

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement (this “**Agreement**”) is made effective as of today (“**Effective Date**”), by and between Chronosphere, Inc., a Delaware corporation (“**Chronosphere**”) and you, the individual accessing the Confidential Information and any legal entity of which you are acting on behalf (each herein referred to individually as a “**Party**,” or collectively as the “**Parties**”). The Parties hereby agree to the following:

1. **Purpose**

The Parties wish to explore a business opportunity of mutual interest (the “**Opportunity**”), and in connection with the Opportunity, each Party may disclose certain confidential technical and business information (in such capacity, a Party disclosing the information, the “**Discloser**”) to the other Party (in such capacity, a Party receiving the information, the “**Recipient**”), that Discloser desires Recipient to treat as confidential.

1. **Confidential Information**

- *Definition.* “**Confidential Information**” means: (i) any information (including any and all combinations of individual items of information) disclosed by Discloser to Recipient pursuant to this Agreement that is in written, graphic, machine readable or other tangible form (including, without limitation, research, product plans, products, services, equipment, customers, markets, software, inventions, discoveries, ideas, processes, designs, drawings, formulations, specifications, product configuration information, marketing and finance documents, prototypes, samples, data sets, and equipment) and is marked “Confidential,” “Proprietary” or in some other manner to indicate its confidential nature (ii) and (iii) information otherwise reasonably expected to be treated in a confidential manner under the circumstances of disclosure under this Agreement or by the nature of the information itself.
- *Exceptions.* Confidential Information shall not, however, include any information that: (i) was publicly known or made generally available without a duty of confidentiality prior to the time of disclosure by Discloser to Recipient; (ii) becomes publicly known or made generally available without a duty of confidentiality after disclosure by Discloser to Recipient through no wrongful action or inaction of Recipient; (iii) is in the rightful possession of Recipient without confidentiality obligations at the time of disclosure by Discloser to Recipient as shown by Recipient’s then-contemporaneous written files and records kept in the ordinary course of business; (iv) is obtained by Recipient from a third party without an accompanying duty of confidentiality and without a breach of such third party’s obligations of confidentiality; or (v) is independently developed by Recipient without use of or reference to Discloser’s Confidential Information, as shown by written records and other competent evidence prepared contemporaneously with such independent development; provided that any combination of individual items of information shall not be deemed to be within any of the foregoing exceptions merely because one or more of the individual items are within such exception, unless the combination as a whole is within such exception.
- *Compelled Disclosure.* If Recipient becomes legally compelled to disclose any Confidential Information, other than pursuant to a confidentiality agreement, Recipient will provide Discloser prompt written notice, if legally permissible, and will use its best efforts to assist Discloser in seeking a protective order or another appropriate remedy. If Discloser waives Recipient’s compliance with this Agreement or fails to obtain a protective order or other appropriate remedy, Recipient will furnish only that portion of the Confidential Information that is legally required to be disclosed; provided that any Confidential Information so disclosed shall maintain its confidentiality protection for all purposes other than such legally compelled disclosure.

2. **Non-use and Non-disclosure**

Recipient shall not use any Confidential Information of Discloser for any purpose except to evaluate and engage in discussions concerning the Opportunity. Recipient shall not disclose any Confidential Information of Discloser to third parties or to Recipient’s employees, except that, subject to Section 4 below, Recipient may disclose Discloser’s Confidential Information to those employees of Recipient who are required to have such information in order to evaluate or engage in discussions concerning the Opportunity.

1. **Maintenance of Confidentiality**

Recipient shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of Discloser. Without limiting the foregoing, Recipient shall take at least those measures that it employs to protect its own confidential information of a similar nature. Recipient shall reproduce Discloser’s proprietary rights notices on any such authorized copies in the same manner in which such notices were set forth in or on the original. Recipient shall promptly notify Discloser of any unauthorized use or disclosure, or suspected unauthorized use or disclosure, of Discloser’s Confidential Information of which Recipient becomes aware.

1. **No Obligation**

Nothing in this Agreement shall obligate either Party to proceed with any transaction between them, and each Party reserves the right, in its

sole discretion, to terminate the discussions contemplated by this Agreement concerning the Opportunity. _

1. **No Warranty**

ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS OR PERFORMANCE OF ANY CONFIDENTIAL INFORMATION, OR WITH RESPECT TO NON-INFRINGEMENT OR OTHER VIOLATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY OR OF RECIPIENT.

1. **No License**

Nothing in this Agreement is intended to grant any rights to Recipient under any patent, mask work right or copyright of Discloser, nor shall this Agreement grant Recipient any rights in or to the Confidential Information of Discloser except as expressly set forth in this Agreement.

1. **Term**

The obligations of Recipient under this Agreement shall survive, with respect to any particular Confidential Information of Discloser, for a period of three (3) years.

1. **Remedies**

Recipient agrees that any violation or threatened violation of this Agreement may cause irreparable injury to Discloser, entitling Discloser to seek injunctive relief in addition to all legal remedies.

Neither Party may assign or otherwise transfer this Agreement. If a court or other body of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be invalid or unenforceable, such provision will be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the remainder of this Agreement will continue in full force and effect. No provision of this Agreement may be waived except by a writing executed by the Party against whom the waiver is to be effective. A Party's failure to enforce any provision of this Agreement shall neither be construed as a waiver of the provision nor prevent the Party from enforcing any other provision of this Agreement.

1. **Disputes**

All disputes arising out of this Agreement will be subject to the exclusive jurisdiction and venue of the state courts located in Santa Clara County, California and the federal courts located in the Northern District of California, and each Party hereby consents to the personal jurisdiction thereof.