TWO-WAY NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (the “Agreement”) is made and entered into as of the last date set forth below by and between **Client (“Client”)** and **Expert (“Expert”).** Each party possesses certain Confidential Information (defined below) and intends to evaluate a potential business relationship (the “Contemplated Relationship”) and, in connection therewith, each desire to share in confidence certain of such Confidential Information in their possession with one another on the condition that each party provides proper safeguards to protect the other party’s Confidential Information. The party providing Confidential Information in each case is called the “Disclosing Party.” The party receiving the Confidential Information is called the “Receiving Party.”

In consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth and intending to be legally bound, the parties hereby agree as follows:

# **Definition of Confidential Information.** As used herein, “Confidential Information” shall mean proprietary and/or confidential information which, (i) with respect to **Client**, consists of information relating to **Client**’s **business areas** (including but not limited to **business information**), business and financial information, and material financial terms contained within term sheets and/or draft agreements, and (ii) with respect to **Expert**, consists of information regarding **Expert**’s **business areas** (including but not limited to **business information**), business and financial information, and material financial terms contained within term sheets and/or draft agreements, and in each case that the Disclosing Party either (a) provides in writing to the Receiving Party and marks “Confidential”, or (b) discloses orally and confirms in writing to the Receiving Party within thirty (30) days of such oral disclosure specifying with particularity the non-written Confidential Information that is subject to this Agreement. Notwithstanding the foregoing, (a) neither party will share any confidential and/or proprietary process technology, and if such information is provided hereunder, it shall not be considered to be Confidential Information under this Agreement; and (b) Confidential Information shall not be information which: (i) has entered the public domain through no action or failure to act of Receiving Party; (ii) prior to disclosure hereunder was already lawfully in Receiving Party’s possession without any obligation of confidentiality; (iii) subsequent to disclosure hereunder is obtained by Receiving Party on a non-confidential basis from a third party who has the right to disclose such information to Receiving Party; or (iv) is independently developed by the Receiving Party without reference to any of the Disclosing Party’s Confidential Information.

In the event that the Receiving Party or any of its Representatives (as defined below) is required by a court of law or by any governmental, regulatory or administrative agency, body or tribunal to disclose any of the Confidential Information, the Receiving Party shall (a) provide the Disclosing Party with prompt prior written notice of such requirement so that the Disclosing Party at its expense may seek appropriate relief to prevent or limit such disclosure and/or obtain reliable assurance that confidential treatment will be accorded such Confidential Information, and (b) furnish or cause its Representatives to furnish only that portion of the Confidential Information which is legally required to be furnished or disclosed, and, to the extent reasonably feasible, shall consult with the Disclosing Party on content and timing prior to any such disclosure.

# **Non-Disclosure**. Receiving Party agrees to: (i) use the same degree of care (and in no event less than reasonable care) in protecting the Confidential Information that Receiving Party would use to protect its own Confidential Information of a similar nature; (ii) not to copy, publish, show, or disclose the Confidential Information to any third parties (other than its Representatives) without the prior written consent of the Disclosing Party, and (iii) to destroy the Confidential Information at the request of the Disclosing Party; *provided, however,* that the Receiving Party may retain a single copy of the Confidential Information for the purpose of monitoring compliance with its continuing obligations hereunder.

# Both parties shall advise their officers, representatives, employees, agents, and independent contractors (“Representatives”) who have access to Confidential Information of the confidential nature thereof. The parties under this Agreement agree that their Representatives shall be bound by the terms of this Agreement or confidentiality obligations no less restrictive than those set forth herein.  No Confidential Information shall be disclosed by a Receiving Party to any Representative who does not have a need for such information.  Each party shall be responsible for any breach of this Agreement by its Representatives.

# **Removal of Notices.** Receiving Party shall not remove any copyright, trademark, service mark or other proprietary rights notice attached to or included in any Confidential Information furnished by Disclosing Party.

# **Use of Confidential Information.** The Confidential Information shall be used by Receiving Party solely to evaluate the Contemplated Relationship. Each party agrees not to use Confidential Information of the other party for its own or any third party’s benefit. In particular, the Receiving Party shall not at any time file any patent application containing any claim the subject matter of which is derived from the Disclosing Party’s Confidential Information. RECEIVING PARTY ACKNOWLEDGES THAT THE CONFIDENTIAL INFORMATION IS RECEIVED “AS IS” FOR EVALUATION PURPOSES ONLY AND IS NOT TO BE RELIED UPON FOR ANY PURPOSE EXCEPT AS SET FORTH IN WRITING BY DISCLOSING PARTY. Disclosing Party makes no representations or warranties as to the accuracy, completeness, condition, suitability or performance of the Confidential Information, and Disclosing Party shall have no liability whatsoever to Receiving Party resulting from its use of the Confidential Information.

# **Reservation of Rights.** All rights not expressly granted by this Agreement are retained by Disclosing Party. Each party recognizes and agrees that nothing contained in this Agreement will be construed as granting any rights to a Receiving Party, by license or otherwise, to use any of the Disclosing Party’s Confidential Information except as specified in this Agreement. All Confidential Information shall remain the property of Disclosing Party.

# **Injunctive Relief.** Receiving Party acknowledges that Disclosing Party will be irreparably harmed if Receiving Party’s obligations under this Agreement are not specifically enforced and that Disclosing Party may not have an adequate remedy at law in the event of an actual or threatened violation by Receiving Party of its obligations. Therefore, Receiving Party agrees that Disclosing Party shall be entitled to seek an injunction or any appropriate decree of specific performance for any actual or threatened violations or breaches by Receiving Party or its employees and agents.

# **No Required Disclosure or Further Obligation.** Nothing contained herein shall be construed as requiring either party to disclose any Confidential Information to the other. Any such disclosure shall be made in the sole discretion of the Disclosing Party. Neither party shall be under any obligation of any kind whatsoever to enter into any further agreement with the other party by reason of this Agreement.

# **Term.** Except as provided herein, this Agreement shall terminate one (1) year from the date that this Agreement is first entered into. Each Party’s obligations under this Agreement shall survive termination of the Agreement and shall be binding upon such Party’s heirs, successors and assigns for five (5) years from the date that this Agreement is first entered into.

# **General**.

## Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the **State of California** without reference to its principles of conflict of laws. Any dispute arising out of or in connection with this agreement and which could not be solved by an amicable settlement shall be submitted to the courts of **State of California**.

## Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be illegal, invalid or unenforceable, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

## No Joint Venture. The parties hereto agree that this Agreement is for the purposes of protecting Disclosing Party’s Confidential Information only. This Agreement is not a joint venture or other such business arrangement; and any agreement between the parties as to any existing or future business activities is or will be set forth in other or subsequent written agreements, respectively.

## Counterparts. This Agreement may be executed in one or more counterparts, including facsimile and PDF electronic copies, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same Agreement.

## Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements or understandings. This Agreement shall not be modified except in writing signed by both parties.

The parties hereto have executed this Agreement by their duly authorized representatives with full rights, power and authority to enter into and perform this Agreement.

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

Print Name:

Title:

Address:

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

Print Name:

Title:

Address: