**Auriga Measurement Systems, LLC**

# Mutual Confidentiality and Limited Use Agreement

This Mutual Confidentiality and Limited Use Agreement (“Agreement”) is entered into between Auriga Measurement Systems, LLC (hereinafter, “Auriga”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter, a “Recipient”).

In order for the Recipient and Auriga to work together with respect to a possible acquisition of Auriga’s RF/microwave IP, including, without limitation, the performance of due diligence (“Purpose”), each party (hereinafter, a “Discloser” and/or a “Recipient) may disclose to the other party certain Confidential Information (as defined below).

Therefore, in consideration of its receipt of such Confidential Information from the other party, each party agrees as follows, effective as of the date of the last signature below:

1. “Confidential Information” means any proprietary, confidential and/or trade secret information of Discloser and/or others possessed by Discloser relating to, among other things, Discloser’s products, services, technology, data, methodologies, specifications, manufacturing or operating methods, inventions, discoveries, know-how, finances, business or marketing plans, suppliers, customers, employees or other business relationships. Confidential Information may be disclosed either in documentary form (including without limitation traditional tangible media such as written documents, photographs and drawings, and intangible media such as diskettes and other magnetic or electronic data), or orally or visually or in other non-documentary form (including without limitation presentations, displays or inspections of writings, designs, drawings, photographs, models, prototypes, samples, or facilities). Tangible objects, materials or media in which Confidential Information is embodied are referred to in this Agreement as “Confidential Materials.”
2. Recipient shall not, without Discloser’s written consent, use Discloser’s Confidential Information to develop its own business or to compete with Discloser, nor shall Recipient reverse engineer, disassemble, or decompile any prototypes, software, or other tangible objects that embody Discloser’s Confidential Information.  Recipient shall not directly or indirectly interfere with, circumvent or attempt to circumvent, avoid, by-pass, or obviate Discloser’s interest, or the interest or relationship between Discloser and its technology providers or manufacturers, to change, increase or avoid directly or indirectly: (i) payment of established or to be established fees or commissions; (ii) continuance of pre-established relationships; or (iii) to obtain rights or access to technologies directly.  In the event that one or several of the technology providers or manufacturers does not renew any existing rights or similar contracts or ceases its relationship with Discloser, Recipient cannot directly contact the technology provider or manufacturer without the express written permission of Discloser.
3. The Recipient shall only use the Confidential Information in connection with the Purpose. The Recipient shall not, without the prior written approval of Discloser, directly or indirectly, (a) reveal, report, publish, disclose or transfer any Confidential Information to any third party; (b) use any Confidential Information for any purpose other than the Purpose; (c) disclose to any third party any of the terms, conditions or other facts with respect to any possible business arrangement between Discloser and Recipient, including the status thereof; or (d) otherwise use any Confidential Information in any way to the detriment of Discloser.
4. Recipient (a) shall not disclose Confidential Information except to its directors, officers, partners, members and/or employees only on a need to know basis to the extent necessary to achieve the Purpose and only to persons legally bound by written agreement or otherwise to comply with Recipient’s obligations under this Agreement, provided that Recipient may disclose Confidential Information to third parties with the prior written consent of Discloser, (b) shall not use Confidential Information except for the Purpose, (c) shall use at least the same degree of care to safeguard Confidential Information that it uses to protect its own confidential and proprietary information, and in any event not less than a reasonable degree of care under the circumstances, and (d) shall make copies of Confidential Materials only as needed for such purpose, all of which shall include any existing markings indicating that they are Confidential Information of Discloser, or shall have markings supplied by Recipient. These obligations shall survive any expiration or termination of this Agreement and continue in effect until (a) such time as all Confidential Information disclosed hereunder becomes publicly known and made generally available through no action or inaction of Recipient, (b) a court of law requires disclosure, or (c) such time as the parties enter into a written agreement which expressly supersedes this Agreement,
5. Upon Discloser’s request, Recipient shall return or, upon requesting and receiving the written authorization of Discloser, destroy all Confidential Materials.
6. Recipient’s duty to hold Confidential Information in confidence shall:

(a) In the case of Confidential Information that is subject to the “limited” or “restricted” data rights provisions of the Federal Acquisition Regulation (“FAR”) and the Department of Defense Federal Acquisition Regulation Supplement (“DFARS”) or other restrictions applicable to commercial software or technical data, survive the expiration or termination of this Agreement for ten (10) years.

(b) In the case of Confidential Information that is subject to the “SBIR data rights” provisions of DFARS 252.227-7018 or FAR 52-227-20 (or any successor clauses) survive the expiration or termination of this Agreement for ten (10) years.

1. Confidential Information shall not include information that: (a) was in the public domain when disclosed; (b) becomes public domain after disclosure, other than as a result of Recipient’s violation of this Agreement; (c) was in Recipient’s possession when disclosed and was not acquired directly or indirectly from Discloser; or (d) was received after disclosure from a third party who did not require it to be held in confidence and who did not acquire it directly or indirectly from Discloser.
2. Recipient shall notify Discloser immediately of any breach of this Agreement of which it becomes aware and shall assist and cooperate with Discloser in minimizing the consequences of such breach. If Recipient is required by order of any court of competent jurisdiction, by any governmental agency, by any applicable law, rule or regulation, or by any applicable stock exchange or stock association rule, to disclose Confidential Information, Recipient shall notify Discloser of the requirement prior to disclosure and as soon as possible, but in no event later than five business days after learning of such requirement, to provide Discloser a reasonable opportunity to protect its Confidential Information by protective order or other means. Recipient shall cooperate with Discloser’s reasonable efforts to avoid, protect or minimize such disclosure.
3. Either party shall sustain irreparable harm by a breach of this Agreement for which money damages would not be an adequate remedy. Each party therefore agrees that, in the event of a threatened or continuing breach of this Agreement, Discloser shall be entitled, without prejudice to all other available remedies, to immediate injunctive or other equitable relief. Recipient shall indemnify and hold Discloser harmless from any damages, losses, costs, and expenses, including reasonable attorney fees, arising from any breach of this Agreement.
4. This Agreement is the complete and exclusive agreement of the parties with respect to the Purpose, supersedes all prior and contemporaneous written or oral understandings relating thereto, and shall survive the expiration or termination of any other agreement. This Agreement shall be subject to and be interpreted in accordance with the laws of the Commonwealth of Massachusetts. This Agreement may be amended or modified only in writing agreed to by both parties.
5. The parties represent and warrant that they have the right to make the disclosures under this Agreement.
6. This Agreement shall not be construed as creating, conveying, transferring, granting or conferring upon either party any rights, license or authority in or to the Confidential Information exchanged, except the limited right to use Confidential Information specified herein. Furthermore and specifically, no license or conveyance of any intellectual property rights is granted or implied by this Agreement.
7. Neither party has an obligation under this Agreement to purchase any service, goods, or intangibles from the other party. Furthermore, both parties acknowledge and agree that the exchange of Confidential Information under this Agreement shall not commit or bind either party to any present or future contractual relationship (except as specifically stated herein), nor shall the exchange of information be construed as an inducement to act or not to act in any given manner.
8. Neither party shall be liable to the other in any manner whatsoever for any decisions, obligations, costs or expenses incurred, changes in business practices, plans, organization, products, services, or otherwise, based on either party’s decision to use or rely on any Confidential Information exchanged under this Agreement.
9. If any of the provisions of this Agreement are found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision(s) shall be deemed modified to the limited extent required to permit enforcement of the Agreement as a whole
10. Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent:

# To Auriga:

Auriga Measurement Systems, LLC

c/o Bruce L. Cohen

Bruce L. Cohen & Associates

302 Willow Brook Drive

Wayland, MA 01778

Email: bcohen@auriga-ms.com

# To Recipient:

[Name]

[Address]

[Email]

or to such other address as may have been furnished to Recipient by Auriga or to Auriga by Recipient, as the case may be.

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| **Auriga Measurement Systems, LLC**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Authorized Signature  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name (Print or Type)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **Company/Person Name**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Authorized Signature  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name (Print or Type)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date |