

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This agreement is entered into as of \_\_\_\_\_, 2018, between \_\_\_\_\_ and **Saygus/American Smartphone, Inc.** The parties recognize that certain trade secrets and confidential information of each party may be disclosed to or discovered by the other party in the course of their discussions. The parties are willing to enter into such discussions, provided each party agrees to protect the other party's secrets and confidential information according to the terms of this Agreement.

The parties, intending to become legally bound, agree as follows:

1. As used in this Agreement, the term "Trade Secrets" shall mean and include all trade secrets and confidential information of any nature of either party or any of its affiliates whether presently existing or developed hereafter, and whether communicated orally, in writing, or learned by observation or otherwise, including without limitation, inventions; formulae; patterns; compilations; programs (including software object and source codes); devises; designs; methods; techniques; processes; discoveries and improvements; customer and supplier lists; non-public financial information; buying and marketing plans and methods; pricing policies; product ideas; and other non-public business, technical, marketing, or operating information. "Trade Secrets" also include any information obtained by either party from third parties which the receiving party is obligated to protect as trade secrets or confidential information hereunder. Trade Secrets shall not include any information that the receiving party conclusively demonstrates: (i) was in the public domain prior to disclosure to the receiving party, or becomes so available through no fault of the receiving party; or (ii) is currently being developed by receiving party; or (iii) is received from a third party with no breach of a duty owed hereunder.
2. The receiving party acknowledges the importance of preserving the confidentiality of the disclosing party's Trade Secrets and agrees not to use or disclose at any time, and to prohibit its employees or agents from using or disclosing at any time, any disclosing party's Trade Secrets to any third party unless and to the extent directed in writing in each instance by an officer of the disclosing party. The receiving party shall restrict access and use of the disclosing party's Trade Secrets solely to each of its employees or agents who need to know such information. The receiving party shall, prior to permitting such access, obtain from each such employee or agent a written agreement to be bound by the terms hereof for the benefit of the disclosing party, and shall deliver copies of such agreements to the disclosing party on request.
3. The receiving party shall not without the consent of the disclosing party make or have made or use any copies of any materials containing any disclosing party's Trade Secrets, and any notices or legends used by the disclosing party shall be reproduced in all copies. All tangible items embodying or disclosing any portion of the disclosing party's Trade Secrets, including copies or partial copies and reproductions thereof, shall remain the property of the disclosing party and must be returned upon the termination of the parties' business relationship or the earlier request of an officer or manager of the disclosing party.
4. No license right in or to any of the disclosing party's Trade Secrets or any other trade secrets, confidential information or other rights is granted hereunder.
5. The receiving party acknowledges that the disclosing party will be irreparably harmed if any disclosing party's Trade Secrets are disclosed by the receiving party to third parties or use by the receiving party or others except as contemplated hereunder, agrees that any remedy at law would be inadequate in the event of a breach or threatened breach to this Agreement, and agrees that the disclosing party shall be entitled to injunctive relief in addition to money damages or any other remedies, in the event of a breach or threatened breach of this Agreement. Any amounts or property received by the receiving party through a violation of this Agreement shall be held in constructive trust for the benefit of the disclosing party.

Initials \_\_\_\_\_

6. This Agreement shall be governed by the laws of the State of Utah. Each party hereby consents to the personal jurisdiction of the state and federal courts sitting in Salt Lake County, Utah, which courts shall be proper venue for any action hereunder. Each party agrees the other shall be awarded its reasonable attorney's fees and costs if it prevails in any action to enforce this Agreement.
7. If any provision of this Agreement is found to be unenforceable or invalid in any context or to any extent, it shall nevertheless be enforced to the fullest extent allowed by law in that and other contexts, and the validity and force of the remainder of this Agreement shall not be affected thereby.
8. This Agreement shall bind and inure to the benefit of the parties and their respective successors, assigns, directors, officers, shareholders, and parent, subsidiary and related entities. This Agreement shall not reduce, limit or supersede any trade secret rights or remedies of either party under applicable laws, but shall be deemed to supplement same.
9. This Agreement and the obligations arising hereunder shall survive the expiration or termination of any relationship between the parties. Upon expiration or termination of any such relationship, each party shall return to the other all tangible copies of the other's Trade Secrets, wherever located including copies or partial copies contained on any computer hard drive, tapes, floppy disks, other magnetic media or other medium.
10. This Agreement contains the entire agreement of the parties with respect to its subject matter and supersedes any prior or contemporaneous agreements or statements relating to the subject matter hereof. Any waiver of either party's rights under this agreement must be by a specific written waiver signed by an officer of such party, and no waiver shall apply to any instance other than that for which it is given. Any modifications or amendments to this Agreement must be in a writing signed by an officer of both parties.

Executed by authorized representatives of the parties as of the date first written above.

\_\_\_\_\_ (Co. Name)

**Saygus/American Smartphone, Inc.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title (if a business, non-profit or trust)

\_\_\_\_\_  
Title