LESS CONFLICT. MORE PURPOSE.

**EXHIBIT A**

**TO DISPUTE PREVENTION & RESOLUTION TERM SHEET**

* Intention of the Parties. The Parties acknowledge the strategic business relationship between them as expressed in the Agreement and the mutual benefits (economic and otherwise) that will be derived from that relationship. The Parties also acknowledge that, in order to maximize these mutual benefits, each Party will need to (i) maintain open channels of communication and regularly discuss with the other Party the status of their business relationship, and (ii) identify facts and circumstances that may result in disagreements or disputes between them in respect of the Agreement. Accordingly, the Parties have adopted the provisions in {the Sections below} in an effort to nurture their strategic business relationship, to realize the mutual benefits arising from such relationship, to prevent impairment of such benefits and to prevent any disagreements or disputes from ripening into an arbitration proceeding or litigation.
* Business Partner Pledge. Each Party pledges to the other Party as set forth below in this Section. Notwithstanding anything in the Agreement to the contrary, the pledges below are not intended to be legally binding obligations of the Parties, but rather an expression of the spirit in which they will interact with each other under the Agreement:

1. Each Party will be honest with and respectful of the other Party, its representatives, and the Relationship Facilitator (as defined below) at all times;
2. Each Party will listen to the ideas, suggestions, criticisms and concerns of the other Party, its representatives and the Relationship Facilitator and consider them in good faith;
3. Each Party will work constructively with the other Party, its representatives, and the Relationship Facilitator to resolve any disagreements arising under or in respect of the Agreement; and
4. Each Party will perform its obligations under the Agreement in good faith and in a timely manner.

* Party Representatives. Each Party shall appoint one of its employees (each, a “Representative” and collectively, the “Representatives”) who shall have overall responsibility for (i) monitoring the performance of such Party’s obligations under the Agreement (ii) managing the business relationship with the other Party in respect of the Agreement and (iii) identifying any issue that has or may become a basis for a disagreement or dispute between

the Parties and attempting to resolve the same. The Representative of each Party shall be an employee with sufficient seniority and authority to make and implement decisions on behalf of such Party. Subject to the immediately foregoing sentence, each Party may, in its sole discretion and upon written notice to the other Party, select another employee to serve in the capacity of its Representative during the term of the Agreement.

**EXHIBIT B**

**TO DISPUTE PREVENTION & RESOLUTION TERM SHEET**

* Relationship Facilitator.[1](#_bookmark0) The Parties have engaged [INSERT NAME OF RELATIONSHIP FACILITATOR], a member of one of the panels of neutrals of the International Institute for Conflict Prevention & Resolution, Inc. (“CPR”), to assist the Parties with managing their business relationship under the Agreement (such individual and any successor appointed in accordance with the terms hereof, the “Relationship Facilitator”). Without limiting the generality of the foregoing, the Relationship Facilitator shall (x) assist the Parties with (i) facilitating continued open and regular communications between the Parties and encouraging the Parties to honor and abide by their respective pledges under Section [X] of Article [X] {*see, e.g., “Business Partner Pledge” of Exhibit A}*, (ii) exploring the facts and circumstances related to any disagreements or disputes between the Parties, including any Disputed Matter (as defined in Section [X]) {*see Exhibit C}*, and (iii) finding ways to prevent, mitigate or resolve any disagreements or disputes between the Parties, including any Disputed Matter, and (y) serve as a mediator in connection with any Mediation and issue a Mediation Report, if applicable, as provided in Section [X] of Article [X] {*see, e.g., “Recommendation of the Facilitator” of Exhibit E}*. The Parties acknowledge and agree that the Relationship Facilitator shall not (A) decide the outcome of any disagreement or dispute between the Parties, including any Disputed Matter, unless specifically requested to do so by the Parties or to offer a recommendation as otherwise provided in Section [X] of Article [X] {*see, e.g., “Recommendation of the Facilitator” of Exhibit E}*, or (B) provide legal advice to the Parties. Each Party shall provide the Relationship Facilitator with copies of its books, records, data and other documentation and access to its officers, employees and agents, in each case, as may be reasonably requested by the Relationship Facilitator from time to time; provided that neither Party nor any of its officers, employees or agents shall be required to violate any obligation of confidentiality or applicable Law to which it is subject or to waive any privilege it may possess in discharging its obligations hereunder. The Relationship Facilitator may resign at any time upon written notice to the Parties, and may be removed by the Parties at any time upon mutual written agreement of the Parties; provided that any such resignation or removal shall not be effective unless and until a successor Relationship Facilitator has been appointed by the Parties and accepts such position and the terms hereof. Any successor Relationship Facilitator shall be selected by mutual written agreement of the Parties within [ten (10)] business days of such resignation or removal. In the event that the Parties are unable to agree on the identity of any successor Relationship Facilitator within such [ten (10)] business day period, then CPR shall select one of its neutrals to serve as the Relationship Facilitator, which selection shall be final and binding on the Parties. The individual to serve as the Relationship Facilitator shall have experience mediating complex commercial disputes and in [INSERT

1 **Note to Draft**: If the parties wish to retain a Relationship Facilitator at the time the contract is signed, but deploy that person only when a Disputed Matter arises, these provisions can be revised accordingly (*i.e.,* to reflect that the Relationship Facilitator will serve only as a mediator to assist the parties in resolving the Disputed Matter).

DESCRIPTION OF THE RELEVANT INDUSTRY OF THE PARTIES] and shall not have any material conflict of interest with either Party. Any potential conflicts of interest of any candidate to become the Relationship Facilitator shall be disclosed to the Parties, so that they can be evaluated by the Parties. The Relationship Facilitator’s fees and costs in connection with its services under the Agreement shall be borne equally by the Parties.

**EXHIBIT C**

**TO DISPUTE PREVENTION & RESOLUTION TERM SHEET**

* Meetings of the Representatives and Relationship Facilitator.[2](#_bookmark1)
  1. The Representatives and the Relationship Facilitator shall meet in-person (except as provided below) at least once each calendar quarter (each, a “Quarterly Meeting”), to discuss the performance of the Parties under the Agreement, including, but not limited to, any issue that has become or may become a basis for a disagreement or dispute between the Parties. At each Quarterly Meeting, each Party will make a progress report (a “Progress Report”) to the other Party and the Relationship Facilitator, which will include, without limitation, a report on the performance of its obligations under the Agreement, including any areas of concern or difficulty, and an assessment of the business relationship between the Parties under the Agreement. The Representatives, with help from the Relationship Facilitator when and as needed, will discuss in good faith each Party’s Progress Report, and constructive ways to alleviate areas of concern or difficulty, if any, including any potential amendments or supplements to the Agreement that may be necessary to address any areas of concern or difficulty, in an effort to prevent any disagreements between the Parties or prevent any such disagreements ripening into an arbitration proceeding. At the last Quarterly Meeting of each calendar year, the Representatives and the Relationship Facilitator shall agree on the dates, times and locations of each Quarterly Meeting for the upcoming calendar year. In recognition of the importance of the Quarterly Meetings, each Representative and the Relationship Facilitator shall use their respective commercially reasonable efforts to attend each Quarterly Meeting in-person, as and when scheduled; provided that if weather or other conditions not in the reasonable control of such person prevent such person from attending a Quarterly Meeting in-person, then the Representatives and the Relationship Facilitator will meet via video conference or in the absence of such capabilities, via phone.
  2. In addition to the Quarterly Meetings, a Party (the Requesting Party”) may, at any time, deliver to the other Party (the “Recipient”) and the Relationship Facilitator written notice (each, a “Meeting Notice”) for the Representatives and the

2 **Note to Draft**: The parties may wish to consider whether any work product of the Relationship Facilitator should be subject to confidentiality provisions similar to those set forth in Exhibit F, including whether such work product should or should not be admissible in any subsequent arbitration.

In addition, these provisions offer an example as to how the Relationship Facilitator may be deployed during the course of the parties’ business relationship as well as a governance model for the relationship. These suggestions may be modified, including to have the Relationship Facilitator on standby to assist the parties only when a Disputed Matter arises; in that case, these provisions can be revised to remove references to the Relationship Facilitator.

Relationship Facilitator to meet and discuss any matters arising from or related to the Agreement (each, an “Additional Meeting”). Each Additional Meeting shall occur via video conference or phone (or if the Parties and the Relationship Facilitator mutually agree, in-person) on the date and time as mutually agreed in good faith by the Parties and the Relationship Facilitator; provided that if the Parties and the Relationship Facilitator are not able to mutually agree on such date and time within three (3) business days after the date the Recipient and the Relationship Facilitator receive such Meeting Notice, such Additional Meeting shall occur at 5:00

p.m. (Eastern Time) on the fifth business day after the Recipient and the Relationship Facilitator receive such Meeting Notice. Notwithstanding the foregoing, a Requesting Party shall not request more than [five (5)] Additional Meetings in any calendar quarter (and the Parties and the Relationship Facilitator shall not be required to attend more than [ten (10)] Additional Meetings in any calendar quarter (*i.e.,* if each Party requests [five (5)] Additional Meetings during such calendar quarter)).

* Disputed Matters. In the event that any disagreement or dispute in respect of the Agreement between the Parties cannot be resolved in the ordinary course by the Parties (a “Disputed Matter”), the Parties desire to resolve such Disputed Matter in accordance with the procedures set forth in Article [XX] below {*see Exhibit D}*, including the order of such procedures (except as provided in Section [X] of Article [XX] below) {*see “Escalation” in Exhibit F*}, which shall be the exclusive procedures for the resolution of all Disputed Matters.

**EXHIBIT D**

**TO DISPUTE PREVENTION & RESOLUTION TERM SHEET**[3](#_bookmark2)

* Dispute Notice. In the event that any Disputed Matter arises, the Party alleging such Disputed Matter (the “Claimant”) shall promptly deliver written notice of such Disputed Matter to the other Party and the Relationship Facilitator, which notice shall set forth in reasonable detail the basis for the Disputed Matter, the provisions of the Agreement that the Claimant claims have been breached by the other Party and to the extent then known, the amount of losses arising from such Disputed Matter (a “Dispute Notice”). Notwithstanding the foregoing, no delay on the part of the Claimant in notifying the other Party and the Relationship Facilitator of a Disputed Matter shall relieve the other Party from any obligation or liability under the Agreement, except to the extent that the other Party can demonstrate that it has been actually and materially prejudiced by such delay.
* Representative Consultation. {*Subject to “Escalation” in Exhibit F*}, the Disputed Matter shall be considered first by the Representatives and the Relationship Facilitator. Unless one of the Parties has elected to forego the Representative Consultation, the Representatives and the Relationship Facilitator shall meet at least once [in person] and attempt in good faith to resolve the Disputed Matter within [fifteen (15)] days after the date of the Dispute Notice (the “Representative Consultation”). If the Disputed Matter is not finally resolved within such [fifteen (15)] day period, then either Party may at any time, thereafter, deliver written notice (an “Executive Consultation Notice”) to the other Party and the Relationship Facilitator that it is electing for the Disputed Matter to be referred to the Executive Consultation. Notwithstanding the foregoing, if at any time the Parties mutually agree that the Relationship Facilitator should not participate in the Representative Consultation, then the Parties shall deliver written notice thereof to the Relationship Facilitator, and from and after the date such notice is delivered to the Relationship Facilitator, the Relationship Facilitator shall not participate in the Representative Consultation.
* Executive Consultation. {*Subject to “Escalation” in Exhibit F*}, upon election by either Party to escalate the Disputed Matter, the Disputed Matter shall next be considered by an executive officer of each Party, each of whom shall have an equivalent level of authority for such Party as the executive officer appointed by the other Party and shall be the Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, General Counsel or equivalent of such Party (the “Executives”) and the Relationship Facilitator. Unless one of the Parties has elected to forego the Executive Consultation, the Executives and the Relationship Facilitator shall meet at least once [in person] and attempt in good faith to resolve the Disputed Matter within [thirty (30)] days after the date of the Executive Consultation Notice or

3 **Note to Draft**: The provisions below offer a proposal for sequencing the dispute resolution process. The sequence can be modified as the parties see fit. In addition, the Representative Consultation and the Executive Consultation provisions can be customized to exclude the Relationship Facilitator from this portion of the Dispute Resolution process, if so desired.

Escalation Notice (the “Executive Consultation”). If the Disputed Matter is not finally resolved within such [thirty (30)] day period, then either Party may at any time thereafter, and upon written notice to the other Party (a “Mediation Notice”), elect for the Disputed Matter to be referred to the Relationship Facilitator. Notwithstanding the foregoing, if at any time the Parties mutually agree that the Relationship Facilitator should not participate in the Executive Consultation, then the Parties shall deliver written notice thereof to the Relationship Facilitator, and from and after the date such notice is delivered to the Relationship Facilitator, the Relationship Facilitator shall not participate in the Executive Consultation.

**EXHIBIT E**

**TO DISPUTE PREVENTION & RESOLUTION TERM SHEET**

* Relationship Facilitator and Mediation.

1. *Mediation Procedures.* {*Subject to “Escalation” in Exhibit F*}, upon election by either Party, the Disputed Matter shall next be considered by the Relationship Facilitator. Unless one of the Parties has elected to forego the Mediation, the Parties and the Relationship Facilitator shall attempt in good faith to resolve the Disputed Matter within [sixty (60)] days after the date of the Mediation Notice or the Escalation Notice (the “Mediation” and such [sixty (60)] day period, the “Mediation Period”). Within [fifteen (15)] days after the date of the Mediation Notice, each Party may (but neither shall be obligated to) submit to the Relationship Facilitator a written position paper setting forth its positions regarding the Disputed Matter and any supporting data and documentation, which position paper and supporting data and documentation shall be concurrently delivered to the other Party. At any time during the Mediation Period, upon reasonable advanced written notice by the Relationship Facilitator to the Parties, the Relationship Facilitator may request a meeting with the Parties to discuss and ask questions about the Disputed Matter. The Parties agree to use their respective commercially reasonable efforts to participate in the Mediation and to cooperate with the Relationship Facilitator. Without limiting the foregoing, during the Mediation Period, each Party shall make available to the Relationship Facilitator (x) all books, records, data and other documentation of such Party related to the Disputed Matter reasonably requested by the Relationship Facilitator, including any records arising from or related to the Representative Consultation or the Executive Consultation and any settlement proposals made by either Party in connection with such consultations and (y) any officer, employee or agent of such Party who has knowledge of the Disputed Matter; provided, that in the case of the immediately foregoing clause (x) and clause (y), neither Party nor any of its officers, employees or agents shall be required to violate any obligation of confidentiality or applicable Law to which it is subject or to waive any privilege it may possess in discharging its obligations hereunder.
2. *Recommendation of the Relationship Facilitator.*[*4*](#_bookmark3)
   1. If the Parties are able to resolve the Disputed Matter through the Mediation, the Parties shall as promptly as reasonably practicable thereafter (and in any event, within [thirty (30)] days after the end of the Mediation Period (the date that is [thirty (30)] days after the end of the

4 **Note to Draft:** The provisions below vest the Relationship Facilitator with certain authority and obligations. The parties could opt not to do so, and just allow for the issuance of an arbitration notice should the mediation fail to produce resolution.

Mediation Period, the “Settlement Deadline”)) use their commercially reasonable efforts to execute and deliver a written settlement agreement (a “Settlement Agreement”) memorializing the terms and conditions of such resolution. In the event the Parties are not able to resolve the Disputed Matter through the Mediation or do not execute and deliver a Settlement Agreement on or before the Settlement Deadline, subject to the last sentence of this paragraph, upon the written request of either Party (“Mediation Report Request”), the Relationship Facilitator shall issue to the Parties a written report detailing his or her findings with respect to the Disputed Matter and setting forth a proposed settlement of the Disputed Matter (collectively, the “Mediation Report”), which Mediation Report shall be delivered to the Parties within [thirty (30)] days of his or her receipt of the Mediation Report Request. In the event (x) the Parties enter into a Settlement Agreement on or before the Settlement Deadline or (y) neither Party delivers a Mediation Report Request to the Relationship Facilitator on or before the date that is [sixty (60)] days after the end of the Mediation Period, the Relationship Facilitator shall not issue the Mediation Report.

* 1. In the event that the Parties are not able to resolve the Disputed Matter through the Mediation and the Relationship Facilitator issues the Mediation Report and the Parties agree to the Relationship Facilitator’s proposed settlement of the Disputed Matter as reflected in the Mediation Report, the Parties shall use their commercially reasonable efforts to execute and deliver a Settlement Agreement memorializing such settlement as promptly as reasonably practicable after the issuance of the Mediation Report (and in any event, no later than [thirty (30)] days after the date of the Mediation Report).
  2. If the Disputed Matter is not finally resolved as provided in this Section, then either Party may at any time after the [Mediation Period], and upon written notice to the other Party (an “Arbitration Notice”), elect for the Disputed Matter to be resolved through binding arbitration. For the avoidance of doubt, the Relationship Facilitator shall have no adjudicatory authority and shall act solely as a mediator working with the Parties.

**EXHIBIT F**

**TO DISPUTE PREVENTION & RESOLUTION TERM SHEET**

* Escalation. Notwithstanding anything herein to the contrary, if either Party (an “Escalating Party”), in good faith, believes that, based on the prior meetings of the Representatives and the Relationship Facilitator and the nature, scope and severity of the Disputed Matter, the Representative Consultation, the Executive Consultation and/or the Mediation will not resolve the Disputed Matter or add material value to the dispute resolution process, then the Escalating Party may, at any time, deliver written notice (each, an “Escalation Notice”) to the other Party, that the Disputed Matter is being referred to (a) Executive Consultation (in the event the Escalating Party desires to skip or truncate the Representative Consultation); (b) Mediation (in the event the Escalating Party desires to skip or truncate the Representative Consultation and/or the Executive Consultation); or (c) Arbitration (in the event the Escalating Party desires to skip or truncate the Representative Consultation, the Executive Consultation and/or the Mediation). In the event the Escalating Party (i) elects to skip or truncate the Executive Consultation and/or the Mediation and (ii) is not the prevailing party, as determined by the arbitration panel, in the Arbitration, the arbitration panel may, in its discretion and as part of its award, require the Escalating Party to reimburse the prevailing party for all or any portion of the reasonable out-of-pocket costs and expenses, including the reasonable attorneys’ fees and disbursements, that were incurred by the prevailing party in connection with the Arbitration.
* Confidentiality. The Representative Consultation, the Executive Consultation and the Mediation, including the Mediation Report, if any, shall be private and confidential and shall be subject to Rule 408 of the Federal Rules of Evidence and similar rules of evidence of applicable state law, except for the fact that such consultations and the Mediation took place. Unless required by applicable law, neither Party shall, nor shall either Party permit any of its officers, employees or agents to, produce as evidence or disclose in any judicial, arbitral or similar proceeding any settlement offers made by any Party in any of the consultations or the Mediation.[5](#_bookmark4)
* Binding Arbitration as Last Resort.
  1. *Binding Arbitration*. Upon delivery of an Arbitration Notice or Escalation Notice by either Party to the other Party, such Disputed Matter shall be finally resolved through shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution (“CPR”) Rules for

5 **Note to Draft**: The parties may wish to consider whether provisions expressly addressing privileged information should be included (*for example,* adding a provision to maintain any attorney-client privilege that may be applicable to communications and information that are inadvertently disclosed to the other party during the Representative Consultation, Executive Consultation or the Mediation). In addition, the parties may wish to protect as confidential work product of the Relationship Facilitator during the pre- dispute process. See Note 2 in Exhibit C.

Administered Arbitration (the “Administered Rules” or “Rules”) by three arbitrators, of whom each party shall designate one in accordance with the screened appointment procedure provided in Rule 5.4. The arbitrator(s), and not the court, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitrator(s). The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of the arbitration shall be (city, state). The language of the Arbitration shall be English.

* 1. The arbitrators shall issue a reasoned award and, in their award, shall allocate all of the costs of the Arbitration, including the fees of the arbitrators.
  2. *Confidentiality of the Arbitration*. Neither Party nor the arbitrators may disclose the content or results of any arbitration hereunder without the prior written consent of the other Party, except (x) that a Party may make such disclosure to its attorneys, accountants and other advisors who have a need to know such information and are advised of the confidential nature of such information and

(y) to the extent that disclosure may be required of a Party by applicable law or to protect or pursue a legal right or to enforce or challenge an award of the arbitrators hereunder before a court or other judicial authority.

* Continuity. Each Party acknowledges and agrees that the timely and complete performance of its obligations pursuant to the Agreement, and any other agreements between the Parties, is critical to the business and operations of the other Party. Accordingly, in the event of a Disputed Matter, both Parties shall continue to perform their respective obligations under and in accordance with the terms of the Agreement, and any other agreements between the Parties, in good faith during the pendency of such Disputed Matter.