

Vendor Services Agreement

This Vendor Services Agreement ("Agreement"), effective as of _____, 20__ ("Effective Date"), is entered into by and between Coiled, Inc. ("Coiled") with its principal address at 1412 Broadway, 21st Floor, New York, NY 10018 and _____ ("Vendor"), with its principal address at _____.

1. SERVICES. On the terms and conditions set forth in this Agreement, Vendor agrees to provide the services ("Services") and deliverables ("Deliverables") for Coiled, Coiled's customers and Coiled's Affiliates as set forth on each Statement of Work entered into by the parties in the form of Exhibit A. Vendor also agrees that Vendor shall, from time to time in writing during the term of this Agreement, keep Coiled advised as to Vendor's progress in performing the Services under this Agreement. "Affiliate" means an entity that a party, directly or indirectly, controls, an entity that controls a party or an entity that is under common control with a party. For purposes of this provision, control means ownership of at least fifty percent (50%) of the outstanding voting shares of the entity.

2. PAYMENT.

2.1 Coiled agrees to pay for Services and Deliverables as provided on each Statement of Work.

2.2 If specified in the applicable Statement of Work, Coiled shall reimburse Vendor for all reasonable travel expenses incurred by Vendor in accordance with Coiled's travel expense policy; provided that all such expenses have been approved in advance in writing by Coiled. All expenses must be submitted within thirty (30) days of the completed engagement and require the inclusion of all receipts.

2.3 Unless otherwise provided in the applicable Statement of Work, invoices must be sent to Coiled at the address shown above no earlier than the Acceptance Date and no later than thirty (30) days after the Acceptance Date. All undisputed invoices shall be paid net forty-five (45) days from date of an accurate invoice. Such payments shall be Vendor's sole compensation for the provision of the Services and Deliverables.

3. CONFIDENTIALITY.

3.1 As used in this Agreement, the term "Confidential Information" means the confidential, secret or proprietary information of Coiled, its Affiliates and customers disclosed prior to and after the Effective Date, including, without limitation, financial and business information such as financial and business plans, marketing plans, know-how, customers, distributors, suppliers, business processes, business ideas and strategies developed by Vendor under this Agreement or disclosed to Vendor or otherwise made available, directly or indirectly, to Vendor, whether written, graphic, oral, visual, tangible or intangible, in any form or format. Confidential Information shall not include any information, however designated, that: (a) is or subsequently becomes publicly available without Vendor's breach of any obligation owed Coiled; (b) became known to Vendor prior to Coiled's disclosure of such information to Vendor pursuant to the terms of this Agreement, provided such prior knowledge can be adequately substantiated by documentary evidence antedating the disclosure by Coiled; (c) became known to Vendor from a source other than Coiled other than by the breach of an obligation of confidentiality owed to Coiled; or (d) is independently developed by Vendor. All Confidential Information is and will remain the sole and exclusive property of Coiled, its Affiliates or customers, as applicable.

3.2 Vendor may not use the Confidential Information except as required to provide the Services and Deliverables under this Agreement. Except for as expressly set forth herein, Vendor shall not, directly or indirectly, communicate or in any way divulge to any other person or entity any Confidential Information without the prior written consent of Coiled. In addition, Vendor may not disclose to any third party the existence of any negotiations between Vendor and Coiled. Vendor agrees that Vendor shall not improperly use or disclose any proprietary information or trade secrets of any former or current employer or other person or entity with whom Vendor has an agreement or duty to keep in confidence information acquired by Vendor, if any, and that Vendor shall not bring onto the premises of Coiled, Coiled's Affiliates or Coiled's customers any unpublished document or proprietary information belonging to such employer, person, or entity, unless consented to in writing by such employer, person, or entity. Vendor agrees that disclosure of Confidential Information may be made only to its employees and contractors (each a "Service Provider") who (a) are directly involved in performing the Services or providing the Deliverables, (b) have a specific need to know such information, and (c) who have executed a nondisclosure agreement containing provisions in Coiled's favor in the form of Exhibit C. Vendor shall be liable for all violations of this Agreement by its Service Providers.

4. OWNERSHIP OF MATERIALS.

4.1 Coiled shall own the right to Coiled's Property. "Coiled's Property" shall mean any and all intellectual property of Coiled and any Services or Deliverables provided by Vendor hereunder. Vendor agrees, in consideration for payment by Coiled for Services and Deliverables provided hereunder, that all right, title and interest to such materials (either in whole or in part) conceived, devised, developed discovered, invented or reduced to practice (the "Works") in connection with this Agreement or any Statement of Work are "works made for hire" under the Copyright Act of 1976 ("Act"). Any such Works shall be the sole and exclusive property of Coiled and Coiled shall be the sole author of such Works within the meaning of the Act. Such Works (in whatever medium) shall be the sole and exclusive property of Coiled as consideration for any and all compensation paid to Vendor hereunder and Vendor hereby expressly disclaims any and all interests in such Works. If all intellectual property rights in any Work are not works made for hire by operation of law, Vendor hereby, and without further consideration, irrevocably transfers, assigns, and conveys to Coiled all right, title and interest in all Works conceived, devised or developed by Vendor pursuant to this Agreement, including, without limitation, all copyrights, patentable inventions, trade secrets, and moral rights, without further compensation or the necessity of any further actions. At the request of Coiled, Vendor shall promptly execute separate written assignments to Coiled and do all things deemed reasonably necessary by Coiled to enable Coiled to secure patents, register copyrights or obtain any other forms of protection for any Works and Coiled's Property in the United States and in other countries worldwide. Title to all Works shall vest in Coiled automatically upon creation of such Works.

4.2 Upon the request of Coiled, but in any event upon termination of this Agreement, Vendor will surrender to Coiled all Confidential Information, Works, Coiled's Property, memoranda, notes, records, drawings, manuals, computer software, and other documents or materials (and all copies of the same) pertaining to the materials generated or developed by Vendor or furnished by Coiled to Vendor in connection with the Services.

5. ACCEPTANCE TESTING.

5.1 To the extent Coiled deems relevant, upon Coiled's receipt of each Deliverable, Coiled shall have the right to review such Deliverable to determine in its sole discretion whether it conforms to its applicable specifications and any other functions, specifications and descriptions of the Deliverable set forth in any materials, documentation and technical information relating to the Deliverable, and to ensure that the Deliverable can be effectively utilized and, if applicable, is fully functional in Coiled's, its customer's or its Affiliate's operating business environment (collectively, the "Acceptance Criteria"). Additional Acceptance Criteria may be set forth in a Statement of Work. Coiled agrees to commence and complete the performance of acceptance testing as quickly as reasonably practicable. All acceptance testing shall be performed in the manner determined by Coiled and shall be conducted on the premises and on the equipment chosen by Coiled. If and when, in Coiled's sole discretion, the acceptance tests establish that the Deliverable conforms to the Acceptance Criteria, Coiled shall sign an acceptance certificate substantially in the form attached hereto as Exhibit B, and the date of execution of such certificate shall be the date of Coiled's acceptance of the Deliverable (hereafter, the "Acceptance Date").

5.2 If Coiled determines, in its sole discretion, that the Deliverables have not successfully completed acceptance testing, Coiled shall promptly notify Vendor in writing and shall specify with as much detail as possible in which respects the Deliverables failed to pass the acceptance test. Within such notification, Coiled may, at its option, either terminate this Agreement or the particular Statement of Work (in which case Section 6.3 shall apply), or request Vendor to make such necessary corrections and modifications to the Deliverables as will permit the Deliverables to be ready for retesting no later than ten (10) days from the date of Coiled's notice that the Deliverables failed to conform. Vendor shall, at its own expense, make all necessary corrections or modifications to the Deliverables to cure all nonconformities therewith and shall notify Coiled in writing when such corrections and modifications have been made. Coiled shall commence and complete retesting of the Deliverable as quickly as possible thereafter. If, in Coiled's sole discretion, the Deliverables still fail to pass the acceptance tests, Coiled shall promptly notify Vendor in writing, and shall have the right, at its option, to terminate this Agreement or the particular Statement of Work by giving written notice of such termination to Vendor (in which case Section 5.3 shall apply).

5.3 Upon Coiled's termination of this Agreement or a particular Statement of Work after failure of any of the acceptance tests, Coiled may, in its sole discretion, either: (a) return to Vendor, at Vendor's expense, or de-install and cease all use of, the Deliverables, and shall have the right to a refund of all fees paid allocable to such defective Deliverables and any other Deliverables that function with, or are integrated or used with, the defective Deliverable; or (b) retain ownership and possession of the non-conforming Deliverables, receive a refund of fees in an amount that is proportionate to the non-delivered and non-conforming portion of the Deliverables, and be relieved of any future payments due for such Deliverables.

6. TERM OF AGREEMENT.

6.1 The term of this Agreement will be from the Effective Date and will continue until terminated as provided in this Agreement.

6.2 This Agreement may be terminated by either party at any time upon ten (10) days written notice; provided however that Vendor may not terminate this Agreement if a Statement of Work is in progress. Upon breach of this Agreement, the non-breaching party may terminate this Agreement upon notice if the other party has not cured such breach within thirty (30) days of receipt of notice to do so.

6.3 Sections 3, 4, 5, 6, 7, 8, 9, 10, and 11 will survive termination of this Agreement.

7. REPRESENTATIONS AND WARRANTIES.

7.1 Vendor represents and warrants that: (a) it has the right to enter into this Agreement; (b) it has entered into agreements with all Service Providers to assign all right, title and interest in and to the Deliverables to Vendor; (c) the Deliverables will: (i) not infringe any third party intellectual property rights; (ii) be of good and marketable quality; (iii) be free from all defects in design, materials, workmanship, performance and title; (iv) meet the applicable specifications, drawings, samples, descriptions and requirements specified in each Statement of Work and this Agreement; (v) not be obscene, libelous, or violate the right of privacy or publicity of any third party; and (vi) not contain any virus, trap door, worm, or any other device that is injurious or damaging to software or hardware used in conjunction with the Deliverables; (d) it shall obtain and maintain all licenses, permits and approvals required by any federal, state or local licensing, regulatory, or other agency or authority for performance of the work required by this Agreement or any Statement of Work, and will inform Coiled immediately of the expiration, termination, non-renewal, denial or revocation of any such license, permit or approval; (e) it will perform the Services in a workmanlike manner in accordance with generally accepted industry standards; (f) providing the Services will not violate any agreements including, without limitation, noncompetition and confidentiality agreements and that it will not enter into any such agreements that would conflict with providing the Services; (g) it will not disclose any confidential information of any third party that it does not have the right to disclose; (h) it will comply with all applicable rules, policies and standards of Coiled, its Affiliates and customers; (i) it will not make unauthorized copies of software of other parties, or incorporate into any products or utilize in performing the Services any intellectual property owned by other parties that has not been licensed for such purpose; (j) it will not violate any applicable laws or regulations in relation to the Services; and (k) it will comply with attached Exhibit D ("Data Protection Exhibit").

7.2 Vendor certifies that neither Vendor nor its Service Providers have been: (a) charged with a criminal offense in connection with obtaining, attempting to obtain, or performing of a public (Federal, state or local) contract or subcontract, (b) listed by a governmental agency as sanctioned, debarred or voluntarily withdrawn as a result of a settlement agreement, (c) proposed for debarment or suspension or otherwise excluded from federal program participation, (d) been convicted of or had a civil judgment rendered against them regarding dishonesty or breach of trust, including but not limited to, the commission of a fraud including mail fraud or false representations, violation of a fiduciary relationship, violation of Federal or state antitrust statutes, securities offenses, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; or (e) within a three (3) year period preceding the date of

this Agreement, had one or more public transactions (federal, state or local) terminated for cause or default. Vendor acknowledges and agrees that it has a continuing obligation to notify Coiled in writing within seven (7) business days if any of the above-referenced representations change. Vendor further acknowledges and agrees that any misrepresentation of its status or any change in its status at any time during the term of this Agreement may be grounds for immediate termination of this Agreement, at the sole discretion of Coiled.

7.3 Vendor represents and warrants that it has conducted a background investigation in accordance with the Fair Credit and Reporting Act and any applicable federal and state laws which include a search of court records in the state, county and federal jurisdictions for all residence and employment addresses for the past seven (7) years for any employee assigned to perform Services for Coiled under this Agreement on Coiled's, its customer's or its Affiliate's property. Vendor further represents and warrants that no Service Provider assigned to perform Services for Coiled on Coiled's, its Affiliates or customer's property under this Agreement has been convicted of any felonies involving controlled substances and/or violence. If, at any time Vendor learns that a Service Provider assigned to perform Services for Coiled on Coiled's, its Affiliate's or its customer's property under this Agreement is convicted of any felony involving controlled substances and/or violence or fails a drug test, Vendor shall notify Coiled in writing and Coiled shall have the sole discretion to decide whether such individual may continue to perform Services. Vendor shall be responsible for all costs and expenses associated with Vendor's obligations under this Section.

7.4 Vendor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Vendor represents, warrants, and agrees that it has verified that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security. Failure to comply with any requirement of this provision shall be cause for termination for breach and Vendor shall be liable for actual and consequential damages.

7.5 Vendor will use qualified individuals with suitable training, experience, capabilities, skill and licenses to perform its obligations under this Agreement and any Statement of Work. Notwithstanding Vendor's compliance with this provision, such individuals shall be subject to approval by Coiled and shall be removed (and immediately replaced by Vendor with personnel meeting the requirements of this Section 7.5) at Coiled's request. Vendor shall be solely responsible and liable for any acts, omissions or breaches of the terms of this Agreement by its Service Provider(s).

7.6 Vendor will indemnify and hold Coiled harmless from and against any loss, damage and expense arising from any and all threatened or actual claims, demands or actions based upon any breach of these warranties, any breach of this Agreement, any negligent, reckless or intentionally wrongful act of Vendor or its Service Provider; a determination by a court or agency that the Vendor or its Service Provider(s) is not an independent contractor with respect to Coiled, including without limitation, for the purposes of ACA compliance, or any allegation that any portion of the Deliverables infringes any patent, copyright, or trade secret of any third party. Vendor's obligation to indemnify Coiled shall include an obligation to pay any costs, including but not limited to reasonable attorney's fees, expert witness fees, reasonable expenses, damages and other costs as incurred by Coiled.

8. LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF. EACH PARTY'S TOTAL LIABILITY FOR ANY CLAIM OF ANY TYPE WHATSOEVER ARISING HEREUNDER, SHALL BE LIMITED AN AMOUNT NOT TO EXCEED THE PRICE PAID BY COILED TO VENDOR DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM. THE LIMITATIONS OF LIABILITY IN THIS SECTION WILL NOT APPLY TO ANY VIOLATION OF LAWS OR REGULATIONS BY VENDOR OR TO ANY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF VENDOR.

9. COMPETITION. During the term of this Agreement and for a period of two (2) years thereafter, if Vendor provides Services for any of Coiled's customers on behalf of Coiled, Vendor agrees that it will not provide or attempt to provide (or advise others of opportunity to provide), directly or indirectly, any services to any of Coiled's customers with whom Vendor has done business.

10. INSURANCE. Vendor shall maintain throughout the term of this Agreement: (a) a separate workers' compensation insurance policy covering Vendor and/or all Service Providers assigned by Vendor under this Agreement with limits that are not less than limits required by law and/or not less than US\$1,000,000 per employee and US\$500,000 per disease; (b) Commercial general liability insurance, written on a "ISO" commercial general liability form or its equivalent, with combined single limits for bodily injury and property damage of not less than US\$1,000,000 each occurrence; (c) Employment Practices Liability Insurance of not less than US\$1,000,000 in a policy year; (d) Business Automobile Liability insurance including owned, non-owned, and hired vehicles with combined single limits for bodily injury and property damage of not less than US\$1,000,000 each accident; (e) Errors and Omissions insurance of not less than US\$1,000,000 in a policy year; and (f) excess umbrella liability insurance, in addition to the coverage above, of not less than US\$2,000,000 in a policy year. Upon request, Vendor shall provide to Coiled certificates of all insurance, and Vendor shall provide thirty (30) days advance notice to Coiled of impending cancellation, non-renewal, or material change of such insurance.

11. GENERAL TERMS.

11.1 Vendor agrees that it will be acting as an independent contractor and will not be considered or deemed to be an agent, employee, joint venture, or partner of Coiled. Vendor will have no status as employee or any right to any benefits that Coiled grants its employees. Without limiting the generality of the foregoing, Vendor is not authorized to bind Coiled to any liability or obligation or to represent that Vendor has any such authority. Vendor shall furnish (or reimburse Coiled for) all tools and materials necessary to accomplish this Agreement, and shall incur all expenses associated with performance, except as expressly provided on the applicable Statement of Work. Vendor acknowledges and agrees that Vendor is obligated to report as income all compensation received by Vendor pursuant to this Agreement, and Vendor acknowledges its obligation to pay all self-employment and other taxes thereon. Vendor acknowledges that Vendor shall receive no Coiled-sponsored benefits from Coiled either as a Vendor or employee, where benefits include without limitation paid vacation, sick leave, medical insurance, stock options and 401K participation.

11.2 Vendor may not assign or otherwise transfer this Agreement, in whole or in part, without the prior written consent of Coiled, except

upon notice to Coiled in the case of a merger or sale of all of substantially all of its assets or stock.

11.3 Vendor may not subcontract its obligations under this Agreement without the prior written consent of Coiled. If Coiled approves the use of a subcontractor, Vendor will: (a) remain obligated under this Agreement for performing the Services; (b) require each subcontractor to agree in writing to the terms of this Agreement; (c) be liable for all violations of the terms of this Agreement by such subcontractor; and (d) pay all amounts due to such subcontractor. Coiled may pay the subcontractor and offset those amounts against amounts owed to Vendor if Vendor fails to pay a subcontractor any amounts due and owing.

11.4 This Agreement is intended by the parties hereto to be the final expression of their agreement with respect to the subject matter hereof, and it constitutes the full and entire understanding between the parties with respect to the subject of this Agreement. This Agreement may be amended only in a writing signed by both parties.

11.5 In case one or more of the provisions of this Agreement will be held invalid, illegal or unenforceable in any respect for any reason, the same will not affect any other provision in this Agreement, which

will be construed as if such invalid or illegal or unenforceable provision had not been contained in this Agreement.

11.6 None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of a party, its agents, or employees, but only by an instrument in writing signed by an authorized officer of the party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

11.7 This Agreement is made under, and in all respects will be interpreted, construed, and governed by and in accordance with, the laws of the United States and the State of New York without regard for its choice of law provisions. Both parties hereby consent to the exclusive jurisdiction of the courts in New York, New York and expressly waive any objections or defense based upon lack of personal jurisdiction or venue.

11.8 All notices required under this Agreement must be in writing and are effective on the date received. Notices to each party will be sent to the addresses shown above.

COMPANY: COILED, INC.

By:

Name: _____

Title:

Date:

VENDOR: _____

By:

Name:

Title:

Date:

Exhibit A: Sample Vendor Statement of Work

This Statement of Work is effective _____, 20__ and is incorporated into the terms and conditions of the Coiled Vendor Services Agreement (the "Agreement") entered into by and between Coiled, Inc. ("Coiled") and _____ ("Vendor") dated _____ 20__.

1. **Project Manager:**

Coiled:

Vendor:

2. **Services and Deliverables:**

3. **Milestones and Acceptance:**

4. **Estimated Start:**

5. **Estimated End Date:**

6. **Place of Performance:**

7. **Termination:**

8. **Fees and Expenses:**

9. **Additional Acceptance Criteria:**

10. **[DELETE IF NOT APPLICABLE] Flow-Down Terms from Prime Agreement:** Vendor agrees to abide by all of Coiled's obligations applicable to Vendor's provision of the Services and Deliverables under this Statement of Work in the _____ Agreement (the "Prime Agreement") entered into by Coiled and _____ which is attached as Appendix A. Vendor acknowledges that the terms and existence of the Prime Agreement constitute Confidential Information under the Agreement.

COILED, INC.

By:

Name:

Title:

Date:

VENDOR: _____

By:

Name:

Title:

Date:

Appendix A:

[Attach Prime Contract with any fees, etc. redacted]

Exhibit B: Acceptance Certificate

This Certificate of Acceptance is to certify to _____ ("Vendor") that on the _____ day of _____, 20____, the Deliverables as defined in the Vendor Services Agreement between _____ ("Vendor") and Coiled, Inc. ("Coiled") dated _____, 20____ (the "Agreement") have been accepted by Coiled as having met the Acceptance Criteria as set forth in the Agreement and any applicable Statements of Work.

Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Agreement.

Coiled, Inc.

By: _____

Name: _____

Title: _____

Exhibit C: Confidential Information and Assignment Agreement

This Confidential Information and Assignment Agreement (the "Agreement") is made and entered into as ____ day of _____, 20__ ("Effective Date") by and between _____ ("Vendor") and _____ ("Service Provider"). Vendor and Coiled, Inc. ("Coiled") have entered into a Coiled Vendor Services Agreement, dated ____ day of _____, 20__ (the "Vendor Services Agreement"). The Vendor Services Agreement requires Vendor to have each of Vendor's employees and contractors with access to Confidential Information execute this Agreement. Service Provider is an employee or contractor of Vendor with access to Confidential Information. Capitalized terms used but not defined in this Agreement shall have the meanings assigned to them in the Vendor Services Agreement.

1. CONFIDENTIALITY

- (a) Nonuse and Nondisclosure. Service Provider will not, during or subsequent to the term of this Agreement, (i) use the Confidential Information for any purpose whatsoever other than the performance of the Services on behalf of Coiled or (ii) disclose the Confidential Information to any third party. Service Provider agrees that all Confidential Information will remain the sole property of Coiled. Service Provider also agrees to take all reasonable precautions to prevent any unauthorized disclosure of such Confidential Information. Without Coiled's prior written approval, Service Provider will not directly or indirectly disclose to anyone the existence of this Agreement or the fact that Vendor or Service Provider has this arrangement with Coiled.
- (b) Former Employer's Confidential Information. Service Provider agrees that Service Provider will not improperly use or disclose any proprietary information or trade secrets of any former or current employer of Service Provider or other person or entity with which Service Provider has an agreement or duty to keep in confidence information acquired by Service Provider, if any. Service Provider also agrees that Service Provider will not bring onto Coiled's premises any unpublished document or proprietary information belonging to any such employer, person, or entity, unless consented to in writing by such employer, person, or entity.
- (c) Third Party Confidential Information. Service Provider recognizes that Coiled has received and, in the future, will receive from third parties their confidential or proprietary information subject to a duty on Coiled's part to maintain the confidentiality of such information and to use it only for certain limited purposes. Service Provider agrees that, during the term of the Vendor Services Agreement and thereafter, Vendor and the Service Provider owe Coiled and such third parties a duty to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out the Services for Coiled consistent with Coiled's agreement with such third party.
- (d) Return of Materials. Upon the termination of the Vendor Services Agreement, or upon Coiled's earlier request, Service Provider will deliver to Coiled all of Coiled's property including but not limited to all electronically stored information and passwords to access such property, or Confidential Information that Service Provider may have in Service Provider's possession or control.

2. OWNERSHIP

- (a) Assignment. Service Provider agrees that all Works are the sole property of Coiled. Service Provider also agrees to assign (or cause to be assigned) and hereby assigns fully to Coiled all Works and any copyrights, patents, mask work rights or other intellectual property rights relating to all Works.
- (b) Further Assurances. Service Provider agrees to assist Coiled, or its designee, at Coiled's expense, in every proper way to secure Coiled's rights in Works and any copyrights, patents, mask work rights or other intellectual property rights relating to all Works in any and all countries, including the disclosure to Coiled of all pertinent information and data with respect to all Works, the execution of all applications, specifications, oaths, assignments and all other instruments that Coiled may deem necessary in order to apply for and obtain such rights and in order to assign and convey to Coiled, its successors, assigns and nominees the sole and exclusive right, title and interest in and to all Works, and any copyrights, patents, mask work rights or other intellectual property rights relating to all Works. Service Provider also agrees that Service Provider's obligation to execute or cause to be executed any such instrument or papers shall continue after the termination of this Agreement.

(c) Attorney-in-Fact. Service Provider agrees that, if Coiled is unable because of Service Provider's unavailability, dissolution, mental or physical incapacity, or for any other reason, to secure Service Provider's signature for the purpose of applying for or pursuing any application for any United States or foreign patents or mask work or copyright registrations covering the Works assigned to Coiled in Section 2(a) above, then Service Provider hereby irrevocably designates and appoints Coiled and its duly authorized officers and agents as Service Provider's agent and attorney-in-fact, to act for and on Service Provider's behalf to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyright and mask work registrations with the same legal force and effect as if executed by Service Provider.

3. CONFLICTING OBLIGATIONS

- (a) Conflicts. Service Provider certifies that Service Provider has no outstanding agreement or obligation that is in conflict with any of the provisions of this Agreement or that would preclude Service Provider from complying with the provisions of this Agreement. Service Provider will not enter into any such conflicting agreement during the term of the Vendor Services Agreement. Service Provider's violation of this Section 3(a) will be considered a material breach of the Vendor Services Agreement.
- (b) Non-Competition. In view of Service Provider's access to Coiled's, its Affiliates' and customers' trade secrets and proprietary know-how, Service Provider agrees that Service Provider will not, during the term of the Vendor Services Agreement and for a period of two (2) years thereafter: (i) provide or attempt to provide (or advise others of opportunity to provide), directly or indirectly, any services to any of Coiled's customers or Affiliates with whom Service Provider has done business under the Vendor Services Agreement; (ii) retain or attempt to retain, directly or indirectly, for him/herself or another party, the services to which Service Provider has been introduced under the Vendor Services Agreement; or (iii) design identical or substantially similar designs as those developed under the Vendor Services Agreement for any third party without Coiled's prior written approval. Service Provider's acknowledges the obligations in this Section 3(b) are ancillary to Service Provider's nondisclosure obligations under Section 1.

4. THIRD-PARTY BENEFICIARY

Vendor and Service Provider agree that Coiled is hereby deemed a third-party beneficiary of this Agreement.

IN WITNESS WHEREOF, the authorized representatives of the parties hereto have executed this Confidential Information and Assignment Agreement as of the date first set forth above.

COILED COMPUTING, INC.:

SERVICE PROVIDER

By:

By:

Print Name:

Print Name:

Title:

Title:

Exhibit D: Data Protection Exhibit

1. INTRODUCTION

Coiled and Vendor acknowledge that relevant data protection legislation must be observed in carrying out the activities under the Agreement. Vendor acknowledges that transactions under the Agreement may be global in nature and may require the processing of Coiled data and Personal Data in various countries, including the transfer of such data across national borders. Accordingly, Vendor agrees to process and transfer such data in accordance with the terms and provisions of the Agreement and this Exhibit.

2. DEFINITIONS

In this Exhibit:

"Data Breach" shall mean any breach of security leading to unauthorized or unlawful destruction, loss, alteration or disclosure of Personal Data.

"Personal Data" shall mean personal data as defined in the Laws, including that any information relating to an identified or identifiable individual (including, but not limited to, name, postal address, email address, telephone number, date of birth, Social Security number, driver's license number, other government-issued identification number, financial account number, credit or debit card number, insurance ID or account number, health or medical information, consumer reports, background checks, biometric data, digital signatures, any code or password that could be used to gain access to financial resources, or any other unique identifier) that is processed by Vendor under the Agreement.

"Process" shall mean any operation, or set of operations, performed on Personal Data, by any means, such as by collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

"Laws" means all applicable law relating to data protection, privacy and security when processing Personal Data under the Agreement. This includes without limitation applicable international, regional, federal or national data protection, privacy, export or data security directives (e.g. directives of the European Union), laws, regulations, rulings, decisions and other binding restrictions of, or by, any judicial or administrative body, whether domestic, foreign or international.

3. COMPLIANCE WITH LAWS

Vendor agrees to comply with the Laws applicable to the processing of Personal Data and the terms and conditions of this Agreement, including Coiled's policies and instructions made available by Coiled to Vendor from time to time.

4. INTERNATIONAL TRANSFER OF PERSONAL DATA

Vendor agrees to comply with all Laws applicable to international transfers of Personal Data and in particular those laws that provide specific security requirements for the transfer.

For international transfers of Personal Data under the laws European Economic Area ("EEA"), Vendor shall not (and shall ensure that its subcontractors shall not) process or transfer Personal Data in a country outside the EEA unless

- (i) the Personal Data is exported to a country that has an "adequate level" of data protection according to the Laws, or
- (ii) the parties enter into an appropriate contractual arrangement for the transfer of Personal Data as approved by the applicable data protection regulatory authority ("Model Clauses") and Vendor shall bring its subcontractors under the scope of such Model Clauses, or
- (iii) once available, Vendor complies with all obligations arising from an alternative data transfer framework permitting the lawful transfer of the Personal Data outside of the EEA and Vendor shall bring its subcontractors under the scope of such alternative data transfer framework.

5. RIGHTS TO PERSONAL DATA

Vendor shall have no rights to Personal Data and shall not Process such Personal Data for any other purposes than the rightful performance of its obligations towards Coiled under the Agreement.

To the extent that Vendor is processing Personal Data on behalf of Coiled, Vendor shall (and shall ensure that its subcontractors shall) process Personal Data solely in accordance with Coiled's instructions expressly provided in the Agreement or this Exhibit or as otherwise provided by Coiled in writing.

Upon termination or expiry of the Agreement, Vendor shall provide Coiled with a complete and up-to-date copy of all Personal Data, including any back-up copies thereof, in such form as Coiled may reasonably request. Without prejudice to the foregoing obligation, upon termination or expiry of the Agreement, Vendor shall (and shall ensure that its subcontractors shall) return or destroy all Personal Data.

6. USE OF SUBCONTRACTORS IN DATA PROCESSING

If in the Agreement, or separately in writing, Coiled has agreed that Vendor may engage subcontractor(s) to process Personal Data, then

- (i) such engagement will be under a written contract,
- (ii) the subcontract will require the subcontractor(s) to comply with the same obligations, representations, warranties and requirements applicable to Vendor under the Agreement and the Laws and will provide Coiled with the same rights as Coiled has towards Vendor.

Vendor shall remain fully liable for the acts and omissions of its subcontractors.

7. SAFEGUARDS

Vendor shall have in place documented up-to-date operational, managerial, physical and technical measures to protect the Personal Data against accidental, unauthorized or unlawful destruction, loss, alteration, disclosure or access so that all processing is in compliance with this Agreement and the Laws. Vendor shall limit access of Personal Data to authorized and properly trained personnel with a well-defined "need-to-know" and who are bound by appropriate confidentiality obligations.

Vendor shall maintain and promptly provide Coiled with up-to-date information regarding its data processing activities as Coiled may reasonably request to meet its obligations under the Laws.

Coiled shall have the right to audit the facilities and processing activities of Vendor under this Exhibit to examine the level of protection and security provided for Personal Data processed under the Agreement, or under this Exhibit, and to assess the compliance of Vendor and its subcontractors with the Agreement or this Exhibit. Vendor shall procure for Coiled the same rights of audit with respect to Vendor's subcontractors. Each party shall bear its own costs for any such audit. Any such possible audit by Coiled shall in no way limit Vendor's or its subcontractors' obligations and liability under the Agreement or this Exhibit.

8. DATA BREACHES

Vendor shall provide Coiled with prompt reasonably detailed written notice in case Vendor discovers any Data Breach, or any actual, pending or threatened enforcement proceeding, action, notification of breach, lawsuit against Vendor, or a Vendor subcontractor, relating to Personal Data.

To the extent the Laws require that an individual or authority be notified of a Data Breach, Vendor shall at Coiled's request and subject to Coiled's prior approval of the content, form and timing, provide any notices to such an individual or governmental authority containing the information as mandated by the Laws. Vendor shall provide remediation services and other reasonable assistance to individuals impacted by the Data Breach directly or through a third party as required under the Laws, or required by governmental authorities, or agreed by the parties in writing.

Upon Coiled's request, Vendor shall cooperate and provide Coiled information about the nature, circumstances and causes of the event at issue. Vendor will take all necessary actions to prevent further losses and otherwise limit the consequences of the event at issue. Vendor shall conduct professional forensic and security review and audit in connection with such Data Breach.

Vendor shall be responsible for any costs resulting from a Data Breach.

9. COOPERATION OBLIGATIONS TO MEET RIGHTS OF DATA SUBJECTS

Coiled or Vendor may have the obligations under the Laws to provide access to individuals' Personal Data or to allow modification, correction, blockage or deletion of Personal Data processed by the Vendor or to provide information regarding the processing of an individual's Personal Data.

If requested by Coiled, Vendor shall, at no additional cost,

- (i) promptly provide Coiled with a copy of individuals' Personal Data under Vendor's control in tangible form or, at Coiled's discretion, provide access at any time to the Personal Data,
- (ii) promptly modify, correct, block or delete Personal Data under Vendor's control in a manner consistent with the Agreement or as required by Laws,
- (iii) provide Coiled with or make available to individuals information regarding the processing by providing, for example, privacy notices or requesting consents and waivers on behalf of Coiled.

10. HANDLING GOVERNMENT REQUESTS

Subject to what is permitted under the Laws, (i) if Vendor receives a request from a governmental authority or body ("Authority") regarding any Coiled Personal Data, Vendor shall immediately notify Coiled in writing identifying the Authority, the scope of the requested and grounds presented for the request, and (ii) Vendor shall respond to such Authority request only after consultation with Coiled and Coiled's prior approval of the response in writing.

11. REGISTRATION OF DATA PROCESSING

If requested by Coiled in order for Coiled to comply with the Laws, Vendor shall, at no additional cost, assist Coiled in the filing process by providing accurate information in a timely manner about the processing practices of Personal Data by Vendor and its subcontractors. Further Vendor is under the obligation to inform Coiled if any information relevant for the registration of data processing has changed and needs to be updated.

12. LIABILITY

Vendor shall indemnify, defend and hold harmless, Coiled against all damages, losses, penalties, compensation and expenses caused by any act, omission, default or negligence of Vendor or its subcontractors, relating to the processing of Personal Data under the Agreement or this Exhibit, or relating to a Data Breach where the Personal Data is in the possession, custody, or control of Vendor or its subcontractor, and against all actions, claims, demands and proceedings in relation thereto.

Coiled may, at any time, take over the defense, totally or partly, at Vendor's reasonable cost in the event that Coiled considers such action to be necessary. Breach by Vendor (or its subcontractors, as the case may be) of its obligations under this Exhibit will be deemed a material breach of the Agreement. Notwithstanding the limitation of liability clause or any other provision of the Agreement, a liability cap therein shall not apply and Vendor does not limit or exclude its liability arising out of any violation by Vendor or any subcontractor of the provisions of this Exhibit.

13. MISCELLANEOUS

To the extent that Personal Data is processed by, or for, Vendor, for whatsoever reason, after the termination or expiration of the Agreement, this Exhibit shall continue to apply to such processing for as long as such processing is carried out. The parties agree that to the extent of any conflict between the terms of this Exhibit and the Agreement, the provisions of this Exhibit shall prevail. Any changes to this Exhibit must be agreed in writing between the parties.