

## UNILATERAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

In consideration of disclosures of confidential and/or proprietary information to be made by VWP SSF II Cove, LLC (“Company”) to \_\_\_\_\_, a \_\_\_\_\_ (“Recipient”), in connection with a possible negotiated transaction between Company (and/or an affiliate) and Recipient (and/or an affiliate) (the “Purpose”), and other good and valuable consideration, Recipient hereby agrees to all of the following terms and conditions in order to assure the continued confidentiality of such information.

### 1. Definitions

1.1 “Agreement” means this Unilateral Non-Disclosure and Confidentiality Agreement.

1.2 “Discloser” means Company, any affiliated entity that directly or indirectly controls, is controlled by, or is under common control with Company and each of their respective employees, officers, directors, and agents who disclose information for the purposes of this Agreement.

1.3 “Party” means either the Company or Recipient individually as the context requires and “Parties” means the Company and Recipient collectively.

1.4 Confidential Information means (i) any and all information that has previously been or will be provided by Discloser to Recipient in connection with the Purpose, either directly or indirectly, whether in graphic, written, electronic or oral form, whether identified or marked at the time of disclosure as “confidential” or “proprietary”, or which by its context would reasonably be deemed to be confidential, including without limitation (a) unpublished patent disclosures and patent applications and other filings, know-how, trade secrets, works of authorship, and other proprietary information, as well as any information regarding ideas, inventions, technology, and processes, including without limitation assays, sketches, schematics, drawings, techniques, drawings, designs, descriptions, specifications, and technical documentation, (b) specifications, protocols, models, designs, equipment, engineering, algorithms, software programs, software source documents, and formulae, (c) information concerning or resulting from any research and development or other project, experimental work, product development plans, regulatory compliance information, and research, development and regulatory strategies, and (d) business and financial information, including without limitation purchasing, procurement, manufacturing, customer lists, information relating to investors, employees, business and contractual relationships, business forecasts, sales and merchandising, business and marketing plans, product plans, and business strategies, including without limitation information Discloser provides regarding third parties, such as, but not limited to, suppliers, customers, employees, investors, or vendors; and (ii) any other information, whether prepared by Discloser or a third party, to the extent such information contains, reflects or is based upon any of the foregoing Confidential Information, including notes, analyses, compilations, reports, and studies. The existence of this Agreement, its terms, the Purpose and the possible establishment or existence of the contemplated business relationship between the Parties and/or their respective affiliates shall be deemed to be Confidential Information. Except as expressly permitted under this Agreement, neither Party will disclose the name of the other Party,

the existence of this Agreement, or the subject matter hereof in any publicity, advertising or public announcement without the prior written consent of the other Party.

2. Non-use and Non-disclosure. Recipient agrees to use the Confidential Information only for the Purpose. Recipient agrees that at all times until the expiration or earlier termination of this Agreement in accordance with section 8 below, it will hold in strict confidence and, except as otherwise expressly permitted in this Agreement, not disclose to any third party any Confidential Information or exploit such Confidential Information for its own benefit or the benefit of another. Notwithstanding the foregoing, Confidential Information may be disclosed to Recipient's directors, officers, employees, consultants, prospective lenders, and advisors (including without limitation attorneys and accountants) (each, a "Representative" and collectively "Representatives") who need access to Confidential Information solely in connection with the Purpose and prior to disclosure have been informed by Recipient of the confidential nature of the Confidential Information and have expressly agreed to abide by the terms of this Agreement. In any event and without exception, Recipient shall be responsible for the breach of this Agreement by any Representative as if such breach were committed by Recipient itself. Recipient shall take, at its own cost and expense, all necessary steps to keep the Confidential Information strictly confidential and to prevent its Representatives from prohibited or unauthorized disclosure or use of the Confidential Information. Recipient shall immediately notify Company upon discovery of any actual or suspected loss or unauthorized disclosure of the Confidential Information in breach of the terms hereof and shall take, at its sole cost and expense, all reasonable steps requested by Company to prevent, control or remedy any such loss or disclosure.

3. Limitation on Obligations. The non-use, non-disclosure and other restrictions regarding Confidential Information set forth in this Agreement shall not apply to information that Recipient can establish by competent proof (i) was publicly known or made generally available in the public domain prior to the time of disclosure to Recipient; (ii) becomes publicly known or made generally available to the public after receipt by Recipient unless due to the acts of Recipient or any Representative; (iii) was in the possession of Recipient or any of its Representatives, without confidentiality restrictions, at the time of disclosure by Discloser as shown by Recipient's or such Representative's files and records immediately prior to the time of disclosure; (iv) is obtained by Recipient or any of its Representatives in good faith from a third party who is not known by Recipient or any of its Representatives, after due inquiry, to be bound by any obligations of confidentiality relating to such information; or (v) was independently developed by Recipient or any of its Representatives without use of, reliance on, or reference to any Confidential Information, as shown by Recipient's or such Representative's files and records immediately prior to the time of disclosure. If Recipient or any of its Representatives becomes compelled by law, regulation (including the rules of any applicable securities exchange), or court order to disclose the Confidential Information, Recipient shall first give Company prompt notice to Company so that Company may, at its discretion, seek a protective order or such other appropriate remedy as Company deems necessary. Recipient will cooperate reasonably with Company (and will cause its Representatives to cooperate reasonably with Company) in any proceeding to obtain a protective order or other remedy. If such protective order or other remedy is not obtained, Recipient or such Representative shall only disclose that portion of such Confidential Information as is legally required to be disclosed. Recipient shall request that confidential treatment be accorded such Confidential Information, where available. Compulsory disclosures made pursuant to this section shall not relieve Recipient of its obligations of confidentiality and non-use with respect to non-compulsory disclosures.

4. Restrictions on Use. Recipient and its Representatives may not (and may not allow others to) reproduce Confidential Information in any form except as required to accomplish the Purpose. Recipient and its Representatives shall not (and shall not allow others to) modify, reverse engineer, disassemble, decompile, create other works from or determine the composition of any formulations, prototypes, software or other tangible objects that embody Confidential Information. Any reproduction of any Confidential Information by Recipient or its Representatives shall remain the property of Discloser and, to the extent practicable, shall contain any and all confidential or proprietary notices or legends which appear on the original.

5. No Warranty. All Confidential Information is provided "AS IS," without any warranty of any kind. DISCLOSER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE CONFIDENTIAL INFORMATION OR OTHERWISE UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION WITH RESPECT TO THE ACCURACY AND COMPLETENESS OF THE CONFIDENTIAL INFORMATION, AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES. Further, Recipient acknowledge and agrees that any conclusions drawn or inferences reached by Recipient and/or its Representatives concerning the Confidential Information shall be solely those of Recipient and its Representatives.

6. No License. Recipient recognizes and agrees that nothing contained in this Agreement shall be construed as granting any interest, title or property rights, by license or otherwise, in any Confidential Information, or to any invention or any patent, copyright, trademark, trade secret or other intellectual property right that has issued or that may issue, based on such Confidential Information. Any and all such interest, title and property rights are hereby retained by Discloser.

7. Remedies. Recipient acknowledges that release of Confidential Information in violation of this Agreement may cause irreparable harm for which Company may not be fully or adequately compensated by recovery of monetary damages. Accordingly, in the event of any violation or threatened violation by Recipient or any of its Representatives, Discloser shall be entitled to seek specific performance and injunctive relief from a court of competent jurisdiction in addition to any other remedy that may be available at law or in equity, and Recipient further agrees to waive any requirement for the securing or posting of any bond in connection with any such remedy. It is further understood and agreed that no failure or delay by the Discloser in exercising any right, power or privilege hereunder shall operate as a waiver hereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

8. Term; Return of Materials. This Agreement and all of the terms, conditions, and provisions hereof shall survive for one (1) year following the termination of the Purpose; provided, however, that Confidential Information that constitutes a trade secret shall continue to be subject to the obligations of nondisclosure and non-use until such Confidential Information is no longer a trade secret under applicable law. Upon the written request of Company at any time, Recipient shall promptly return to Company or at the Recipient's option destroy (with such destruction to be confirmed in writing upon request of Company), all documents and other tangible materials representing the Confidential Information and all copies thereof, including copies in the possession of any Representative.

9. Miscellaneous.

9.1 Governing Law and Venue. This Agreement shall be governed by the laws of the State of Arizona, without reference to any conflict of laws rule that would result in the application of the laws of any other jurisdiction. Any litigation regarding the interpretation, breach, or enforcement of this Agreement will be filed in and heard by the state or federal courts with jurisdiction to hear such disputes in Phoenix, Arizona, and Recipient (on behalf of itself and its Representatives) hereby submits to the jurisdiction of such courts

9.2 Jury Waiver. **RECIPIENT UNCONDITIONALLY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED PURSUANT HERETO. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT. THIS WAIVER IS IRREVOCABLE MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.**

9.3 Attorneys' Fees. If any litigation is brought by either party regarding the interpretation or enforcement of this Agreement, the prevailing Party will recover from the other all costs, attorneys' fees and other expenses incurred by the prevailing Party. The provisions of this Section 9.3 will survive the expiration or earlier termination of this Agreement.

9.4 Assignment. Recipient may not assign or transfer this Agreement, or any rights or obligations under this Agreement, without the prior written consent of Company, which consent may be withheld in Company's sole discretion. Any such purported assignment inconsistent with the foregoing shall be null and void *ab initio* and shall be deemed a material breach of this Agreement. This Agreement shall be binding upon the successors and assigns of Recipient and protects the Confidential Information of any successors or assigns of Discloser.

9.5 Notice. All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered (a) in person, (b) by a commercial overnight courier that guarantees next business day delivery, or (c) by email. If personally delivered, a notice shall be deemed given and received upon the date of such delivery. If sent by commercial overnight courier, a notice shall be deemed given upon the date of deposit with such courier and deemed received upon the date of delivery or refusal of delivery at the notice address. If sent by email, a notice shall be deemed given upon the date when such email is transmitted by the sending Party to the receiving Party's notice address, and shall be deemed received on that same date unless such notice is transmitted by the sender after 5:00 p.m. in the local time of the physical address of the receiving Party, in which case receipt by the receiving Party shall be deemed to be upon the next business day. The notice addresses for the Parties are set forth on Schedule 1 attached hereto, but either Party may specify a different notice address for itself as such Party may from time to time desire by giving notice thereof in writing as provided above to the other Party.

9.6 Severability. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid such unenforceability or invalidity shall not render this Agreement

unenforceable or invalid as a whole and in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions and the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. Recipient agrees that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not be applied in the construction or interpretation of this Agreement.

9.7 No Obligation for Future Transaction. Nothing herein 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 at any time and for any reason.

9.8 Amendments. This Agreement may not be amended, nor any provision waived, in whole or in part, except by a writing signed by both Parties.

9.9 Signature. A facsimile, PDF or any other type of copy of an executed version of this Agreement signed by Recipient (including a signature transmitted via DocuSign) is binding upon Recipient and will be accepted by Company with the same effect as an original ink-signed “hard copy” of this Agreement.

9.10 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

9.11 Entire Agreement. This Agreement sets forth the complete, exclusive and final statement of the agreement between the Parties as to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the Parties regarding such subject matter.

Recipient represents and warrants that the undersigned individual has the authority to enter into this Agreement on behalf of Recipient.

Accepted and agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_.

**RECIPIENT**

\_\_\_\_\_

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

Name: \_\_\_\_\_

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

**SCHEDULE 1**

NOTICE ADDRESSES

If to Recipient:

[Street Address] \_\_\_\_\_

[City, State, Zip Code] \_\_\_\_\_

Attn: \_\_\_\_\_

Email: \_\_\_\_\_

If to Company:

c/o ViaWest Group  
2390 E. Camelback Road, Suite 305  
Phoenix, Arizona 85016  
Attn: Todd J. Weiss  
Email: [tweiss@viawestgroup.com](mailto:tweiss@viawestgroup.com)