

## MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this “Agreement”) is made as of \_\_\_\_\_ (the “Effective Date”) by and between \_\_\_\_\_ (“Partner”), and Ira Bell, an individual (“Company”), to assure the protection and preservation of the confidential and/or proprietary nature of information to be disclosed or made available to each party in connection with a possible business relationship or transaction (the “Business Purpose”).

### 1. **Confidential Information.**

(a) As used in this Agreement, “Confidential Information” means any and all information disclosed by one party (the “Disclosing Party”) to the other party (the “Receiving Party”) that is marked or otherwise identified orally or in writing by the Disclosing Party as confidential or proprietary or that, under the circumstances surrounding its disclosure, the Receiving Party should know is treated as confidential by the Disclosing Party. Confidential Information includes non-public information relating to the Disclosing Party’s: released and unreleased products and services, marketing and promotion of its products and services, and business policies and practices, financial information, technical information, know-how, methods, techniques, processes, sales data, customer lists, projects, plans, proposals, systems, designs, data, analysis, compilations, studies, and other documentation. Confidential Information also includes any of the foregoing information disclosed to the Receiving Party by any parent, subsidiary, or affiliate of the Disclosing Party for the Business Purpose (including information relating to such parent, subsidiary or affiliate), whether or not such parent, subsidiary, or affiliate has been made a party to this Agreement.

(b) The term “Confidential Information” does not include any information that: (i) is now, or hereafter becomes, through no act or failure to act on the part of the Receiving Party, generally known or available; (ii) is in the Receiving Party’s possession, free of any obligation of confidence, at the time it is communicated by the Disclosing Party to the Receiving Party, provided that the source of such information is not known to the Receiving Party to be bound by a confidentiality agreement or other obligation of confidentiality with respect to such information; (iii) is communicated to the Receiving Party by a third party, free of any obligation of confidence, provided that the source of such information is not known to the Receiving Party to be bound by a confidentiality agreement or other obligation of confidentiality with respect to such information; or (iv) is developed by employees or agents of the Receiving Party independently of and without reference to any Confidential Information.

### 2. **Non-Disclosure of Confidential Information.**

(a) The Receiving Party may use and reproduce the Confidential Information only to the extent necessary to further the Business Purpose. Except as expressly permitted in Section 2(b), the Receiving Party shall not disclose any Confidential Information to any third party without the Disclosing Party’s prior written consent.

(b) The Receiving Party may disclose Confidential Information only to those of its employees, contractors, attorneys, accountants, or other agents (the “Receiving Party’s Representatives”) who need to know such Confidential Information to further the Business Purpose and who have agreed to be bound by terms and conditions substantially similar to, and no less restrictive with respect to limitations on use and disclosure than, those in this Agreement. The Receiving Party will be responsible to the Disclosing Party for any breach of the terms and conditions of this Agreement by the Receiving Party’s Representatives.

(c) Notwithstanding anything to the contrary in this Agreement, the Receiving Party may disclose Confidential Information as required by law in response to a valid order by a court or other governmental body; provided that the Receiving Party: (i) gives prior written notice to the Disclosing Party of any such disclosure (if not prohibited by law from doing so) sufficiently in advance and (ii) if the Disclosing Party wishes to seek a protective order with respect to such disclosure, provides reasonable cooperation and assistance to the Disclosing Party.

3. **Security of Confidentiality Information.** The Receiving Party shall treat all Confidential Information with at least the same degree of care as it accords to its own confidential information of a similar nature, but no less than reasonable care.

4. **Ownership and Return of Confidential Information.** All Confidential Information and materials furnished by the Disclosing Party to the Receiving Party shall remain the property of the Disclosing Party. Upon the Disclosing Party's written request, the Receiving Party shall promptly return, or at Disclosing Party's option, certify destruction of the same in writing, to the Disclosing Party all documents and any tangible material or medium containing or representing any Confidential Information.

5. **No Implied Rights.** No rights, obligations, representations, or terms, other than those expressly set forth in this Agreement, are to be implied from this Agreement. The disclosure of Confidential Information contemplated by this Agreement in no way creates any commitment or obligation on behalf of either party with respect to the Business Purpose except as expressly set forth in this Agreement. In particular, nothing in this Agreement shall be construed as granting any right or license under any intellectual property owned or controlled by either party.

6. **Cost of enforcement.** The prevailing party in any action brought hereunder shall be entitled to reimbursement of its costs and expenses, including reasonable attorney's fees, resulting from or arising out of the valid enforcement of this Agreement, including enforcement proceedings with respect to any breach or threatened breach of this Agreement by a Receiving Party or by a Receiving Party's Representatives.

7. **Term.** The term of this Agreement commences on the Effective Date and shall expire upon the earlier of (a) the fifth (5<sup>th</sup>) anniversary of the date of this Agreement or (b) the date on which the parties enter into a definitive agreement governing one or more of the proposed business relationships that are the subject of the Business Purpose. The obligations of Section 2 shall survive any termination or expiration of this Agreement.

8. **Miscellaneous.**

(a) Neither party may assign or transfer any rights or obligations under this Agreement without the other party's prior written consent. The parties' rights and obligations under this Agreement shall be binding upon and inure to the benefit of their respective successors and permitted assigns.

(b) The application and interpretation of this Agreement shall be governed exclusively by its terms and conditions and the laws of the State of Delaware (without giving effect to its principles of conflicts of laws).

(c) Each party acknowledges and agrees that, in the event of any breach or threatened breach of this Agreement by the other party, including the actual or threatened disclosure of any Confidential Information, the Disclosing Party will suffer irreparable injury and that no remedy at law will provide adequate protection against, or appropriate compensation for, such injury. Accordingly, the

Disclosing Party shall be entitled to specific performance of the Receiving Party's obligations under this Agreement and any further injunctive relief that may be granted by a court of competent jurisdiction without the necessity of posting a bond or other security.

(d) This Agreement represents the entire understanding of the parties with respect to its subject matter and supersedes any other prior or contemporaneous agreements or understandings, whether written or oral. This Agreement may be modified or amended only by written agreement of both parties. If any provision of this Agreement is found by a court of competent jurisdiction and authority to be unenforceable or invalid, such unenforceability or invalidity shall not affect the other provisions of this Agreement and this Agreement shall be construed as if such unenforceable or invalid provision had never been in this Agreement.

(e) This Agreement will be construed without regard to the drafter of the provisions. The word "including" and words of similar import mean "including but not limited to."

(f) Any notice, demand, or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed effectively given or delivered upon receipt. Any such notice, demand, or other communication may be given: (i) by personal delivery to the party to be notified; (ii) by confirmed email; or (iii) by mail or courier. All communications will be delivered to the addresses or email addresses that appear below, or to such address or email addresses as such party may designate in accordance with this Section.

If to Partner:

Address: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

If to Partner:

Address: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

(g) This Agreement may be executed and delivered in counterparts, each of which shall be deemed an original, but both of which together constitute the same instrument. Any signature page delivered by fax or other electronic image transmission shall be binding to the same extent as an original signature page.

The parties have caused this Agreement to be duly executed by their respective authorized representatives as of the Effective Date.

PARTNER

Ira Bell

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

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

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

Name:

Title:

Title: