

Memorandum of Understanding

THIS MEMORANDUM OF UNDERSTANDING (the “MOU”) is made as of the last date of signature set forth below

BETWEEN:

Liberty Defense Technologies, Inc., a Massachusetts corporation

(“Liberty”)

and

the Office of the Attorney General of the State of Utah

(“Partner”)

WHEREAS Liberty and Partner collectively, (“the Parties” or “all Parties”) wish to collaborate on testing Liberty’s security threat detection system and related technologies (“Hexwave”) at potential facilities or venues in Utah (the “Venues”) to possibly include, but not be limited to:

1. Sporting & Concert Arenas, Stadiums and Olympic Venues;
2. Primary, Secondary and Higher Education Facilities;
3. Places of Worship, Facilities and Property Owned by or Affiliated with Faith Entities;
4. Government Offices, Buildings and Facilities;
5. Amusement Parks; and
6. Entertainment Events, Conventions, Shows & Festivals.

WHEREAS there been no expenditure of public funds or agreement to expend public funds prior to the execution of this agreement and no public funds are expended or agreed to be expended under this MOU.

WHEREAS the Parties now wish to enter into this MOU to memorialize their understanding as to the provision of certain rights and protections to all Parties and to Liberty as consideration for making Hexwave available for such testing.

NOW THEREFORE THIS MOU WITNESSES THAT for good and valuable non-monetary consideration, the receipt and sufficiency of which are hereby conclusively acknowledged, the Parties agree as follows:

1. Hexwave Testing. During the term of this MOU, Liberty intends to make Hexwave available to Partner for alpha and beta testing at the Venues to be completed within 24 months with the following conditions:

a. Participation by Liberty with Partner law enforcement and executive employees to jointly collect requirements for the installation, operation and service of Hexwave to include “user jury” or feedback surveys on deployment and suggestions that would enable improving or aligning the system to such requirements;

- b. Testing to occur during spring, summer and winter events;
- c. Testing to occur during both the day and evenings;
- d. Testing to occur during concerts, sporting events and other events held at certain of the Venues;
- e. Testing to occur during regular and non-business hours to get system exposure to the full range of potential operating conditions to include environmental, frequency / volume of use or other operating conditions to which Hexwave would be subjected;
- f. Neither party guarantees access to any of the Venues but the Parties will make good faith efforts to gain access to such Venues;
- g. Following an impact analysis, and in its sole discretion, Partner shall consider allowing the integration of Hexwave into Partner's security operations to determine Hexwave's utility in augmenting or synchronizing with such systems and to assess the potential benefits and requirements for such integration;
- h. Nothing herein shall require the expenditure of public funds or an agreement to expend public funds for any purposes, specifically including the acquisition of any procurement item within the meaning of the Utah Procurement Code, Title 63G, Chapter 6a.
- i. This MOU shall become effective upon signature by the authorized representatives from the Parties and will remain in effect for a period of 36 months, unless earlier terminated by any of the parties for any reason. While this MOU is at-will, the non-disclosure terms and restrictions of paragraphs 2-5 survive beyond any termination. The terms of this MOU may be modified only by mutual consent of authorized representatives of the Parties.
- j. This Section 1 merely sets forth the intent of the parties with respect to Partner's evaluation and testing of Hexwave and is not intended to create legally binding obligations on either party. **NOTWITHSTANDING THE FOREGONG, SECTIONS 2 THROUGH 5 OF THIS MOU CONSTITUTE A BINDING AND LEGALLY ENFORCEABLE AGREEMENT.**

2. Proprietary Rights, Restrictions, Confidential Information, Feedback, Return of Materials.

a. This MOU only gives Partner the limited right to use Hexwave for evaluation and testing purposes in accordance with the terms hereof. Liberty reserves all other rights, including but not limited to all intellectual property rights in and to Hexwave and its components and the Confidential Information (as defined below). In using Hexwave, Partner must comply with all Liberty instructions that allow Partner to use Hexwave only in certain ways. Partner may not: (a) modify or create any derivative works of Hexwave or any part thereof; (b) sell, transfer, rent, lease or lend Hexwave or any of its components to any third party; (c) reverse engineer or disassemble Hexwave or any of its components; (d) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels of Liberty; or (e) allow, authorize, or permit any third party to do any of the foregoing.

b. Partner acknowledges that, in the course of testing and evaluating Hexwave, Partner will obtain or develop information relating to Hexwave or Liberty (“Confidential Information”), including, but not limited to Hexwave technology, software, algorithms, schematics, testing procedures, user interface, documentation, problem reports, analysis and performance information, inventions (whether patentable or not), and other technical, business, product, marketing, financial and customer information, plans and data. Except as required by Utah law, during and after the term of this MOU, Partner shall hold in confidence and protect, and shall not use (except as expressly authorized by this MOU) or disclose, Confidential Information or any copies thereof, unless such Confidential Information becomes part of the public domain without breach of this MOU by Partner. Partner acknowledges and agrees that due to the unique nature of the Confidential Information, there can be no adequate remedy at law for any breach of Partner’s obligations hereunder, that any such breach may allow Partner or third parties to unfairly compete with Liberty resulting in irreparable harm to Liberty, and therefore, that upon any such breach or threat thereof, Liberty shall be entitled to injunctions and other appropriate equitable relief in addition to whatever remedies it may have at law. Hexwave hereby asserts a claim of business confidentiality under Utah Code § 63G-2-309 as to all information it has identified as Confidential Information in this MOU. Pursuant to Utah Code § 63G-2-309, Hexwave agrees to identify Confidential Information in writing as such when it is provided to Partner. The reasons supporting the claim of business confidentiality are as stated herein.

c. In Partner’s sole discretion, Partner may provide to Liberty reasonable suggestions, comments and feedback regarding Hexwave including, without limitation, feedback related to usability, functionality, performance, error reports and test results (collectively, “Feedback”), except that Partner shall not receive or otherwise acquire a procurement item in exchange for such Feedback. As between the parties, all Feedback shall be exclusively owned by Liberty and Liberty shall be freely entitled to reproduce, prepare derivative works of, disclose to third parties, display and perform (publicly or otherwise), sell, lease, license, distribute, and otherwise use and exploit any and all such Feedback, at its sole discretion, without obligation or liability of any kind to Partner or to any third party. Partner hereby assigns and agrees to assign to Liberty all of its right, title and interest, including all intellectual property rights, in and to all Feedback.

d. Upon the expiration or earlier termination of this MOU for any reason, Partner shall return to Liberty (i) all documents and other tangible materials (and any copies) containing, reflecting, incorporating or based Confidential Information and (ii) any Hexwave equipment or other physical assets that Liberty may have provided to Partner for evaluation or use in connection with the activities contemplated under this MOU.

3. Disclaimers, Limitations of Liability.

a. Hexwave is in pre-release version and, as such, is believed to contain defects. A primary purpose of this MOU is to obtain feedback on performance and the identification of defects. PARTNER IS ADVISED TO USE CAUTION AND NOT TO RELY IN ANY WAY ON THE CORRECT FUNCTIONING, EFFECTIVENESS OR PERFORMANCE OF HEXWAVE. Liberty may make changes to Hexwave prior to making any version available commercially. Liberty also may not release a commercial version. Liberty shall have sole authority and discretion to determine the period of time for testing and evaluation of Hexwave, and Liberty shall be the sole judge of the success of such testing and the decision, if any, to offer

Hexwave as a commercial product. Liberty reserves the right to fully or partially discontinue, at any time and from time to time, temporarily or permanently, the availability of Hexwave or any part thereof with or without notice to Partner, and without any liability to Partner.

b. HEXWAVE CONTAINS EXPERIMENTAL TECHNOLOGY AND IS PROVIDED "AS IS." LIBERTY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITATION OF THE FOREGOING, LIBERTY EXPRESSLY DOES NOT WARRANT THAT HEXWAVE OR ANY RELATED SERVICES OR TECHNOLOGY WILL BE EFFECTIVE FOR DETECTING SECURITY THREATS OR OTHERWISE MEET PARTNER'S REQUIREMENTS OR THAT IT WILL BE SUITABLE FOR ITS INTENDED USE OR FREE OF DEFECTS OF ANY KIND. PARTNER ASSUMES FULL RESPONSIBILITY FOR USING HEXWAVE AND ANY USE OF HEXWAVE IS AT PARTNER'S SOLE RISK.

c. IN NO EVENT SHALL THE PARTIES BE LIABLE FOR ANY MONETARY DAMAGES WHATSOEVER WITH RESPECT TO PARTNER'S USE OF HEXWAVE OR OTHERWISE IN CONNECTION WITH THIS MOU. WHETHER OR NOT THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, NEITHER PARTY SHALL IN ANY EVENT BE LIABLE FOR MISREPRESENTATION, BREACH OF ANY IMPLIED OR EXPRESSED WARRANTY OR CONDITION, OR OTHERWISE BE LIABLE IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, FOR ANY DIRECT OR INDIRECT LOSS OR DAMAGE, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR GOODWILL, LOSS OR DAMAGE TO PROPERTY, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS, HOWEVER CAUSED, WHICH ARISES OUT OF OR IN CONNECTION WITH THE USE OF HEXWAVE OR THIS MOU. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO ANY SEPARATE AND SUBSEQUENT AGREEMENT BETWEEN THE PARTIES SUCH AS A PURCHASE ORDER OR SERVICES AGREEMENT, EVEN ONE RELATED TO THIS MOU, AND ANY SUCH SEPARATE AGREEMENT SHALL BE GOVERNED BY ITS OWN TERMS CONTAINED THEREIN.

4. Publicity. Partner hereby grants to Liberty the right to issue a press release announcing that Partner has become a testing partner of Liberty. In its sole discretion and subject to Partner's prior review and approval, Partner further grants Liberty the right to reproduce and display Partner's name, logo and trademarks on Liberty's website and in brochures, social media and other marketing materials for the purpose of identifying Liberty's relationship with Partner. Except as provided in the preceding sentence, all media releases, public announcements and public disclosures by either party relating to this MOU or its subject matter shall require the mutual approval of both parties.

5. Miscellaneous.

a. This MOU shall be governed by the laws of the State of Utah without regard to its conflicts-of-law provisions.

b. Any dispute arising out of or relating to this MOU shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be Salt Lake City, Utah. Notwithstanding the foregoing, Liberty may bring an action to enforce Section 2 hereof (including any request for injunctive or other emergency relief) before any court of competent jurisdiction.

c. This MOU constitutes the complete and exclusive agreement between the parties with respect to its subject matter and supersedes all prior or contemporaneous oral or written communications, proposals, representations, understandings, or agreements not specifically incorporated herein.

d. This MOU does not create or evidence a partnership, joint venture or any other fiduciary relationship between the parties. Neither party may create or incur any liability or obligation for or on behalf of the other party in connection with this MOU or its subject matter.

e. This MOU may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or electronic form, and the parties adopt any signatures received by means of electronic communication as original signatures of the parties.

IN WITNESS WHEREOF each of the parties hereto has executed this MOU on the date set forth below.

Liberty Defense Technologies, Inc.



Date: March 19, 2019

William E. Riker Jr.
CEO, Liberty Defense Technologies, Inc.



Date: March 20, 2019

Sean D. Reyes
Utah Attorney General