

This Partner Agreement (“Agreement”), effective as of the date Partner accepts the terms in this Agreement (“Effective Date”), is entered into between Coiled Computing, Inc. (“Coiled”) with its principal place of business at 1412 Broadway, 21<sup>st</sup> Floor, New York, NY 10018 and the partner accepting the terms of this Agreement (“Partner”). This Agreement contains the terms and conditions upon which Partner may participate in Coiled Partner Programs by entering into one or more Partner Program Agreements that will be governed by the terms of this Agreement.

**1. CONFIDENTIALITY.** This Agreement supersedes any applicable non-disclosure agreements between the parties. The Mutual Nondisclosure Agreement in Exhibit A is incorporated into this Agreement.

**2. INTELLECTUAL PROPERTY RIGHTS.**

**2.1** Each party reserves all intellectual property rights not expressly granted by it to the other party. Other than the limited licenses granted under a Partner Program Agreement, Coiled retains all right, title and interest in the Marketing Materials, the Coiled Products, and all modifications, extensions, localizations and translations of the Marketing Materials, the Coiled Products. Except as agreed in a Partner Program Agreement, the rights granted to Partner under this Agreement do not extend to its affiliates or to any other third party.

**3. MARKETING AND BRAND FEATURES.**

**3.1 Marketing.** Each party hereby grants to the other party a nonexclusive, nontransferable license to use, copy and supply such party’s Trademarks in accordance with the applicable trademark standards for use. In addition, Coiled hereby grants to Partner a nonexclusive, nontransferable license to use, copy and supply the Marketing Materials to prospective customers. If Partner performs any localization of Marketing Materials, Partner will ensure that the original meaning, quality and intent is preserved in the translation and Coiled shall own all intellectual property rights to such localized Marketing Materials. Partner will provide copies of all localized versions of the Marketing Materials to Coiled prior to distribution. At Coiled’s request, Partner agrees to issue a joint press release with Coiled within forty-five (45) days of the request and provide suitable quotes from appropriate Partner personnel. Partner will use reasonable efforts to arrange for appropriate personnel to be available to serve as references for the Coiled offerings and Coiled in the event of an inquiry from any member of the press, any industry analysts or any potential customer. Partner will work with Coiled to prepare a case study/reference testimonial about the Coiled offerings.

**3.2 Brand Features.** Each party will own all right, title and interest to trade names, trademarks, service marks, logos and domain names it secures from time to time (“Brand Features”). Coiled Partner Brand Features (“Partner Brand Features”) shall include the Coiled logo and mark provided to Partner. Subject to the terms and conditions of the Agreement, Coiled grants to Partner a nonexclusive and non-sublicensable license during the term of this Agreement to display Coiled’s Partner Brand Features solely for the purpose of: (a) marketing and promoting the Coiled offerings, and (b) identifying itself as a Coiled partner on its website and marketing materials. Subject to the terms and conditions of the Agreement, Partner grants to Coiled a nonexclusive and non-sublicensable license during the term of this Agreement to display Partner’s Brand Features solely in connection with the applicable partner program. Coiled will be permitted to reference its relationship with Partner on its website, in marketing materials, during discussions with analysts, meetings with the press, customer briefings, or in regulatory filings. Partner agrees to adhere to Coiled’s then-current trademark usage guidelines. Any goodwill accruing to a party’s Brand Features from use hereunder shall inure to the benefit of the owning party.

**4. PAYMENT.** All fees will be paid as set forth in the applicable Partner Program Agreement. Unless set forth in the applicable Partner Program Agreement, all payments will be made in U.S dollars without deductions or withholdings. Each party is responsible for the taxes levied upon the delivery or use of the software products and/or taxable services described in this Agreement, unless a valid state sales/use/excise tax exemption certificate or direct pay permit is provided. If Partner is required under any applicable law or regulation, domestic or foreign, to withhold or deduct any portion of the payments due to Coiled, then the sum payable to Coiled will be increased by the amount necessary so that Coiled receives an amount equal to the sum it would have received had no withholdings or deductions been made. Except as otherwise set forth in this Agreement, each party will be responsible for its own fees, costs, expenses or taxes incurred in connection with its performance under this Agreement. Each party will keep complete and accurate books of account for the accurate determination of all payments due under this Agreement and will provide the other party with documentation concerning transactions related to this Agreement within ten (10) days after written request.

**5. REPRESENTATIONS AND WARRANTIES.**

**5.1** Each party represents and warrants that it is an entity duly organized and validly existing under the laws of its jurisdiction of organization and has all requisite corporate power and authority to: (a) execute, deliver and perform this Agreement and any other agreements contemplated by this Agreement; and (b) consummate the transactions contemplated by this Agreement. Each party represents and warrants that this Agreement does not contravene or constitute a default or violation of any provision of law applicable

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to its business in its performance under this Agreement or any material agreement to which it is a party.

**5.2 DISCLAIMER.** EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, THE COILED PARTNER PROGRAMS AND THE COILED PRODUCTS ARE PROVIDED ON AN "AS IS" BASIS AND COILED HEREBY DISCLAIMS ALL ADDITIONAL WARRANTIES OF ANY NATURE, EXPRESS, IMPLIED OR OTHERWISE, OR ARISING FROM TRADE OR CUSTOM, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, QUIET ENJOYMENT, OR SYSTEM INTEGRATION. COILED SPECIFICALLY DISCLAIMS ANY WARRANTY THAT USE OF THE COILED PARTNER PROGRAMS AND THE COILED PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THE RESULTS OF USE WILL MEET PARTNER'S OR ANY CUSTOMERS' REQUIREMENTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY COILED OR ITS AFFILIATES, AGENTS, OR EMPLOYEES WILL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF WARRANTY OR SERVICES OBLIGATIONS PROVIDED HEREIN. NO ACTIONS PERFORMED BY COILED OR ITS EMPLOYEES OR AGENTS WILL CREATE ANY EXTENSION OF SCOPE OF SERVICES TO BE PROVIDED HEREUNDER.

**6. LIMITATION OF LIABILITY.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOSS OF DATA, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING FROM OR IN RELATION TO THIS AGREEMENT, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY. IN NO EVENT WILL COILED'S AGGREGATE AND CUMMULATIVE LIABILITY FOR ALL CLAIMS ARISING UNDER OR OUT OF THIS AGREEMENT OR OTHERWISE ARISING FROM THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY (E.G., WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) EXCEED THE PROVEN DIRECT DAMAGES IN EXCESS OF THE GREATER OF THE AMOUNT PAID UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM OR TEN THOUSAND DOLLARS (US\$10,000). THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS ARE AN ALLOCATION OF THE RISK BETWEEN THE PARTIES AND WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

## **7. TERM AND TERMINATION.**

**7.1 Term.** This Agreement will become effective as of the Effective Date and will continue for a period of one (1) year. Thereafter, this Agreement will automatically renew for additional one (1) year periods unless either party provides written notice to the other party at least sixty (60) days prior to the end of the then-current term. The term of each specific Partner Program Agreement will be as set forth in the applicable Partner Program Agreement.

**7.2 Termination.** This Agreement may be terminated with the prior written consent of both parties. In addition, either party may terminate this Agreement immediately upon giving notice in writing to the other party if the non-terminating party commits a material breach of this Agreement and has failed to cure such breach within thirty (30) days following a request in writing from the notifying party to do so. Each party shall also have the right to terminate this Agreement at any time after the first anniversary of the Effective Date upon notice to the other party if there are no Partner Program Agreements in place between Partner and Coiled.

**7.3 Effect of Termination.** Upon the expiration or termination of this Agreement, (a) all outstanding amounts owed under this Agreement will become immediately due and payable; (b) Partner will have no further right to market the Coiled offerings; (c) all licenses granted under this Agreement will terminate; (d) Partner will immediately cease using the Coiled offerings and Marketing Materials; (e) Partner will immediately cease using the Coiled Brand Features; and (f) Coiled will immediately cease using any Partner Brand Features. Neither party will be liable to the other for damages, losses, costs or expenses of any kind due to the termination or expiration of this Agreement, including those arising from the loss of prospective sales, any expenses incurred, or investments made in connection with establishing, developing or maintaining either party's business.

**7.4 Survival.** Sections 1, 2, 4, 5.2, 6, 7.4, 8 and 9 will survive the expiration or termination of this Agreement.

**8. GENERAL.** This Agreement does not create or constitute a franchise, joint venture, partnership or other relationship which implies or imposes a fiduciary responsibility to each other or to any third parties. Partner is an independent contractor, and will not hold itself out as, or be deemed to be, an employee, agent or franchisee of the other party. Except as specified in this Agreement, neither party has the right to bind the other party in any manner. This Agreement, including the Program Partner Agreements constitute the complete and exclusive statement of the agreement between the parties, and supersedes all prior agreements, proposals, negotiations and communications between the parties, both oral and written, regarding the subject matter hereof. No waiver, alteration, modification or amendment of any of the provisions of this Agreement will be binding unless made in writing and signed by the duly authorized representatives of each of the parties to this Agreement. This Agreement is solely for the benefit of the parties and their successors and permitted assigns, and unless otherwise specified in this Agreement is not intended to and does not confer any rights or remedies on

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any other person or entity. This Agreement and any dispute relating to or arising out of this Agreement or its formation or termination or actions or omissions contemplated by this Agreement, will be governed by and in accordance with the laws of New York, without giving effect to the conflict of laws provisions. All disputes arising out of or relating to this Agreement will be submitted to the exclusive jurisdiction of the courts located in New York, and each party irrevocably consents to such personal jurisdiction and waives all objections to such jurisdiction and venue. All rights and remedies, whether conferred by this Agreement or by any other instrument or by law will be cumulative and may be exercised singularly or concurrently. If any provision of this Agreement is held invalid by any law, rule, order, or regulation of any government or by the final determination of any court of competent jurisdiction, such invalidity will not affect the enforceability of any other provisions and such provisions will be interpreted to best accomplish the objectives of such invalid provisions within the limits of applicable law or applicable court decision. This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns; provided, however, that except in the case of a merger or sale of all or substantially all of its assets or stock or the business unit responsible for this Agreement, neither party may assign this Agreement or its rights or obligations hereunder, in whole or in part, either voluntarily or by operation of law, with the prior written consent of the other party. Neither party will be liable for failure to perform any of its obligations under this Agreement (except payment obligations) when such failure is caused by the occurrence of any contingency beyond the reasonable control of such party. Notices to be given under this Agreement will be in writing, and sent by reputable overnight courier service, to the addresses set forth at the beginning of this Agreement (or to such other addresses as the parties may designate by notice given in accordance with this provision). All such notices will be effective two (2) days after the date sent. Purchase orders will be for the sole purpose of defining quantities, prices and describing the items purchased and fees to be paid under this Agreement and to this extent only are incorporated as a part of this Agreement and all other terms in purchase orders are rejected. This Agreement may be executed in counterparts, each of which will be deemed to be an original, but both of which will constitute one and the same instrument. A signed copy of this Agreement transmitted via facsimile or other electronic transfer will be deemed to be an original.

**9. DEFINITIONS.** Capitalized terms in this Agreement have the following meanings:

**Coiled Partner Programs** mean the programs offered by Coiled from time to time to companies offering complementary solutions for the Coiled offerings.

**Coiled Products** mean the products and services offered by Coiled.

**Confidential Information** means information or materials provided by one party ("Disclosing Party") to the other ("Receiving Party") which are in tangible form and labeled "confidential" or the like, or, if disclosed orally, are identified as being confidential at the time of disclosure and, within two (2) weeks thereafter, are summarized, appropriately labeled and provided in tangible form. The following information shall be considered Confidential Information whether or not marked or identified as such: information regarding Coiled pricing, product roadmaps and strategic marketing plans. Confidential Information excludes information that: (i) was in the public domain at the time it was disclosed or has become in the public domain through no fault of the Receiving Party, (ii) was known to the Receiving Party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure, (iii) is disclosed with the prior written approval of the Disclosing Party, (iv) was independently developed by the Receiving Party without any use of Confidential Information of the Disclosing Party, or (v) becomes known to the Receiving Party, without restriction, from a source other than the Disclosing Party. Except as otherwise indicated in this Agreement, the term "Disclosing Party" also includes all Affiliates of the Disclosing Party and, except as otherwise indicated, the term "Receiving Party" also includes all Affiliates of the Receiving Party.

**Marketing Materials** mean information and materials obtained from Coiled that are not included with Coiled offerings, such as data sheets and sales presentations.

**Territory** means worldwide, unless otherwise specified by Coiled and except to the extent limited by applicable import and export laws.

**Trademarks** means a recognizable word, design, or expression which identifies products or services of a particular source from those of others.

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## EXHIBIT A

### MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement is entered into by and between Coiled Computing, Inc. and Partner.

1. **Purpose.** Certain Confidential Information may be made available to the other party in connection with discussions regarding joint business opportunities. "Confidential Information" means any confidential or proprietary information of the disclosing party ("Discloser") disclosed to the receiving party ("Recipient"), including without limitation, pricing, product and company roadmaps, and information about customers and prospects. Confidential Information shall not include any information which Recipient can establish by written documentation (i) was publicly known and made generally available in the public domain prior to the time of disclosure to Recipient by Discloser; (ii) becomes publicly known and made generally available after disclosure to Recipient by Discloser through no action or inaction of Recipient; or (iii) is in the possession of Recipient, without confidentiality restrictions, at the time of disclosure by Discloser.
  2. **Non-use.** Recipient agrees not to use any Confidential Information for its own purpose or for any purpose except to evaluate and engage in discussions concerning potential business relationships between Recipient and Discloser ("Purpose").
  3. **Non-disclosure.** Recipient agrees not to disclose any Confidential Information to its employees or contractors, except to those employees and contractors of Recipient who have executed a written non-use and non-disclosure agreement in content similar to the provisions in this Nondisclosure Agreement and who are required to have access to such Confidential Information to accomplish the Purpose. Recipient is liable for violations of the obligations by its employees and contractors receiving the Confidential Information. In the event Recipient is required to disclose Confidential Information pursuant to law or regulation, Recipient may disclose such Confidential Information, however, to the extent possible, Recipient shall provide Discloser with reasonable advance notice to enable Discloser to seek a protective order to prevent or limit such disclosure.
  4. **Maintenance of Confidentiality.** Recipient agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. In addition, Recipient shall take at least those measures that it takes to protect its own highly confidential information of a similar nature, but in no case shall Recipient exercise less than reasonable care. Recipient shall notify Discloser upon each discovery of any unauthorized use or disclosure of Confidential Information.
  5. **NO WARRANTY.** ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". DISCLOSER MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, AND DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.
  6. **Return of Materials.** All documents and other tangible objects containing or representing Confidential Information and all whole or partial copies or embodiments which are in the possession or under the control of Recipient shall be and remain the property of Discloser and shall be promptly returned to Discloser upon Discloser's request, however Recipient is not required to delete or return information stored as part of its standard electronic backup or other business continuity systems.
  7. **No License.** Nothing in this Nondisclosure Agreement is intended to grant any rights to Recipient under any intellectual property rights of Discloser, nor shall this Nondisclosure Agreement grant Recipient any rights in or to Confidential Information.
  8. **Term.** The obligations under this Nondisclosure Agreement shall survive until five (5) years after the latest date Confidential Information has been disclosed under this Nondisclosure Agreement.
  9. **Miscellaneous.** This document contains the entire agreement between the parties with respect to its subject matter and supersedes all prior understandings with respect to this subject matter. Any failure to enforce any provision of this Nondisclosure Agreement shall not constitute a waiver of such provision or of any other provision. This Nondisclosure Agreement may not be amended except by a writing signed by authorized representatives of both parties. This Nondisclosure Agreement shall be governed by the laws of the state of New York, without reference to conflicts of law principles. This Nondisclosure Agreement may not be assigned except in the case of a merger or sale of all or substantially all of its assets or stock. This Agreement shall bind and inure to the benefit of the parties hereto and their successors and permitted assigns.
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