

SCALA[®] CERTIFIED DEVELOPER PARTNER AGREEMENT

This Scala Certified Developer Partner Agreement (the “Agreement”), effective as of _____, 200_ (the “Effective Date”), is entered into by and between Scala, Inc., a Delaware corporation, having offices at 350 Eagleview Boulevard, Suite 150, Exton, PA 19341, United States (“Scala”) and _____, a _____ corporation, having offices at _____ (“Scala Certified Developer Partner” or “SCDP”) (each a “Party,” collectively the “Parties”).

BACKGROUND

A. Whereas, Scala has developed, owns and markets a suite of software products, identified in Exhibit A related to (i) the creation, management and distribution of content in digital signage networks, and (ii) advertising management of both traditional and digital signage networks; and

B. Whereas, SCDP is a developer of software products where such software products requires access to Scala’s API’s in order to interoperate with Scala Software. The SCDP products can be used by Scala Sales Partners or end user organizations as part of a complete signage deployment built around Scala Software; and

C. Whereas Scala and SCDP each desire to enter into a Certified Developer Partner Agreement whereby SCDP will be eligible for certain SCDP benefits described in Exhibit B-1 and in the Partner Guide (referenced at www.scala.com/partnerguid) on the condition that SCDP meets certain program requirements described as described in Exhibit B-2 and in the Partner Guide (referenced at www.scala.com/partnerguid) in addition to the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

1. DEFINITIONS. As used in this Agreement, the following capitalized terms shall have the meanings set forth below:

(a) **Agreement** shall mean this Agreement, fully executed by the Parties, which includes a which includes all Exhibits, Attachments, Member’s program application, program policies and procedures in effect from time to time published by Scala at www.scala.com/partnerguid and any additional terms, conditions and agreements provided to, or entered into with Member, for certain SCDP benefits.

(b) **Confidential Information** shall have the meaning set forth in Section 8.

(c) **Documentation** means all collateral materials normally provided from time to time by Scala to partners or end users for use of the Scala Software (such as, instruction/user manuals, templates, overlays, quick reference guides, brochures, data sheets, and registration cards), which are identified in Exhibit A, and all subsequent versions thereof provided to SCDP pursuant to this Agreement.

(d) **Scala Software** means all current and future executable object code for Scala’s software products identified in Exhibit A, including all subsequent versions thereof provided to SCDP pursuant to this Agreement.

(e) **Scala Trademarks** means the trademarks, trade names, and logos used by Scala that are identified in Exhibit A.

(f) **SCDP Software** means the software provided by SCDP to Scala that is believed to interoperate with Scala Software.

2. SCDP Benefits.

Upon execution of the Agreement by Scala and SCDP, and provided SCDP continues to meet the requirements outlined in Exhibit B-2, SCDP shall be eligible to receive the benefits outlined by Scala in Exhibit B-1 of this Agreement. Such

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SCDP benefits are further described in detail within the Partner Guide referenced on the Scala website at: www.scala.com/partnerguid. Scala may change any Program benefit, policy or procedure, at any time in its sole discretion. SCDP program details and benefits are more fully described at www.scala.com/partnerguid and are incorporated herein by reference. In the event of a conflict between the Agreement and the SCDP program details, the provisions of the Agreement shall govern and control. SCDP program changes will be provided by posting them at www.scala.com/partnerguid. SCDP agrees to check the Web site for changes, once notified.

3. SCDP Fees.

Participation in the Scala Certified Developer Partner program is subject to payment by SCDP of the initial entry fee and annual partner fees as set forth in Exhibit B-2. Such fees are non-cancelable and non-refundable. All SCDP fees are due and payable net 30 days from receipt of such notice. Scala may terminate this Agreement if SCDP has not paid any fees due within 15 days after written notice of such non-payment.

4. License

(a) **Rights Granted to SCDP.** For the duration of this Agreement, Scala grants SCDP a limited, royalty free, non-exclusive, object code license of the Scala Software set forth in Exhibit A and related Documentation for evaluation, demonstration and internal development use only.

(b) **Rights Reserved to Scala.** SCDP acknowledges that the Scala Software and Documentation are the property of Scala or its licensors and that SCDP has no rights in the foregoing except those expressly granted by this Agreement. Nothing herein shall be construed as restricting Scala's right to sell, lease, license, modify, publish, or otherwise distribute the Scala Software or Documentation, in whole or in part, to any other person.

(c) **Restrictions.** The following restrictions shall be adhered to:

(i) SCDP may not, directly or indirectly, sell, resell, license or otherwise distribute or permit to be distributed Not-For-Resale Copies.

(ii) SCDP shall not copy, translate, disassemble, decompile or reverse engineer the Scala Software, in whole or in part. To the extent that copies, corrections, translations, adaptations, arrangements or modifications may be necessary for the proper use of the Scala Software, or if information may be necessary to investigate the interoperability of Scala Software with other software, SCDP shall promptly inform Scala, which shall be solely responsible to carry out the actions or, at its option, to provide the information as deemed necessary by Scala. SCDP shall not make copies of or make media translations of the user documentation for the Products, unless advance written approval is received from Scala.

5. SCDP Obligations

(a) **Dedicated Scala Alliance Manager.** SCDP agrees to appoint a Scala Alliance Manager at SCDP's primary location to manage the relationship between the Parties throughout the term of this Agreement. These liaisons will coordinate meetings (whether in person or via telephone conference) between the Parties at mutually agreed upon intervals, but no less often than once a calendar quarter, to discuss objectives, SCDP's marketing and Sales activities and efforts, any issues that may arise or have arisen, and the like. Such meetings are for information purposes only and not binding upon either Party.

(b) **Marketing Dollars Invested.** SCDP agrees to invest the partner marketing dollars indicated under Partner Requirements in Exhibit B-2 in order to market Scala products and services.

(c) **Scala Solutions Center.** SCDP commits to and shall operate and maintain, at its own expense, a Scala Solutions Center to include a demonstration area that includes Scala Software.

(d) **SCDP Software Certification.** SCDPs have developed products that interoperate with the Scala Software. SCDPs shall be obligated to have its SCDP Software product(s) tested and certified by Scala for interoperability with the Scala Software. SCDP shall be responsible for a product validation fee as outlined in Exhibit B-2.

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(e) **SCDP Software Provided to Scala.** Within thirty days of execution of this Agreement, SCDP agrees to provide Scala at minimum one (1) free, not for resale copy of the SCDP software product(s) that interoperate with the Scala Software. Upon termination of this Agreement, unless requested otherwise by SCDP, Scala shall destroy or return such software received under this Agreement

(f) **Reference Customers Provided to Scala.** SCDP shall provide Scala with SCDP customers that are willing to be a reference regarding SCDP's performance as a software or hardware provider.

(g) **Marketing Plan.** SCDP and Scala mutually agree that SCDP shall create and execute a detailed plan for the marketing outlining how SCDP will meet its obligations set forth herein. Such marketing plan shall be delivered to Scala within thirty (30) days of the date of this Agreement.

(h) **Obligations Subject to Change.** Scala may change any Program obligation, policy or procedures, at any time in its sole discretion. SCDP program details and requirements are more fully described at www.scala.com/partnerguid and are incorporated herein by reference. In the event of a conflict between the Agreement and the SCDP program details, the provisions of the Agreement shall govern and control. SCDP program changes will be provided by posting them at www.scala.com/partnerguid. SCDP agrees to check the Web site for changes, once notified.

6. Scala's Warranties

(a) **Authority.** Scala represents that (i) it has the right and authority to enter into this Agreement and to grant SCDP the right to use the Scala Software and Documentation granted in this Agreement; (ii) entering into, and performance of its obligations under this Agreement does not and will not violate, and is not inconsistent with, any agreements between Scala and any third parties or any applicable laws or regulations; and (iii) it shall comply with the requirements of any and all applicable federal, state, local, and other laws, regulations, rules and orders of any governmental body having jurisdiction over the Parties or activities of the Parties contemplated by this Agreement.

(b) **Non-infringement.** Scala warrants to SCDP that the Scala Software, Documentation and use of the Scala Trademarks in connection therewith will not infringe or misappropriate the proprietary rights of any third party.

(c) **DISCLAIMER. THE FOREGOING ARE THE ONLY WARRANTIES MADE BY SCALA. THE SOFTWARE IS LICENSED "AS IS" AND SCALA SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, STATUTORY, IMPLIED OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

7. SCDP Warranties

(a) **Authority.** SCDP represents that (i) it has the right and authority to enter into this Agreement; (ii) entering into, and performance of its obligations under this Agreement does not and will not violate, and is not inconsistent with, any agreements between Scala and any third parties or any applicable laws or regulations; and (iii) it shall comply with the requirements of any and all applicable federal, state, local, and other laws, regulations, rules and orders of any governmental body having jurisdiction over the Parties or activities of the Parties contemplated by this Agreement.

(b) No representations or warranties shall be made by or under authority of SCDP, with respect to the Scala Software that have not been provided by Scala to SCDP in writing or that exceed the scope of Scala's then current literature made publicly available by Scala for the Scala Software. Except as may be set forth in the Scala Software Use Terms, SCDP agrees that any and all representations and warranties, whether express, implied, statutory, or otherwise, shall be disclaimed on Scala's behalf.

8. Confidentiality

(a) **Confidential Information.** "Confidential Information" means information disclosed by a Party in connection with this Agreement, which if disclosed in tangible form is marked "Confidential", or with other similar

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designation to indicate its confidential or proprietary nature or if disclosed orally is indicated orally at the time of such disclosure to be confidential or proprietary by the Party disclosing such information and is confirmed as being confidential or proprietary by the disclosing Party in a writing delivered to the receiving Party within thirty (30) days after such disclosure. The Parties agree that the receiving Party shall not publish or otherwise disclose, and shall not use for any purpose, any Confidential Information furnished to it by the other Party pursuant to this Agreement, except as set forth in this Section 14. Notwithstanding the foregoing, Confidential Information shall not include information that, in each case as demonstrated by written documentation or other competent evidence:

- (i) was already known to the receiving Party, other than under an obligation of confidentiality, at the time of disclosure;
- (ii) was independently developed by the receiving Party without use of or reference to the Confidential Information of the disclosing Party;
- (iii) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the receiving Party;
- (iv) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the receiving Party in breach of this Agreement; or
- (v) was subsequently lawfully disclosed to the receiving Party other than directly or indirectly from the disclosing Party and not under an obligation of confidentiality.

(b) **Permitted Use and Disclosures**. Notwithstanding the provisions of Section 8(a) above, each Party may disclose the other Party's Confidential Information to the extent such disclosure is reasonably necessary to comply with applicable governmental laws, regulations, or orders; provided that if a Party is required to make any such disclosure of the other Party's Confidential Information, it will, to the extent it may legally do so, give reasonable advance notice to the latter Party of such disclosure sufficient to give the disclosing Party an opportunity to secure confidential treatment of such information prior to its disclosure (whether through protective orders or otherwise). Each Party may otherwise use the Confidential Information of the other as reasonably necessary to enforce, or perform its obligations under, this Agreement.

(c) **Confidentiality of Agreement**. Each Party shall treat the terms and conditions of this Agreement as the Confidential Information of the other, provided that each Party may disclose the terms and conditions of this Agreement without consent (i) to advisors, investors and others on a need-to-know basis under conditions which reasonably ensure the confidentiality thereof, (ii) as required by any court or other governmental body; (iii) as otherwise required by law; (iv) in confidence to legal counsel of such parties; (v) in confidence, in connection with the enforcement of this Agreement or rights under this Agreement; (vi) in confidence, in connection with a merger, acquisition of stock or assets, proposed merger or acquisition, or the like; or (vii) as advisable or required in connection with any government or regulatory filings, including without limitation filings with the SEC; provided that in the case of a disclosure pursuant to Sections (ii), (iii), or (vii) above, the disclosing Party shall give the other Party prompt notice and a copy of the proposed disclosure and shall consider in good faith any comments provided by such other Party to the disclosing Party within two (2) business days of such other Party receiving the proposed disclosure.

9. Scala Trademarks

(a) **Use**. Distributor acknowledges that the Scala Trademarks are trademarks owned solely and exclusively by Scala. Scala hereby grants SCDP a non-exclusive, non-transferable, royalty free license to use the Scala Trademarks for the term of this Agreement (i) to market and promote Scala Software in accordance with this Agreement and (ii) as part of the SCDP Trademarks to market and promote SCDP's business and the Scala Software. SCDP agrees to use the Scala Trademarks only in the form and manner (with appropriate legends) prescribed by Scala. SCDP agrees not to use any other trademark or service mark in connection with any of the Scala Trademarks without prior written approval of Scala. SCDP agrees to mark all advertising and other uses of the Scala Trademarks with a legend indicating that the Scala Trademarks are the property of Scala and that they are being used under license from Scala, together with any other legends or markings that may be required by law. All ownership and goodwill from the use of the Scala Trademarks shall inure solely to the benefit of Scala.

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(b) **Notices.** SCDP shall not remove, alter, cover, or obfuscate any copyright notice or other proprietary rights notice placed in or on the Scala Software or Documentation by Scala, whether in machine language or human-readable form.

10. Limitation of Liability.

(a) EXCEPT FOR EITHER PARTY'S LIABILITY ARISING UNDER ARTICLE 8, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR LOST PROFITS OR REVENUE, COST OF SUBSTITUTE GOODS OR SERVICES, OR ANY SPECIAL, CONSEQUENTIAL, RELIANCE, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE.

(b) EXCEPT FOR ANY UNAUTHORIZED USE OR EXPLOITATION BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY OR A FAILURE TO COMPLY WITH ARTICLE 8, IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE TOTAL PAYMENTS MADE BY ONE PARTY TO THE OTHER DURING THE TWELVE MONTHS PRECEDING IMPOSITION OF SUCH LIABILITY.

(c) THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED HEREIN.

11. Term and Termination.

(a) **Term.** This Agreement will continue in effect for one (1) year from the date hereof ("Initial Term"). Upon expiration of the Initial Term and each Renewal Term thereafter, this Agreement will be automatically renewed for an additional one (1) year term ("Renewal Term") unless terminated by either party upon ninety (90) days notice prior to the expiration of the Initial Term or any Renewal Term.

(b) **Effect of Termination.** Upon termination of this Agreement for any reason, SCDP shall cease to be a SCDP and all rights to receive the benefits detailed in this Agreement and Exhibit B-1 shall cease. Upon expiration or termination of this Agreement, the license granted pursuant to Section 4 above shall immediately terminate and SCDP shall immediately return the Scala Software and other materials based on Confidential Information of Scala to Scala. The obligation of confidentiality set forth in this Agreement shall remain in effect notwithstanding any termination of this Agreement.

12. General Provisions

(a) **Assignment.** This Agreement may not be assigned by SCDP or by operation of law to any other person, persons, firms, or corporations without the express written approval of Scala.

(b) **Notices.** All notices and demands hereunder shall be in writing and shall be served by personal service or by mail at the address of the receiving party set forth in this Agreement (or at such different address as may be designated by such party by written notice to the other party). All notices or demands by mail shall be by certified or registered mail, return receipt requested, or by nationally-recognized private express courier and shall be deemed complete upon receipt.

To: Scala, Inc.
350 Eagleview Boulevard, Suite 150
Exton, PA 19341
Attn: CFO
Fax: +1 610-363-4010

To: SCDP

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(c) **Governing Law.** This Agreement shall be governed by and construed in accordance with the substantive laws of the Commonwealth of Pennsylvania.

(d) **Relationship of the Parties.** Each party is acting as an independent contractor and not as an agent, partner, or joint venturer with the other party for any purpose. Except as provided in this Agreement, neither party shall have any right, power, or authority to act or to create any obligation, express or implied, on behalf of the other.

(e) **All Amendments in Writing.** No provisions in either party's purchase orders, or in any other business forms employed by either party, will supersede the terms and conditions of this Agreement, and no supplement, modification, or amendment of this Agreement, unless described herein, shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement.

(f) **Entire Agreement.** The parties have read this Agreement and agree to be bound by its terms, and further agree that it constitutes the complete and entire agreement of the parties and supersedes all previous communications, oral or written, between them relating to the license and to the subject matter hereof. No representations or statements of any kind made by either party that are not expressly stated herein shall be binding on such party.

(g) **No Third Party Beneficiaries.** This Agreement shall inure to the benefit of, and be binding upon, each of the Parties and their respective successors and permitted assignees, subject to the provisions of this Agreement, but shall not inure to the benefit of any third party.

(h) **Severability and Invalidity.** In the event that any provisions of this Agreement be found to be, in whole or in part, invalid or unenforceable by a court of competent jurisdiction, the validity or enforceability of the remaining provisions under applicable law will not be affected thereby and shall remain binding upon the Parties. Any such invalid or unenforceable provisions shall be substituted by a valid or enforceable provision which, in its essential purpose, comes as close as possible to the invalid or unenforceable provision; the same applies mutatis mutandis to any gaps in this Agreement.

(i) **Waivers.** The failure of either Party to enforce or to exercise, at any time or for any period of time, any right or remedy arising pursuant to or under this Agreement does not constitute, and shall not be construed as, a waiver of such right or remedy and shall in no way affect that Party's right to enforce or exercise it at a later time, provided that such right or remedy is not time-barred or otherwise precluded by law or by a writing expressly waiving such right or remedy and signed by that Party seeking to assert such right or remedy.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first specified above.

SCDP:

SCALA:

By: _____ By: _____

Name: _____ Name: _____

Its: _____ Its: _____

Date: _____ Date: _____

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EXHIBIT A

I. SOFTWARE

- 1 – Not for Resale Scala Starter Kit
- 1 – Not for Resale Scala Player

II. SCALA TRADEMARKS

Scala and the Scala exclamation point logo are registered trademarks of Scala, Inc.

EXHIBIT B-1

Scala Developer Partner Benefits

Below are the benefits you are eligible to receive based upon your partnership level. The \$ symbol represents benefits that may involve additional fees and the * requires executive approval based on the quality of business and the opportunity available.

Benefits	Certified Partner
Developer Incident Support (Incidents Per Year)	25
Program Specific Logo Use	✓
Training (# of Courses)	3
Partner Listing on Website	Basic
Joint Case Studies	✓
Partner Portal Access	✓
Not for Resale Software (<i># of Starter Kits, # of players</i>)	1, 1
Script Kits	✓
Development Software (<i>APIs, etc.</i>)	✓
Exhibit at Scala Connected Signage Conference	\$
Training Discount Off Partner Price	10%
Assigned Scala Point Person	✓
Joint Press Release (<i>Press release announcing partnership including an endorsement by Scala</i>)	✓
Participation in Scala Booth at Industry Trade Shows	\$
Staff to Attend Scala Connected Signage Conference (<i>fee applies for all attendees</i>)	Unlimited
Product/Service Validation (<i>Stamp of approval for Scala on the Partners product or service</i>)	\$
Integration Assistance (<i>Assist from Scala R&D/Experts Group on integrating the Partners Product/Service with Scala Software</i>)	\$
Promotion in Partner Newsletter	✓
Co-Managed Business Plan (<i>Scala assigned Point Person will review the partner's business plan annually</i>)	✓
Referenceable Customer Logo (<i>A special logo for partners that have publicly referenceable customers with Scala deployments</i>)	✓
Scala Market Development Funds (<i>In rare situations, these funds may be given in advance of sales revenues to help grow certain markets</i>)	*
Scala Partner Plaque	✓

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EXHIBIT B-2

Scala Developer Partner Requirements

A company must meet the following minimum requirements within the first year of membership.

Requirements	Certified Partner
Entry Fee	\$ 10,000
Annual Partner Program Fee	\$ 10,000
Trained and Certified Technicians	0
Dedicated Scala Alliance Manager <i>A Scala point person at the partner's location</i>	✓
Partner Marketing Dollars Invested <i>Money invested by partner in marketing Scala products and services</i>	\$ 5,000
Operate a Scala Solution Centers <i>A Partner maintained demo area that includes Scala products</i>	1
Validated Product - Per Product Fee <i>Product that has been tested and given the seal of approval by Scala</i>	\$
Provide Hardware/Software to Scala <i>Partner must provide Scala with product for testing and validation</i>	✓
Provide Referenceable Customers for Scala Use (<i>A customer that is willing to vouch for the abilities of the partner</i>)	✓
Business Plan/ Marketing Plan <i>(An outline of how each of these requirement will be met)</i>	Marketing Plan