MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (the “Agreement”) is made and entered into as of \_\_\_\_\_\_\_\_\_, 20\_\_ (“Effective Date”) by **UST Global Inc** (“UST”), a Delaware corporation with its corporate offices at 5 Polaris Way, Aliso Viejo, California 92656, and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (“Company”) a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with its corporate offices at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

1. Purpose. The parties wish to explore a business opportunity of mutual interest [or \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (the “Purpose”), and, in connection therewith, each party may disclose to the other certain confidential business, strategic, and technical information which the disclosing party desires the receiving party to treat as confidential.
2. Term. This Agreement shall be in effect for a period of three (3) years from the Effective Date; provided, however, the obligations to maintain confidentiality shall continue for three (3) years from the date of disclosure to the recipient with the exception of Software source code and Trade Secrets (so long as they remain Trade Secrets), which shall continue in perpetuity.
3. Confidential Information. “Confidential Information” means any information disclosed by either party to the other party, directly or indirectly, in writing, orally, or by inspection of objects, graphics, or designs, which is designated as or communicated to be “Confidential,” “Proprietary,” or some similar designation, or which should be known to be confidential and/or proprietary due to the nature of the information or the manner in which it was disclosed. “Confidential Information” includes, but is not limited to, software (including all software programs, subroutines, source and object code, algorithms, and methods, techniques and processes revealed by such software) (collectively “Software”), Trade Secrets, designs, technology, know-how, mask works, processes, data, ideas, techniques, inventions (whether patentable or not), works of authorship, formulas, business and product development plans, customer lists, terms of compensation and performance levels of either party’s employees, and other information concerning the disclosing party’s actual or anticipated business, research or development, or which is received in confidence by or for the disclosing party from any other person. Confidential Information may also include information so designated and disclosed to a party by third parties, including Affiliates. Confidential Information shall not include any information which (i) is or becomes publicly known and made generally available through no action or inaction of the receiving party; (ii) is in the possession of the receiving party prior to disclosure; (iii) is independently developed by the receiving party without use of or reference to the disclosing party’s Confidential Information; (iv) is or has been disclosed to the party by a third party having no obligation of confidentiality concerning the information; or (v) is approved in writing for release by the disclosing party as being no longer confidential. “Trade Secrets” means Confidential Information which derives economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can derive economic value from its disclosure or use and is the subject of efforts by the disclosing party that are reasonable under the circumstances to maintain its secrecy.
4. Non-Use and Non-Disclosure. Each party agrees not to use any Confidential Information of the other party for any purpose except to evaluate and engage in discussions concerning the Purpose. Each party agrees not to disclose any Confidential Information of the other party to any third party, except that a receiving party is permitted to share Confidential Information with its Affiliates, and its and each of their Affiliates’ respective officers, directors, managers, employees, representatives, agents, consultants, subcontractors, any third party with whom the disclosing party has provided written consent to receiving party to disclose, successors, and assigns (the “Representatives”) who: (i) agree to only use the Confidential Information to evaluate and engage in discussions concerning the Purpose; (ii) are informed of the confidential nature of the Confidential Information; (iii) are bound in writing by confidentiality obligations contained herein, or no less protective than those contained herein, with respect to such Confidential Information; and (iv) agree to act in accordance with the terms of this Agreement. “Affiliate” means any entity controlling or controlled by or under common control with a party, at the time of execution of the Agreement and any time thereafter, where “control” is defined as the ownership of at least fifty percent (50%) of the equity or beneficial interest of such entity, or any other entity with respect to which such party has significant management or operational responsibility (even though such party may own less than fifty percent (50%) of the equity of such entity). The receiving party assumes full liability for acts or omissions by its Representatives that are inconsistent with its obligations under this Agreement. The receiving party may disclose Confidential Information of the other party to the extent required by law or compulsory legal process to be disclosed by the receiving party, provided that the receiving party gives the disclosing party prompt written notice prior to such disclosure (to the extent permitted by law) and assistance (at disclosing party’s expense) in seeking an order protecting the information from public disclosure. If the disclosing party’s efforts to obtain a protective order or similar are unsuccessful, or, in the event the disclosing party elects not to seek a protective order, the receiving party shall only disclose that Confidential Information which, in the opinion of receiving party’s counsel (in-house or outside), is necessary to comply with any such order. Neither party shall reverse engineer, disassemble, or decompile any prototypes, software, graphical designs, or other tangible objects, which embody the other party’s Confidential Information.
5. Unauthorized Disclosure or Use. The unauthorized disclosure or use of any Confidential Information may cause immediate and irreparable injury to the disclosing party which could not be adequately compensated by monetary damages. Each party therefore authorizes the other party to seek any temporary or permanent injunctive relief necessary to prevent such disclosure or use, or threat of disclosure or use.
6. Maintenance of Confidentiality. Each party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party. Without limiting the foregoing, each party shall take at least those measure that it takes to protect its own most highly Confidential Information.
7. No Obligation. Nothing herein shall obligate either party to proceed with any transaction between them, and each party may reserve the right, in its sole discretion, to terminate the discussions contemplated by this Agreement.
8. No Warranty. ALL CONFIDENTIAL INFORMATION IS PROVIDED “AS IS”. EACH PARTY MAKES NO WARRANTIES, EXPRESS OR IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS, OR PERFORMANCE.
9. Return of Materials. All documents and other tangible objects containing or representing Confidential Information which have been disclosed by either party to the other party, and all copies thereof which have been made by or are in the possession of the other party, shall be and remain the property of the disclosing party and shall be returned to the disclosing party within five (5) business days of the disclosing party’s written request. However, the parties acknowledge that the return and/or destruction of electronically stored information may be impossible, extremely or unduly difficult, or costly, and the parties therefore agree that the receiving party is not obligated to make extra-ordinary efforts to destroy electronically stored copies of the Confidential Information, provided that, in relation to any such copy that is not destroyed, the receiving party’s obligations of confidentiality and restricted use shall continue as per the provisions of this Agreement, and such obligations shall survive the termination or expiration of this Agreement with respect to all such retained Confidential Information.
10. Modifications to Agreement. All additions or modifications to this Agreement must be made in writing and executed by both parties.
11. No License. Nothing in this Agreement shall be construed as granting or conferring, expressly or impliedly, any rights by license or otherwise, to either party under any patent, trade secret, trade dress, trademark, copyright, or other intellectual property rights, nor shall this Agreement grant any party any rights in or to the Confidential Information of the other party except as set forth herein.
12. Binding Effect, Assignment. This Agreement shall be binding on the parties and their respective successors and assigns. This Agreement and the rights and obligations herein may not be assigned by either party without the prior written consent of the other party, except that such consent shall not be required in the event of (i) a recapitalization, reorganization, reincorporation or similar corporate event by either party not resulting in a change in control; or (ii) a merger or acquisition of either party, pursuant to which all of the stock, or all or substantially all of the assets of such party is acquired by another party, which party agrees to assume the rights and obligations of the acquired party under this Agreement.
13. Export Regulations. The receiving party shall comply with the export laws and regulations of the United States, including the Export Administration Regulations, 15 C.F.R. Parts 730-774, and shall not export or re-export any technical data or products received from the disclosing party or the direct product of such technical data to any destination, end use, or end-user that is prohibited or restricted under such United States export control laws and regulations, unless properly authorized by the U.S. government.
14. Jurisdiction and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California without regard to conflicts of laws provisions. The parties hereby consent to submit the jurisdiction and venue of the federal and state courts in and for Orange County, California. The parties shall not raise in connection therewith, and hereby waive, any defenses based upon the venue, the inconvenience of the forum, the lack of personal jurisdiction, the sufficiency of service of process, or the like in any such action or suit.
15. Counterparts. The parties agree that this Agreement may be electronically signed. The parties agree that an electronic signature appearing on this Agreement is the same as a handwritten signature thereon for the purposes of validity, enforceability, and admissibility. Further, the parties agree that this Agreement may be executed in counterparts, each of which shall be deemed one and the same instrument. Moreover, the exchange of this executed Agreement that is photostatic or portable document format (.pdf) form by electronic mail or by another electronic means (e.g. facsimile) shall be considered original(s) and shall constitute effective execution and delivery of the original(s).
16. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be amended, nor any obligation waived, except for in writing, signed by both parties.

**UST GLOBAL INC [COMPANY]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

By: By:

Print: Print: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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