whom such disclosure is made that it is made in confidence, subject to this Agreement, and each party shall take appropriate action by instruction or agreement with such persons to fulfill the obligations set forth in this Agreement. The parties agree to safeguard all Information received using a reasonable degree of care but not less than the degree of care used by each party in safeguarding its own similar Information or material.

**Section 4. Exclusions.** This Agreement shall not apply to Information:

- (a) that was previously known to either party free of any obligation to keep it confidential;
- (b) that has been or is subsequently made public by a third party who is under no obligation of confidence to either party hereto;
- (c) that is independently developed by either party or an affiliate without reference to or knowledge of the other's Information; or
- (d) that was lawfully received by such party from a third party.

In addition, any combination of Information regarding, for example, products, features or technology, disclosed by either party to the other, shall not be deemed to be within the foregoing exception merely because individual portions of such combination are disclosed or separately known in the public domain or known by the receiving party.

**Section 5. Non Interference.** Each party agrees not to interfere with any discussion or negotiation the other party may be having with any third party and which discussion or negotiation is disclosed as Information.

**Section 6. Injunctive Relief.** Each party acknowledges that Information of the other is and shall remain such other party's valuable personal property. Each party agrees not to disclose, or directly or indirectly use any Information produced or disclosed by a party to compete with the disclosing party during the term of this Agreement and for a period of three (3) years thereafter. In the event of the violation of any term of this Agreement, irreparable damage would be inflicted and, therefore, the aggrieved party shall be entitled to an immediate court-ordered injunction to halt any apparent violation of this Agreement in addition to any other remedies available to such aggrieved party at law or in equity.

**Section 7. Attorney's Fees.** In the event it is necessary for either party to seek a determination or enforcement of their rights under this Agreement in any court of competent jurisdiction, the prevailing party shall be entitled to recover, in addition to any and all other remedies awarded by such court, its reasonable attorney's fees and court costs, including such fees and costs on appeal. As used herein, the term "attorney's fees" shall include, without limitation, the cost and expenses of in-house counsel.

**Section 8. Not Subject to Assignment.** Neither this Agreement nor any rights hereunder, in whole, or in part, shall be assignable or otherwise transferable by either party, and the obligations contained in this Agreement shall survive and continue after termination of this Agreement.

**Section 9. Entire Agreement.** This Agreement contains the entire understanding between the parties regarding the subject matter hereof, superseding all prior or contemporaneous communications, agreements, or understandings with respect to the subject matter hereof. Amendments or alterations of this Agreement shall be invalid unless made in writing and signed by the parties hereto. Neither this Agreement nor the disclosure or receipt of information shall constitute or imply any promise or intention to enter into any contract or other business relationship or to make any purchase of products or services by either party or any commitment by either party with respect to present or future marketing of any product or service.

**Section 10. Discovery.** If either party becomes subject to a demand for discovery or disclosure of the Information of the other under lawful process, the party receiving such demand shall give notice thereof to the owner of the Information prior to furnishing the Information, and shall cooperate, at the Information owner's expense, in seeking reasonable protective arrangements requested by the owner. Either party may disclose Information of the other, provided that the disclosing party had obtained protective arrangements reasonably satisfactory to the owner of the Information.

**Section 11. Term.** The term of this Agreement shall be for one year from and after the effective date.

**Section 12. Validity.** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein. If any one or more of the provisions contained in this Agreement shall, for any reason, be held to be excessively broad as to time, duration, scope, activity, or subject, each such provision shall be construed by limiting and reducing it so as to be enforceable to the extent compatible with the applicable law as it shall then appear.

**Section 13. Arbitration.** If a dispute arises out of, or relates to, this Agreement or the subject matter of this Agreement, either party may submit the dispute to a sole mediator selected by the parties, or at any time prior to selection of a sole mediator, to mediation by the American Arbitration Association (“AAA”). If not thus resolved, it shall be referred to a sole arbitrator selected by the parties or to the AAA arbitration. The arbitration shall be governed by the United States Arbitration Act and judgment on the award may be entered by any court having jurisdiction. The arbitrator shall not limit, expand, or modify the terms of the Agreement nor award damages in excess of compensatory damages, and each party waives any claim to such excess damages. A request by a party to a court for interim protection shall not affect either party’s obligation hereunder to mediate and arbitrate. Each party shall bear its own expenses and an equal share of all costs and fees of the mediation and/or arbitration. Any arbitrator selected shall be competent in the legal and technical aspects of the subject matter of this Agreement. The content and result of mediation and/or arbitration shall be held in confidence by all participants.

IN WITNESS WHEREOF, the parties have executed this Agreement.



## RECIPROCAL INFORMATION NONDISCLOSURE AGREEMENT

### SPECTRUM MANAGEMENT, L.L.C.

By: \_\_\_\_\_

Its Authorized Representative

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

By: \_\_\_\_\_

Its Authorized Representative

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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