

SCALA® NETWORK PARTNER AGREEMENT

Please select one: **Digital Signage** **Advertising Management**

This Network 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 Network Partner" or "SNP") (each a "Party," collectively the "Parties").

RECITALS

Whereas, Scala has developed, owns and markets a suite of software products, services, and post-sales support services for (i) the creation, management and distribution of content in digital signage networks, and (ii) the first unified platform for advertising management of both traditional and digital signage networks; and

Whereas, SNP desires to license the Products from Scala in order to (i) host Scala networks for End Users under a term license agreement (from Scala) or (ii) own and operate their own Scala network for profit under a perpetual license agreement (from Scala). The SNP aims to deploy Scala Products by hosting them or reselling hosted access to Scala Products, in order to provide a more complete horizontal or vertical market solution. The SNP solution is sold to End Users under the SNP brand and Scala desires to make its Products available to SNP for these purposes.

NOW, THEREFORE, in consideration of the foregoing premises, the Parties agree that the terms and conditions, mutual covenants and promises contained herein, shall govern the use and distribution of the Products by SNP. The Parties hereby agree as follows:

AGREEMENT

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

1.1 "Affiliate" shall mean any entity which controls, is controlled by or is under common control with a Party, for so long as such control exists. For purposes of this definition, "control" means beneficial ownership of more than fifty percent (50%) of the shares of the subject entity entitled to vote in the election of directors (or, in the case of an entity that is not a corporation, the corresponding managing body).

1.2 "Agreement" shall mean this Agreement, fully executed by the Parties, which includes all Exhibits and Attachments.

1.3 "Confidential Information" shall have the meaning set forth in Section 9.

1.4 "Documentation" shall mean Scala's user manuals, other user documentation, marketing documentation, training manuals, and other training materials, in each case provided by or under authority of Scala to SNP from time to time under this Agreement.

1.5 "End User" shall mean an entity that licenses a hosted application from a SNP for its own internal use only and not for distribution.

1.6 "End User License Agreement (EULA)" shall mean Scala's end user terms and conditions for the Product in the form of Exhibit 1.6 (perpetual license) or a translation thereof, or as specified by Scala. Such Exhibit 1.6 may be updated by Scala in accordance with Section 4.8(c) of this Agreement.

1.7 "License Fees" shall have the meaning set forth in Section 4.4.

1.8 "Scala Trademarks" shall mean the trademarks of Scala set forth in Exhibit 1.8, as such Exhibit may be updated by Scala from time to time.

1.9 "Product" shall mean all current and future software products, services and post-sales support made available by Scala, as mutually agreed by Scala and SNP in writing, but only to the extent that Scala is authorized to license such software products, services and post-sales support to SNP within the Territory without infringement of third party rights.

1.10 "Sell," "Sale" and similar words shall mean to enter into an agreement with an End User to provide the Product via a hosted offering by SNP.

1.11 "Territory" shall mean the geographic region SNP may market and sell Product as outlined in Exhibit 1.11. Such territory may be amended by the Parties mutual written agreement.

1.12 "User Documentation" shall mean the Documentation which Scala determines may be distributed to End Users.

2. Appointment, Rights, Obligations and Restrictions of SNP.

2.1 Appointment. Subject to the terms and conditions of this Agreement, Scala hereby appoints SNP, a non-exclusive, independent hosting partner, at SNP's own risk and expense. SNP shall have the right to order and receive Product solely for the purpose of displaying, marketing, selling and distributing the Product in the Territory, to End Users via a SNP branded hosted product offering.

2.2 Exclusivity. Except as expressly provided in this Agreement, no exclusivity is granted, whether express or implied.

2.3 Obligations

(a) SNP shall meet the minimum requirements outlined in Exhibit 2.3 based on the partnership level selected by SNP. Failure to meet these requirements may result in the termination or reduction in the SNP partnership level by Scala, without incurring liability.

(b) SNP shall maintain at its sole cost and expense, suitable facilities and resources to host, maintain and support the Scala Products, which shall include without limitation: maintaining in good operating condition appropriate and compatible computer hardware, peripherals and system software adequate to operate the Products; appropriately train sales, application, engineering, service and maintenance staff capable of competently operating and demonstrating the Products' functionality; and supporting and maintaining the Products for SNP End Users.

(c) SNP shall be entitled to receive a limited number of demonstration copies of the Products for use by SNP's employees to familiarize themselves with the operation of the Products and to demonstrate the Products to End Users ("Not-For-Resale Copies"). SNP agrees to provide Scala with information it requires to identify and track users of Not-For-Resale Copies, and further agrees to promptly return to Scala the dongle for such Not-For-Resale Copies when any such user leaves the employment of or engagement by SNP. Not-For-Resale Copies of Scala Products are given at the sole discretion of Scala and a nominal fee may be charged.

(d) SNP shall register its End User customers, in accordance with then-current Scala End User product registration procedures, at the time Products are ordered by SNP to add to the network for such End User. Information to be provided to Scala includes, but is not limited to End User company name, contact, telephone number and email address. Scala will NOT provide customer information to any entity outside of Scala or use customer information in such a way as to discourage customer or SNP from closing business.

(e) SNP shall only purchase, license or obtain Scala Products directly from Scala.

(f) SNP shall be required to procure and maintain Scala Advantage for all licenses deployed on the SNP network.

(g) SNP shall be required to maintain the most current version of the Product, including updates, deployed on the SNP network.

(h) SNP shall present to Scala a comprehensive business plan ("Business Plan") related to the promotion, sale and support of Products and

Services in the Territory; including but not limited to: target markets & opportunities, target End Users, marketing and promotion initiatives and activities, sales objectives of SNP, sales projections of SNP for a minimum one-year period, resources dedicated to Scala Products and Services. Such Business Plan shall be provided by SNP to Scala within sixty days (60) from the date of execution of this Agreement by both parties and, once approved by Scala, shall become an integral part of Agreement under Exhibit 2.3(h).

(i) Within 60 days of the annual anniversary of the date of execution of this Agreement, SNP and Scala will undertake a joint review of SNP performance in the Territory and execution according to the Business Plan as factors to determine SNP status, authorizations and Territory for subsequent twelve-month periods within the Term of Agreement.

2.4 Restrictions

(a) SNP shall not acquire Scala Products for use by SNP Affiliates unless permission is granted by Scala.

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

(c) SNP shall not offer for sale, license or otherwise distribute or permit to be distributed any Scala Product over third party websites, including but not limited to, e-bay, amazon.com, etc.

(d) SNP shall not copy, translate, disassemble, decompile or reverse engineer the Products, 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 Products, or if information may be necessary to investigate the interoperability of Products with other software, SNP 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. SNP shall not make copies of or make media translations of the user documentation for the Products, unless advance written approval is received from Scala.

2.5 Support.

(a)) Subject to any obligations of Scala to provide support as set forth in Exhibit 2.5 of this Agreement, SNP shall maintain at its sole cost and expense adequate, trained technical staff sufficient to provide SNP End Users technical support in connection with the operation of the SNP branded product. SNP shall be solely responsible for and Scala shall have no obligation to (i) honor, any representations or warranties provided by SNP with respect to the SNP branded Product, and (ii) provide support and maintenance to End Users. All support personnel of SNP shall be reasonably trained and competent in the use of the Scala Product. Without limiting the foregoing, support personnel of SNP shall be required to attend training offered by Scala, and SNP shall dedicate personnel to activities under this

Agreement as agreed by the Parties. SNP shall cooperate fully with Scala in connection with any support furnished by Scala.

(b) SNP shall ensure that End Users contact SNP and not Scala for support.

(c) SNP shall notify Scala promptly in the event that SNP receives any complaint or identification of a bug in the Product, or other communication of concerns or issues regarding the Product or use of the Product, and shall provide a copy or reasonable description of the complaint or communication to Scala with such notice.

3. Marketing.

3.1 Business Liaisons. As soon as practicable following the Effective Date, each Party shall designate a dedicated business liaison to manage the relationship between the Parties throughout the term of this Agreement. These liaisons will coordinate regular 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, product enhancements, requests by SNP for modifications or services, product roadmaps, SNP's marketing and Sales activities and efforts, any issues that may arise or have arisen, and the like. Such meetings may be attended (either in person or by teleconference) by mutually agreed personnel of both Parties and are for information purposes only and not binding upon either Party.

3.2 SNP's Marketing and Sale. SNP shall keep Scala fully informed regarding the activities of SNP with respect to marketing and sales of Product in the Territory, including progress against Marketing Plans.

3.3 Marketing Materials. SNP shall obtain Scala's written approval before using any Sales or promotional material, or advertisements or training material, with respect to the Product that have not been provided by Scala, including all Documentation.

3.4 Trademarks.

(a) Display. All promotional materials for Product shall display the Scala Trademarks in a manner approved by Scala in writing. Without limiting the foregoing, if any Scala Trademark is to be used in conjunction with another trademark or trade name, then the Scala Trademark shall be presented equally legibly and equally prominently, but nevertheless separated from the other so that each appears to be a mark in its own right, distinct from the other mark. Except for the Scala Trademarks, and the SNP Trademarks, no trademarks, trade names, or logos shall be used to market or Sell the Product without Scala's prior written consent. SNP shall not engage in any deceptive, misleading, illegal, unfair, or unethical marketing or practices related to the Product or the Scala Trademarks.

(b) License. Scala hereby grants to SNP a non-exclusive, non-transferable, royalty free license to use the Scala Trademarks for the term of this Agreement (i) to market and promote the Product in accordance with this Agreement and (ii) as part of the SNP Trademarks to market and promote SNP's business and the Products. All ownership and goodwill from the use of the Scala Trademarks shall vest in and inure solely to the benefit of Scala.

(c) Recordation. Scala has the right to provide and record in the Territory a separate trademark license for SNP for the Scala Trademarks. SNP shall cooperate in the preparation and execution of such document. Upon termination of the trademark license set forth in this Section 3, SNP shall cooperate in the cancellation of any trademark licenses that have been recorded. All domain names through which the Product are provided shall be registered in the name of Scala or its Affiliate or other designee. SNP shall not register any Scala mark or any other mark confusingly similar to any Scala mark.

(d) Trademark Infringement. SNP shall notify Scala promptly upon learning of any actual, alleged, or threatened infringement of a Scala Trademark or of any unfair trade practices, trade dress imitation, passing off of counterfeit goods, or similar offenses.

(e) Approval of Representations. All representations of Scala Trademarks that SNP intends to use shall first be submitted to Scala for approval of design, color, and other details or shall be exact copies of those used by Scala and shall in all events comply with the usage guidelines established by Scala from time to time. Scala has the right to change its marks by providing ninety (90) days prior written notice, and an updated Exhibit 1.8 (if appropriate) to SNP.

(f) Trademark Limitation. Notwithstanding the license in Section 3.4(b), SNP shall not use the Scala Trademarks, including as part of the SNP Trademarks, with respect to any products or services, other than the Product under this Agreement, unless SNP has obtained Scala's prior written approval and the Parties have agreed in writing on the terms and conditions under which Scala will monitor the quality of such products and services.

3.5 Joint Press Release. The Parties shall issue only mutually acceptable press releases ("Joint Press Release"). All press releases shall be subject to the review and approval by each Party prior to release, such approval not to be unreasonably withheld or delayed. Throughout the term of this Agreement, the Parties shall cooperate in public relations activities, including with regard to the launch of the fully Product.

4. PURCHASING, PRICE, RETURNS, RESTOCKING, USE OF PRODUCT; REPORTING

4.1 SNP Fee. Upon execution of this Agreement, SNP shall pay to Scala the entry fee and annual partner program fee indicated on the SNP Requirements in Exhibit 2.3. These fees plus the additional requirements indicated on the SNP Requirements in Exhibit 2.3 entitle the SNP to the SNP Program Benefits indicated in Exhibit 2.3. Upon the annual renewal of this Agreement, SNP shall pay the annual partner program fee as one of the requirements to remain in the partner program.

4.2 Purchase Orders.

(a) SNP will prepare and submit to Scala, prior to each shipment of Products, a purchase order ("Purchase Order"). All SNP purchase orders are required to submit End User registration information as well. The terms and conditions of this Agreement shall apply to all Purchase Orders submitted to Scala and supersede any different or additional terms on SNP's Purchase Orders. Purchase Orders issued by SNP to Scala shall include requests for delivery dates and quantities of Products. All Purchase Orders placed with Scala for the Products shall be subject to written acceptance by Scala. Scala shall use reasonable efforts to make deliveries promptly of orders so accepted, but Scala shall not be liable for any damages to SNP or to any other person for Scala's failure to fill any purchase orders, or for any delay in delivery or error in filling any orders for any reason whatsoever.

(b) ANY TERMS OR CONDITIONS OF ANY PRODUCT ORDER OR ACKNOWLEDGMENT GIVEN OR RECEIVED WHICH ARE ADDITIONAL TO OR INCONSISTENT WITH THIS AGREEMENT SHALL HAVE NO EFFECT AND SUCH TERMS AND CONDITIONS ARE HEREBY EXCLUDED. FOR CLARITY, THE PRECEDING SENTENCE SHALL NOT PRECLUDE EITHER PARTY FROM MAKING ANY CHANGES TO ITS POLICIES, REQUIREMENTS AND THE EXHIBITS AS EXPRESSLY CONTEMPLATED IN THIS AGREEMENT.

(c) For purchase orders submitted as provided in Section 4.2, Scala's obligations are as follows: (i) will use diligent efforts to expeditiously process SNP product orders and (ii) confirm all orders and provide an estimated time of delivery upon specific request by SNP.

4.3 Acceptance of Products. Subject to the exceptions set forth in Section 4, Products delivered pursuant to an order fulfilled in accordance with the terms hereunder shall be deemed accepted by SNP unless SNP returns such Products within fifteen (15) days of the Product invoice date. Sales of accepted Products as provided herein are final, and may not be returned for refund, exchange or credit to SNP.

4.4 Price/License Fee. The price of the respective Products ordered by SNP from Scala shall be set forth in the then current Scala's Price List in effect for the Territory at the time Scala ships the Scala Products to SNP, less the discount shown on the then current SNP Discount Schedule. Shipping fees shall be added to the price of the product as set forth in Scala's then

current Shipping Schedule. Refer to Exhibit 4.4 for the current Price List for the Territory. Scala reserves the right to apply modified prices and discounts in respect of sales outside the Territory, without notice. Upon thirty days' prior notice, Scala may change its Territory Price List, SNP Discount Schedule and/or its Shipping Schedule. All prices are listed in, and all payments shall be tendered by SNP in US Dollars.

4.5 Delivery. All shipments of Products will be made F.O.B. from a Scala facility or other such location designated by Scala in writing, except that any software purchased by SNP and delivered by Scala electronically be F.O.B. SNP's place of business as set forth above, or such other outlet as SNP may designate in a Purchase Order. Delivery will be deemed complete, and risk of loss or damage to the Scala Products will pass to SNP upon delivery to the carrier, or upon receipt by SNP of Scala Products delivered electronically.

4.6 Return Policy

(a) Subject to the provisions set forth in this Section 4.6, Scala will accept the return of any defective or damaged Product upon demand, provided that any such defects or damage did not result from or arise as a result of improper handling, abuse or misuse of the Products by or on behalf of SNP or its employees.

(b) Any returns authorized and accepted by Scala must be the most recent release version of the Product(s). SNP is responsible for insuring, and prepaid shipping of returned Scala Products.

(c) Any and all Products returned by SNP to Scala are subject to prior approval of Scala, and require a Return Merchandise Authorization (RMA) number issued by Scala. SNP will be responsible to return any and all product within fifteen (15) days from the date of the Product invoice to obtain authorization and credit from Scala, unless there is a valid reason, at Scala's option, for extending such time period. Scala will not be responsible for providing a credit to SNP for any Scala Product returned by SNP after the fifteen (15) day return period.

4.7 Restocking Policy. Scala will charge a twenty percent (20%) restocking fee for all returned product that is not deemed defective or damaged. Scala will apply the credit minus the restocking fee to SNP's account for future purchases. Scala will return any unused credit to SNP in the form of a check or any other means satisfactory to Scala should SNP terminate SNP status with Scala.

4.8 Product Use Terms.

(a) SNP product terms and conditions provided its End Users for its branded product offering shall be no less restrictive and as protective of Scala and the Product as the Product Use Terms listed in Exhibit 1.6 and this Section 4.8, as updated by Scala from time to time.

(b) The foregoing is not intended to limit SNP's agreement with the End User to the Product Use Terms, and is not intended to require SNP to use the express Product Use Terms in Exhibit 1.6, provided that no agreement with an End User shall be less protective than Scala's Product Use Terms or this Agreement. SNP shall obtain Scala's advance written consent to the agreement that SNP uses with End Users if other than the Product Use Terms. For clarity, all contracts for access to and use of the Product shall be between SNP and the applicable End User, and Scala's obligations shall be limited to its obligations to SNP under this Agreement, notwithstanding anything to the contrary (including any terms and conditions, or click through agreement, or Scala's web site).

(c) Scala has the right to modify and otherwise update the Product Use Terms by providing to SNP an updated Exhibit 1.6 reflecting the changes (which may include delivery by email).

(d) SNP shall not make the Product available to any party that has failed to comply with the Product Use Terms, unless approved by Scala in writing. SNP agrees that it will not make any inconsistent or conflicting commitments to its End Users.

(e) SNP's right to use the Product includes the right to demonstrate the Product to End Users in the Territory as necessary to perform its marketing obligations under this Agreement.

(f) SNP shall communicate to all End Users, all End User alerts and communications that Scala determines, in its sole discretion, need to be communicated to End Users.

4.9 Customer Information. SNP shall provide, and hereby grants, to Scala sufficient rights and licenses with respect to all information, data, works, and other subject matter that is transmitted through or using, submitted to, received from, or otherwise provided to or by Scala, as a result of the use or operation of the Product.

5. Taxes, Duties and Payments.

5.1 Taxes and Duties. In addition to any payments due to Scala under this Agreement, SNP shall be responsible to pay amounts equal to any taxes, duties, or other amounts, including state sales taxes, however designated, which are levied or based upon such payments, or upon this Agreement, provided, however, that SNP shall not be liable for taxes based on Scala's net income.

5.2 Payment. Payment for the Products ordered from Scala and shipping costs shall be due at the time of the order by check or other means satisfactory to Scala. Scala may, in its sole discretion, grant credit approval,

in which case all payments shall be due within net terms after date of Scala's invoice, as provided in such credit approval. The invoice date shall not be before the actual date of shipment. All payments made by check or wire transfer paid in net ten (10) days of invoice will receive a two percent (2%) discount to order (discount does not apply to credit card payments). All sums not paid when due shall accrue interest daily at the lesser of an annual rate of eighteen percent (18%) or the highest rate permissible by law on the unpaid balance until paid in full. Scala reserves the right to terminate or modify the terms of credit payments when, in its sole discretion, Scala believes that its payments may be at risk.

5.3 Support Fees. The fees for the support and maintenance by Scala that is described in Exhibit 2.5 shall be as initially agreed by Scala and SNP from time to time in accordance with this Agreement. Such fees are non-refundable and non-creditable and shall be paid as agreed or, if not agreed, within thirty (30) days after invoice. Scala shall have the right to update such fees from time to time based upon changes in costs.

5.4 Payment Currency. Unless expressly indicated to the contrary, all amounts set forth in this Agreement, or any Exhibit, are in US dollars. Payments for international orders shall be made to Scala in U.S. dollars by bank wire transfer in immediately available funds to an account designated by Scala.

5.5 Sole Remuneration. SNP's sole remuneration for performing its responsibilities under this Agreement shall be the payments it receives from its End Users less the amounts payable to Scala under this Agreement. SNP is solely responsible for establishing the prices charged to End Users for Product.

5.6 Audit Rights. SNP shall keep complete, true and accurate books of account and records sufficient to demonstrate compliance with the terms of this Agreement, including copies of all End User agreements and accounting of all amounts received from End Users and their affiliates. Such books and records shall be kept reasonably accessible for three (3) years following the end of the calendar year to which they pertain. All such records shall be made available for inspection throughout such three (3) year period by an independent third party auditor selected by Scala for the purpose of verifying compliance with the terms of this Agreement. Such inspections may be made no more than once each calendar year during the normal business hours of SNP upon ten (10) business days advance notice, provided that if a non-compliance is identified by an audit, then an additional audit may be conducted during such calendar year. Scala shall bear the costs and expenses of inspections conducted under this Section 5.6, unless a non-compliance is established, whereupon all out-of-pocket costs and expenses of the audit will be paid by SNP.

6. Ownership; Proprietary Rights.

6.1 Ownership.

(a) Scala shall exclusively own all right, title and interest in and to all inventions, works of authorship, methods, documents, and other technology, data, information and subject matter generated, conceived, created or invented by or under authority of Scala or its Affiliates, whether solely or jointly with Scala or its Affiliates. Scala shall also exclusively own and all other improvements, updates, enhancements, modifications, and derivatives of the Products and Documentation that are conceived or created, in connection with this Agreement, including the Documentation and Product and all patents, trade secrets, copyrights, and other intellectual property and proprietary rights concerning any of the foregoing in all countries of the world, including all applications and registrations for intellectual property (collectively the "Work Product").

(b) With respect to any Work Product related to Scala Products invented or created in whole or in part by SNP or its Affiliates that involve the use of Scala Product source code, SP and its Affiliates hereby assign, and shall assign, all right, title and interest in and to such Work Product to Scala. SP and its Affiliates shall, without demanding any further consideration therefore, cooperate with Scala and provide all assistance requested by Scala that is reasonably necessary, proper or advisable to carry out and make effective the foregoing, including, without limitation, executing and filing assignments, applications, registrations, powers of attorney and other appropriate documents (including confirmatory assignments), providing appropriate consents and/or authorizations, and joining in any administrative or judicial action relating to the filing, prosecution or maintenance of any Work Product.

(c) SNP shall exclusively own all right, title and interest in and to all inventions, works of authorship, methods, documents, and other technology, data, information and subject matter generated, conceived, created or invented by or under authority of SNP or its Affiliates in the SNP's branded product offering, excluding the embedded Scala Product technology.

6.2 License. SNP acknowledges that Scala does not desire to receive, in connection with this Agreement, any information or technology related to its products, services, or business unless the information and technology can be used in any products and services, in Scala's discretion. Prior to disclosing any information or technology to Scala in which SNP, its Affiliate, or licensor, claims a proprietary interest that is not to be assigned to Scala under this Agreement, SNP shall provide a proposal to Scala in writing regarding the use of such subject matter by Scala. Scala and SNP shall agree in writing upon the terms, if any, under which such information or technology may be used. Except as agreed in writing prior to disclosure of the information or technology to Scala, Scala shall have non-exclusive, perpetual, non-terminable, paid-up, royalty free, worldwide right and license, with the right to grant and authorize sublicenses, to incorporate all such information and technology into Scala products and to make, use, sell, reproduce, distribute, transmit, publicly display and perform such products, services and derivatives thereof.

6.3 Proprietary Markings. Neither Party shall remove any trademark, trade name, copyright notice, patent marking, confidentiality, or other proprietary rights notice or marking from any materials provided to it by the other Party in connection with this Agreement.

6.4 No Other Rights. All right, title and interest in and to the Product are reserved to Scala, and no license is granted to SNP with respect to the Product under this Agreement. Except as expressly set forth in this Agreement, no rights are granted to SNP with respect to Documentation, and nothing shall be construed to prevent or limit Scala's direct and indirect marketing, distribution and Sale of any products or services in the Territory, including to End Users, OEMs and Authorized Resellers. Any unauthorized use or exploitation by a Party of the other Party's patents, copyrights, trade secrets, or other intellectual property or proprietary rights shall be considered a material breach of this Agreement by such Party.

7. Term and Termination.

7.1 Term. This Agreement shall commence upon the Effective Date and continue in full force and effect, unless earlier terminated in accordance with the terms of this Agreement.

7.2 Termination for Cause. In the event of a material breach of this Agreement, the non-breaching Party shall be entitled to terminate this Agreement by written notice to the breaching Party, if such breach is not cured within thirty (30) days after written notice is given by the non-breaching Party to the breaching Party specifying the breach.

7.3 Termination Other Than Cause. Each Party has the right to terminate this Agreement at any time by providing the other Party forty-five (45) days advance written notice. Partner entry or annul program fees are non-refundable upon termination of the Agreement.

7.4 Insolvency. In addition, each Party shall have the right to terminate this Agreement immediately by written notice upon the commencement of a petition, proceeding or case seeking the other Party's bankruptcy, or any insolvency, reorganization, liquidation, dissolution or winding-up, or readjustment of its debts, or seeking the appointment of a receiver, trustee or the like of itself or its assets, or otherwise seeking relief from its creditors and, in the case of an involuntary petition, proceeding or case, such petition, proceeding or case continues undismissed for, or an order approving or ordering any of the foregoing is entered and is not stayed within, sixty (60) calendar days.

7.5 Return of Property. Within thirty (30) days after any termination or expiration of this Agreement, each Party shall return to the other Party, or at the other Party's request destroy, all copies or portions of all information and materials containing or constituting Confidential Information or Trademarks of the other Party, provided however that a Party may retain such portions of Confidential Information to which it has surviving rights or

licenses in this Agreement. At the other Party's request, a Party shall furnish to the other Party an affidavit signed by an officer of such Party certifying that, to the best of its knowledge, it has returned all Confidential Information to the extent required under this Section 7.5.

7.6 Survival. Articles and Sections 3.4(c) (last three sentences only), 4.2(b), 5 (with respect to any use prior to, and any use continuing after, any termination or expiration of this Agreement and only until such time as all use has terminated and Scala has been paid in full), 5.5, 5.6, 6, 7.5, 7.6, 7.7, 7.8, 7.9, 8.2, 8.3, 9, 10, 11, 12, and 13 of this Agreement shall survive any termination or expiration of this Agreement. Additionally, for those Products licensed under a perpetual license, all rights granted to End Users in accordance with this Agreement shall survive, subject to the terms of this Agreement and the Product Use Terms, except that such rights shall terminate and expire in accordance with the terms of the applicable End User agreement and this Agreement. All Product Use Terms, and terms and conditions of this Agreement governing access to and use of the Product by the End User, shall survive termination and expiration of this Agreement until termination or expiration of the End User's rights and the End User agreement. Notwithstanding anything to the contrary, all exclusivity under this Agreement shall terminate immediately upon either Party providing notice of termination to the other Party in accordance with this Agreement. Except as expressly set forth above, all terms and conditions of this Agreement shall terminate and have no further force or effect upon any termination or expiration of this Agreement.

7.7 Continuing Liability. Termination of this Agreement for any reason shall not release either Party from any liability which has already accrued as of the effective date of such termination, and shall not constitute a waiver or release of, or otherwise be deemed to prejudice or adversely affect, any remedies or claims, whether for damages or otherwise, which a Party may have hereunder, at law, equity or otherwise or which may arise out of or in connection with such termination.

7.8 No Liability for Termination. Except as expressly required by law, in the event of termination of this Agreement by either Party in accordance with any of the provisions of this Agreement, neither Party shall be liable to the other, because of such termination, for compensation, reimbursement or damages on account of the loss of prospective profits or anticipated Sales or on account of expenditures, inventory, investments, leases or commitments in connection with the business or goodwill of Scala or SNP.

7.9 Purchase Orders; No Waiver. Except to the extent Scala elects not to provide such Product, SNP shall be obligated to accept, and pay for, Product for which Product orders were issued prior to the effective date of termination or expiration of this Agreement. The acceptance of any order from or the provision of any Product after the termination or expiration of this Agreement shall not be construed as a renewal or extension of this

Agreement nor as a waiver of termination of this Agreement. All provisioning of End User accounts after termination or expiration of this Agreement shall require pre-payment to Scala in advance.

7.10 Other Obligations Upon Termination.

(a) SNP shall immediately cease using the Trademarks and discontinue all representations as a Scala Solutions Sales Partner;

(b) return to Scala any Not-For-Resale-Copies of Scala Products and other materials and information provided to SNP;

(c) Scala shall be entitled to (1) reject all or part of any order received from SNP after notice but prior to the effective date of termination and/or (2) require SNP's performance of any outstanding Purchase Orders notwithstanding the fact that delivery dates for such orders may extend beyond the effective date of termination. Notwithstanding any credit terms made available to SNP prior to that time, any Products shipped during said period shall be paid for in full by certified or cashier's check or any other means satisfactory to Scala prior to shipment; and

8. WARRANTIES AND DISCLAIMER

8.1 Mutual. Each Party represents and warrants to the other that: (i) it has the right and power to enter into this Agreement and to fulfill its obligations hereunder; (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 such Party 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 such Party or the activities of such Party contemplated by this Agreement.

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

8.3 Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 8.1 AND 8.2 ABOVE, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES IN CONNECTION WITH THIS AGREEMENT, EXPRESS, STATUTORY, IMPLIED, OR OTHERWISE, INCLUDING WITH RESPECT TO THE PRODUCT, AND EACH PARTY HEREBY DISCLAIMS AND EXCLUDES ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. SCALA DOES NOT REPRESENT OR WARRANT THAT THE

PRODUCT, OR THE WEB SITE OR FACILITIES USED TO PROVIDE THE PRODUCT, WILL BE ERROR FREE OR SECURE.

9. CONFIDENTIAL INFORMATION.

9.1 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 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 Article 10. Notwithstanding the foregoing, Confidential Information shall not include information that, in each case as demonstrated by written documentation or other competent evidence:

(a) was already known to the receiving Party, other than under an obligation of confidentiality, at the time of disclosure;

(b) was independently developed by the receiving Party without use of or reference to the Confidential Information of the disclosing Party;

(c) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the receiving Party;

(d) 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

(e) was subsequently lawfully disclosed to the receiving Party other than directly or indirectly from the disclosing Party and not under an obligation of confidentiality.

9.2 Permitted Use and Disclosures. Notwithstanding the provisions of Section 9.1 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.

9.3 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.

10. INDEMNIFICATION

10.1 Indemnification of SNP. Scala shall indemnify and hold harmless each of SNP and its Affiliates, and the directors, officers, employees, customers, licensees, and contractors of SNP and such Affiliates, and their successors and assigns any of the foregoing (the “SNP Indemnitees”), from and against any and all liabilities, damages, settlements, claims, actions, suits, proceedings, penalties, fines, costs and expenses (including reasonable attorneys’ fees and other expenses of litigation) incurred by the SNP Indemnitee based upon a claim of a non-Affiliate third party to the extent resulting from: (a) a breach by Scala of any of its representations or warranties in this Agreement; (b) the negligence, or illegal or willful misconduct, of Scala in connection with this Agreement or the Product; or (c) Scala’s infringement of a registered US copyrights or valid US patent of a third party in creating or providing the Product under this Agreement. However, Scala will not be obligated to indemnify or hold SNP harmless from any such action unless SNP notifies Scala in writing of any claim within ten (10) days after it learns of such a claim, gives Scala sole control of the defense and settlement thereof and provides all reasonable assistance in connection therewith. If any Scala Product is finally, conclusively and irrevocably adjudged to infringe the intellectual property rights of a third party, or in Scala’s opinion is likely to become the subject of an injunction, Scala shall, at its option and expense, either: (i) procure for SNP the right to continue using the Product; (ii) modify or replace the Product to make it non-infringing; or (iii) REFUND the fee paid, less reasonable depreciation, upon return of the Product. Scala shall have no liability regarding any infringement claim arising out of: (w) use of the Products in combination with non-Scala software, data or equipment if the infringement was caused by such use or combination; (x) any modification, alteration or derivation of the Products made by or on behalf of SNP; or (y) SNP’s use of third party software or works of authorship in conjunction with

the Products. THE FOREGOING STATES SCALA'S ENTIRE LIABILITY AND SNP'S EXCLUSIVE REMEDY FOR INFRINGEMENT OR CLAIMS OF INFRINGEMENT OF ANY COPYRIGHT, PATENT AND OTHER PROPRIETARY RIGHTS BY THE SOFTWARE.

10.2 Indemnification of Scala. Except to the extent that Scala is required to indemnify SNP under Section 10.1, SNP shall indemnify and hold harmless each of Scala and its Affiliates, and the directors, officers, employees, customers, licensors, and contractors of Scala and such Affiliates, and their successors and assigns any of the foregoing (the "Scala Indemnitees"), from and against any and all liabilities, damages, settlements, claims, actions, suits, proceedings, penalties, fines, costs and expenses (including, without limitation, reasonable attorneys' fees and other expenses of litigation) incurred by any Scala Indemnitee based upon a claim of a non-Affiliate third party to the extent resulting from: (a) a breach by SNP of any of its representations or warranties in this Agreement; (b) the negligence, or illegal or willful misconduct, of SNP, or any End Users in connection with this Agreement or any Product; (c) any failure to support End Users; (d) any representations, warranties, or covenants made with respect to the Product, beyond the Product Use Terms or beyond the representations and warranties made by Scala directly to its other customers; (e) otherwise arising out of the marketing, promotion, commercialization or use of the Product pursuant to this Agreement.

10.3 Procedure. A Party that intends to claim indemnification under this Article 11 (the "Indemnitee") shall promptly notify the other Party (the "Indemnitor") in writing of any claim, in respect of which the Indemnitee intends to claim such indemnification, and the Indemnitor shall have sole control of the defense and settlement thereof. The indemnity arrangement in this Article 10 shall not apply to amounts paid in settlement of any action with respect to a claim, if such settlement is effected without the consent of the Indemnitor, which consent shall not be withheld or delayed unreasonably. The failure to deliver written notice to the Indemnitor within a reasonable time after the commencement of any action with respect to a Claim, if prejudicial to its ability to defend such action, shall relieve such Indemnitor of any liability to the Indemnitee under this Article 10 but the omission so to deliver written notice to the Indemnitor shall not relieve the Indemnitor of any liability that it may have to any Indemnitee other than under this Article 10. The Indemnitee under this Article 10 shall cooperate fully with the Indemnitor and its legal representatives in the investigation and defense of any action with respect to a claim covered by this indemnification, at the Indemnitor's expense. Notwithstanding the foregoing, *provided that* the Indemnitor has performed its obligations in accordance with this Section 10, the Indemnitor shall not be responsible for any costs or expenses incurred without the prior written consent of the Indemnitor.

11.Limitations of Liability

EXCEPT FOR EITHER PARTY'S LIABILITY ARISING UNDER ARTICLE 9, 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.

EXCEPT FOR ANY UNAUTHORIZED USE OR EXPLOITATION BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY OR A FAILURE TO COMPLY WITH ARTICLE 9, AND EXCLUDING EACH PARTY'S RESPONSIBILITIES UNDER ARTICLE 10, IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE TOTAL PAYMENTS MADE BY SNP TO SCALA FOR PRODUCTS ORDERED DIRECTLY FROM SCALA DURING THE TWELVE MONTHS PRECEDING IMPOSITION OF SUCH LIABILITY.

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.

12.COMPLIANCE WITH LAWS

12.1 Export Control. SNP understands and acknowledges that Scala is subject to regulation by agencies of the United States Government, including, but not limited to, the U.S. Department of Commerce, which prohibit export or diversion of certain products and technology to certain countries. Any and all obligations of Scala shall be subject in all respects to such laws and regulations as shall from time to time govern the license and delivery of technology and products abroad by persons subject to the jurisdiction of the United States, including without limitation the U.S. Export Administration Act of 1979, as amended, any successor legislation, and the Export Administration Regulations issued by the U.S. Department of Commerce, Bureau of Export Administration. SNP agrees to cooperate with Scala including without limitation, providing required documentation, in order to obtain export licenses or exemptions there from. SNP warrants that it will comply with the U.S. Export Administration Regulations and other laws and regulations governing exports in effect from time to time.

12.2 Governmental Approvals. SNP represents and warrants that it has obtained and shall obtain all required approvals of the applicable governments in the Territory to market and commercialize the Product in the Territory.

13.General Provisions.

13.1 Nature of Relationship. The relationship of Scala and SNP established by this Agreement is that of independent contractors, and neither

Party is an employee, agent, partner or joint venturer of the other. All financial obligations associated with SNP's business are the sole responsibility of SNP. All Sales, service and other agreements between SNP and its End Users are SNP's exclusive responsibility and will have no effect on SNP's or Scala's obligations under this Agreement. Neither Party shall hold itself out to be an agent or representative of the other. Neither Party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other Party or to bind the other Party in any respect whatsoever.

13.2 Entire Agreement. This Agreement contains the entire agreement between the Parties relating to the subject matter contemplated by this Agreement and supersede all prior and contemporaneous written and oral agreements, representations or promises of the Parties (if any), relating to such subject matter.

13.3 Assignment. SNP shall not assign or otherwise transfer this Agreement, or its rights or obligations under this Agreement, whether directly or indirectly, without the prior written consent of Scala, and this Agreements shall terminate automatically in the event of any merger or change of control of SNP unless SNP has obtained Scala's prior written consent to the merger or change of control. Scala shall have the right to assign and otherwise transfer this Agreement as a whole to any successor to all or substantially all of Scala's business or assets, whether by sale of stock or assets, merger, operation of the law, or otherwise. Any assignment or transfer in violation of the foregoing shall be void. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties hereto, their successors and permitted assigns.

13.4 Foreign Corrupt Practices Act. In conformity with the United States Foreign Corrupt Practices Act and with Scala's established corporate policies regarding foreign business practices, SNP and its employees and agents shall not directly or indirectly make any offer, payment, or promise to pay; authorize payment; or offer a gift, promise to give, or authorize the giving of anything of value for the purpose of influencing any act or decision (including a decision not to act) of an official of any government or inducing such a person to use his or her influence to affect any such governmental act or decision in order to assist Scala or SNP in obtaining, retaining or directing any business.

13.5 Governing Law. THIS AGREEMENT, AND ALL DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES OF PENNSYLVANIA OR ANY OTHER JURISDICTION.

13.6 Arbitration. The Parties shall try in good faith to resolve any dispute or claim related to or arising out of this Agreement, or the

interpretation, making, performance, breach or termination thereof, amicably by themselves. If the Parties should resolve such dispute or claim, a memorandum setting forth their agreement will be prepared and signed by both Parties if requested by either Party. If the dispute or claim is not resolved by the Parties themselves, then it shall be finally settled by arbitration in accordance with the then current rules of arbitration of the American Arbitration Association (the "Rules") by three (3) arbitrators, one selected by each party and the third selected in accordance with such rules. Such arbitration shall be held in Philadelphia, Pennsylvania, and the proceedings and all pleadings, filings, written evidence, decisions and other relevant documents shall be in English. Any written evidence in a language other than English shall be submitted with an English translation. Any final decision issued in the arbitration shall be binding and conclusive upon the parties to this Agreement and may be entered as a final judgment by any court of competent jurisdiction. Notwithstanding the foregoing, the Parties may apply to any court of competent jurisdiction for temporary or permanent injunctive relief without breach of this Section 14.6. Each Party shall bear its own costs in connection with the foregoing arbitration.

13.7 Interpretation. The headings in this Agreement are for ease of reference only and do not affect the substance of any provision. Words denoting the singular include the plural and vice versa. Words denoting any one gender include all genders. All references to a statutory provision shall be construed as including references to any statutory modification or re-enactment thereof (whether before or after the date of this Agreement) for the time being in force.

13.8 Modifications to Agreement. Without limiting a Party's rights to update Exhibits as expressly contemplated in this Agreement, no provisions of this Agreement (including, without limitation, the Exhibits attached hereto) may be amended or modified, in whole or in part, otherwise than by an instrument in writing signed by both Parties or their successors or permitted assignees.

13.9 Force Majeure. Neither Party shall be liable to the other for delays or failures in performance resulting from causes beyond the reasonable control of that Party, including acts of God; acts of government or its agencies, including laws, regulations, and judicial action; strikes or other labor disputes or disturbances; power disruptions; riots or civil disturbances; acts of war; or communication, utility or transportation failures, or failure of supply. The obligation of the Party unable to perform, as set forth in this Section 13.9 ("Delayed Party") shall be suspended, and non-performance shall be excused, during such force majeure event, subject to the Delayed Party's compliance with the following. The Delayed Party shall give the other Party written notice of its inability to perform and a description, in reasonable detail, of the cause of the inability and will use diligent efforts to remedy the situation and remove, so far as is commercially reasonable and as soon as practicable, the cause of such inability. The Delayed Party shall give the other Party prompt notice of the cessation of the event of force majeure. In

the event that the Delayed Party is unable to remove the force majeure event, and resume performance in accordance with the other terms of this Agreement, within ninety (90) days of the occurrence of the event, each Party shall have the right to terminate this Agreement by providing written notice of termination to the other.

13.10 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.

13.11 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.

13.12 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.

13.13 Exhibits. All exhibits to this Agreement are an integral part of this Agreement as if fully set forth herein. All references herein to an exhibit shall be deemed to be references to an exhibit of this Agreement unless the context shall otherwise require.

13.14 Notices. All notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given to the recipient when (i) delivered by hand, (ii) sent by facsimile (with receipt confirmed by a machine-generated transmission record), provided that a copy is concurrently mailed by one of the other methods in this Section 13.14, or (iii) when received by the addressee, if sent by courier service (return receipt requested) or by registered or certified mail, postage prepaid, return receipt requested, in each case to the appropriate addresses set forth below (or to such addresses and/or facsimile numbers as a Party may hereafter designate as to itself by written notice to the other Party).

If to: SNP

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

13.15 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which taken together shall constitute one and the same agreement.

13.16 Language. This Agreement has been produced in the English language and the negotiations relating to this Agreement were conducted in English; any translations are for working purposes only and have no influence on the interpretation of this Agreement.

13.17 Announcements. Except as otherwise expressly permitted herein or required by applicable law, all press releases and other public announcements by either Party concerning this Agreement or its subject matter must be approved in writing by the other Party, such approval not to be unreasonably withheld or delayed, prior to their release or publication.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized officers as of the date first hereinabove written.

Scala, Inc.

SNP

By: _____
Name:

By: _____
Name:

Title:
Date:

Title:
Date:

CONFIDENTIAL**EXHIBIT 1.6****END USER LICENSE AGREEMENT –Perpetual License**

Nothing in this Exhibit 1.6 shall be construed to limit any obligations or responsibilities of SNP under the Agreement above.

Scala End User License Agreement

This Software License Agreement (“Agreement”) is entered into between Scala, Inc. (which, for purposes of this Agreement, shall be deemed to include any majority owned subsidiary of Scala, Inc.) (“Scala”), and the purchaser, licensee or user (“Licensee”) of Scala Software (as defined below). The terms of this Agreement also apply to any Scala Software Updates, and/or Software Maintenance (as each term is defined below) for the Scala software, unless other terms accompany those items. If so, those terms apply.

READ THIS LICENSE CAREFULLY. BY OPENING THE SCALA SOFTWARE PRODUCT PACKAGING AND/OR USING THE SCALA SOFTWARE, LICENSEE AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

If Licensee does not agree to the terms of this Agreement prior to opening the Scala Software packaging or installing the Scala Software, Licensee shall cease using (or refrain from commencing use of) the Scala Software, and shall, as applicable, uninstall and/or permanently delete the Scala Software, Documentation (and any copies thereof) from the computers or computer system(s) on which the Scala Software has been loaded or stored, and return the Scala Software and Documentation, all media on which it is stored, all product packaging, and proof of payment to the Scala Partner (as defined below) pursuant to such Scala Partner’s return policy. If Licensee does not agree to the terms of this Agreement, and has acquired the Scala Software as part of a pre-configured computer system on which the Scala Software has been installed, Licensee must either promptly cease using the Scala Software, uninstall and/or permanently delete the Scala Software and Documentation (and any copies thereof) from the computer system(s) on which the Scala Software has been preloaded, or return the pre-configured system pursuant to the system vendor’s return policy.

1. DEFINITIONS.

- 1.1. “Commencement Date” means the ship date of the Scala Software from Scala or a Scala Partner to the Licensee.
- 1.2. “Documentation” means the user guides, tutorials, printed instructions, reference manuals, and other explanatory materials developed by Scala that accompany or are stored on or in the Scala Software for use in connection with the Scala Software.
- 1.3. “End User” means, as applicable, Licensee or any person or entity (including, for the avoidance of doubt, any employee or agent of Licensee) that uses the Scala Software.
- 1.4. “Object Code” means the form of Scala Software wherein computer programs are assembled or compiled in magnetic or electronic binary form on software media, which are readable and usable by machines, but not generally readable by humans without reverse-assembly, reverse-compiling, or reverse-engineering.
- 1.5. “Software Maintenance” means the provision of Software Updates.

- 1.6. "Scala Partner" means any Scala Certified Partner, reseller or distributor of Scala that sold or licensed the Scala Software to Licensee.
- 1.7. "Scala Software" means, as applicable, the Object Code form of Scala Starter Kit, Scala Designer, Scala Player, Scala Content Manager, Scala Broadcast Server, Scala Ad Manager or such other Scala software products as may be identified in a purchase order from Scala or a Scala Partner, and shall be deemed to include the Documentation for such Scala Software, the license keys, clip art, fonts and multimedia files included in such Scala Software, their related software options, software extensions, software upgrades and Software Updates, and Third Party Software integrated into such identified products.
- 1.8. "Software Updates" means bug fixes, documentation improvements and feature additions, including all major (i.e., numbered) and minor (i.e., point) releases, when and if made available by Scala.
- 1.9. "Third Party Software" means software, referred to as redistributable code that is licensed to Scala by third party licensors for redistribution with the Scala Software. The redistributable code is the property of Scala's licensors, and protected under United States and international copyright, trade secret or other proprietary rights laws, and international treaties.

2. GRANT OF LICENSE RIGHTS.

- 2.1 **License.** Subject to the terms, restrictions and limitations set forth herein, Scala hereby grants to Licensee a non-exclusive, non-transferable, non-sublicensable license to use (and to permit its End Users to use) the Object Code version of the Scala Software, including any Third Party Software included therein or therewith, along with any graphical, textual, pictorial, audio or visual works or materials incorporated into or delivered with the Scala Software, including the Documentation.
- 2.2 **Term.** This Agreement is effective as of the date at which Licensee accepts the license terms as set forth above, and will continue unless terminated as provided in Sections 7.3 or 8.
- 2.3 **Scope of License and Use**
 - A. **Internal Use.** Licensee may use the Scala Software and Documentation only for its own internal use and only on one, single-user computer. Licensee may internally transfer the Scala Software to a different, single-user computer (a "Transferred Installation"), provided that the Scala Software and any copies thereof are permanently uninstalled and/or deleted from the computer from which the Scala Software is transferred.
 - B. **Limitations.** In connection with the development of content files using Scala Software, Licensee may publish files for playback (i) to an individual player; (ii) to an audio visual network of screens showing identical content controlled by an individual player, and (iii) for preview and approval purposes over the web or other means. Notwithstanding the above, Licensee shall not directly or indirectly, distribute or cause to be distributed over a network, content files created with Scala Software without also having properly licensed Scala Software for playback purposes.
 - C. **Copies.** Licensee may make one (1) copy of the Scala Software and one (1) copy of the related Documentation for archival or back-up purposes, only.
 - D. **Third Party Software.** The license granted hereunder includes the right of Licensee to use the Third Party Software in Object Code form, solely in connection with the authorized operation and use of the Scala Software in conformance with the terms and conditions of this Agreement. For the avoidance of doubt, Licensee may not decouple,

disassemble or otherwise separate the Third Party Software from the Scala Software or use the Third Party Software except in connection with the use and operation of the Scala Software as permitted hereunder.

E. Restrictions. The Scala Software is licensed, not sold. This Agreement only gives you some rights to use the Scala Software. Scala reserves all other rights. Unless and solely to the extent otherwise permitted under applicable law, you may use the Scala Software only as expressly permitted in this Agreement. Except as expressly permitted under applicable law, or as otherwise agreed to in writing by Scala, Licensee shall not, and shall not permit any End User to: (i) work around any technical limitations in the Scala Software; (ii) publish the Scala Software for others to copy; (iii) make more copies of the Scala Software than authorized under this Agreement ; (iv) sell, lease, rent, redistribute, assign, sublicense, or transfer the Scala Software and/or Third Party Software; (v) reproduce, decompile, reverse engineer or disassemble the Scala Software and/or Third Party Software; (vi) offer the use of the Scala Software to third parties as an application service provider, service bureau or remote-hosted service; or (vii) deliver, export, transfer or otherwise distribute the Scala Software acquired hereunder to, or use the Scala Software acquired hereunder in, a country other than the country in which the Scala Software was purchased (including, for the avoidance of doubt, in connection with a Transferred Installation).

3. LICENSE AND OTHER FEES. Licensee agrees to be bound by and pay the license fee(s) set forth in the Scala Software price list in effect as of the date of purchase. License fees for Scala Software and maintenance fees for Software Maintenance may be updated and changed at any time.

3.1 Software Maintenance Coverage. Where Software Maintenance is offered upon separate purchase terms from the Scala Software, the Scala Software products are sold with one (1) year (the "Initial Maintenance Term") of Software Maintenance coverage included in the price of the product. During the Initial Maintenance Term, Licensee shall be entitled to Software Updates if and when made available by Scala. All use of Scala Software provided pursuant to Software Maintenance coverage shall be subject to the terms of this Agreement. Licensee may elect to continue Software Maintenance beyond the Initial Maintenance Term, subject to availability, upon payment to Scala (or, as applicable, a Scala Partner) of the Scala annual maintenance fee in effect at the time of renewal.

3.2 Taxes and Duties. Prices to Licensee do not include taxes, duties, tariffs, handling fees, or other such assessments of any nature. Whenever imposed, such assessments are payable by Licensee. Income or other taxes that are required to be paid or withheld by Licensee or Scala under the laws of jurisdictions other than the United States, in connection with the license and other fees paid by Licensee hereunder, are the sole obligation of Licensee and shall be exclusive of the license and other fees paid by Licensee.

3.3 Other Services. Licensee acknowledges that any additional services offered by Scala, such as installation, customization or professional services, are not provided under this Agreement, and any such services to be provided by Scala (or, as applicable, a Scala Partner) shall be subject to the mutual agreement of the parties, the terms and conditions for which shall be set forth in a separate agreement.

4. CONFIDENTIAL INFORMATION, TITLE AND COPYRIGHTS.

4.1 Licensee acknowledges that the Scala Software, Documentation, Software Updates, enhancements, modifications, additions, new releases of or to the Scala Software contain

confidential information of, are trade secrets of, and are proprietary to Scala and its licensors and that title to such materials is and shall remain in Scala and its licensors, as the case may be. Licensee shall maintain in strict confidence the Scala confidential information, but, at a minimum, to take those precautions that it utilizes to protect its own confidential information. Licensee shall have no obligation of confidentiality with respect to information that (i) at the time of disclosure is in or becomes available to the public through no breach of this Agreement on the part of the Licensee; (ii) was lawfully in Licensee's possession prior to receipt from Scala; (iii) is received independently from a third party free to lawfully disclose such confidential information to Licensee and who does not owe an obligation to Scala with respect to confidential information; (iv) Licensee independently develops without the benefit of any confidential information disclosed hereunder or (v) is required to be disclosed by a government agency; provided that the Licensee will use best efforts to minimize such disclosure and will notify Scala promptly of any such demand, order or judgment in order to permit Scala to seek an appropriate protective order.

- 4.2 All applicable rights to patents, copyrights, trademarks and trade secrets in the Scala Software and other proprietary materials are and shall remain in Scala and its licensors. Licensee shall not assert any right, title or interest in the Scala Software or other materials provided to Licensee under this Agreement, except for the limited license rights expressly granted to Licensee hereunder.
- 4.3 Licensee shall not obscure or remove any copyright or other proprietary notice or legend contained on or included in the Scala Software and shall reproduce all such information on all copies made hereunder. Licensee shall not, directly or indirectly, disclose or distribute any technical information of Scala provided with or in the Scala Software without the prior written consent of Scala, which consent may be withheld at Scala's sole discretion.

5. LIMITED WARRANTIES.

- 5.1 **Media and Documentation.** Scala warrants that if the media or Documentation is in a damaged or physically defective condition at the time the Scala Software is delivered to Licensee, and if such media or Documentation is returned to Scala within thirty (30) days of the effective date of this Agreement, Scala will provide Licensee with a replacement at no charge.
- 5.2 **Software Limited Warranty and Remedy.**
 - A. Provided that Licensee is not in breach of any of its obligations under this Agreement, and in addition to the warranty set forth in Section 5.1, Scala warrants for a period of thirty (30) days from the Commencement Date ("Warranty Period"), that the software will substantially conform to the Documentation provided by Scala with the Scala Software. Licensee's sole remedy and Scala's and Scala Partner's sole obligation under this Agreement for breach of this warranty is, at Scala's sole option, (i) the remedy of the nonconformity or (ii) the authorization of a refund for the price paid for the media and or Scala Software by Scala or the Scala Partner from which the Scala Software was originally obtained. Any request for the above remedies must be made within the Warranty Period and proof of purchase (i.e., copy of the invoice or receipt) is required to be presented to Scala. In the event of a refund, this Agreement will immediately terminate without further notice, and Licensee will have no further rights or license to use Scala Software or Documentation.

- B. Any replacement software or media will be warranted for the remainder of the original Warranty Period or for an additional thirty (30) days whichever is longer.
 - C. This limited warranty is void if nonconformance of the Scala Software results from or is related to the (i) improper installation or operation of the Scala Software by or on behalf of the Licensee, (ii) failure of Licensee's hardware or non-Scala software, (iii) incompatibility of such hardware and non-Scala software systems with Scala Software, (iv) alteration, modification or unauthorized integration of Scala Software by or on behalf of Licensee, or (v) accident, abuse or misapplication of Scala Software.
 - D. If the Scala Software is provided as a trial or evaluation version, the grant of the license to use the Software shall be on an "AS IS" basis and subject to the express limitations of the trial. Unless Licensee shall have entered into a separate written license agreement prior to the expiration or termination of the trial period, Licensee agrees to cease all use of the Scala Software provided on a trial or evaluation basis and to return such Scala Software, or to return any license keys and destroy or permanently delete any and all copies of such Scala Software.
- 5.3 **Disclaimer of Warranties.** SCALA AND ITS LICENSORS MAKE NO WARRANTY, REPRESENTATION OR PROMISE EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT. TO THE FULLEST EXTENT PERMITTED BY LAW, SCALA AND ITS LICENSORS DISCLAIM AND EXCLUDE ANY AND ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR RESULTS. SCALA AND ITS LICENSORS DO NOT WARRANT THAT THE SCALA SOFTWARE OR DOCUMENTATION WILL SATISFY LICENSEE'S REQUIREMENTS; THAT THE SCALA SOFTWARE AND DOCUMENTATION ARE WITHOUT DEFECT OR ERROR; OR THAT THE OPERATION OF THE SCALA SOFTWARE WILL BE UNINTERRUPTED. TO THE MAXIMUM EXTENT PERMITTED UNDER THE LAW, THE UN CONVENTION FOR THE SALE OF GOODS AND THE UNIFORM COMMERCIAL CODE DO NOT APPLY TO THIS LICENSE AGREEMENT.

6. LIMITATION OF LIABILITY.

- 6.1 **IN NO EVENT SHALL SCALA OR ITS LICENSORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS). REGARDLESS OF WHETHER SCALA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SCALA'S AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS LICENSE OR THE SCALA SOFTWARE AND DOCUMENTATION IS LIMITED TO THE AMOUNT ACTUALLY PAID FOR THE LICENSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY.**

7. INDEMNIFICATION.

- 7.1 **Scala's Obligation.** Subject to the Licensee indemnification set forth at Section 7.2 and the restrictions and limitations set forth herein, Scala shall indemnify and hold harmless Licensee, its officers, directors and employees from and against any costs or demands awarded against Licensee by a court of competent jurisdiction pursuant to a final judgment as a result of a claim or action by a third party against Licensee that the Scala Software or Documentation

infringes a registered copyright, trademark, valid patent or other intellectual property right of a third party in North America, European Economic Area or Japan. The foregoing indemnity is conditioned on Licensee (i) promptly notifying Scala of such claim; (ii) permitting Scala to control the response thereto and the defense thereof, including any agreement relating to the settlement thereof, and (iii) assisting and cooperating with Scala, at Scala's expense, in the defense or settlement thereof. Licensee may participate, at its own expense, in such defense directly or through counsel of its choice on a monitoring, non-controlling basis. Scala shall obtain Licensee's prior written consent to any compromise or settlement of any claim which would require an admission of liability on the part of Licensee or which would subject Licensee to any injunction or other equitable relief. Notwithstanding the foregoing, in no event shall Scala or its licensors be liable to indemnify, defend, settle or hold Licensee harmless from and against any or all claims which allege infringement of intellectual property that reads upon or is infringed by a generally recognized audio, video, technology or patent standard, including without limitation MPEG-1, MPEG-2, MPEG-4, JPEG, DV, Flash, VC-1, AAC, AC-3, DVCPRO or AVS (each including all profiles, options, parts or levels);

- 7.2 Scala shall have no obligation under Section 7.1, and otherwise will have no liability for, any claim of infringement caused or alleged to be caused by: (i) the use or combination of the Scala Software with non-Scala software, hardware, data, or content, including but not limited to software, hardware, data, or content of Licensee; (ii) infringement that would have been avoided without the use or combination of the Scala Software with other non-Scala software, hardware, content, or data; (iii) the presence of any alteration or modification of the Scala Software by Licensee or any third party acting on Licensee's behalf; or (iv) the Licensee's continuing the allegedly infringing activity after being notified thereof or after being informed and provided with modifications that would have avoided the alleged infringement.
- 7.3 In the event that a claim of infringement of a valid North American, European Economic Area or Japanese software patent or copyright is made against Scala or Licensee or if Scala reasonably believes that such a claim will be made, Scala, at its option and in lieu of indemnification, may (a) procure for Licensee the right to use the Scala Software without patent or copyright infringement; (b) modify the Scala Software to make it non-infringing; (c) replace the Scala Software with substantially equivalent software that is non-infringing; or (d) direct Licensee to cease use of the Scala Software, and refund to Licensee a percentage of the aggregate fees received for such Scala Software that are the subject of such a claim, based on a five (5) year straight line depreciation
- 7.4 The foregoing Sections 7.1-7.3 set forth the exclusive remedy and entire liability and obligation of Scala with respect to third party claims against Licensee alleging intellectual property infringement or misappropriation.
- 7.5 **Licensee Obligation.** Except for the infringement claims set forth in Section 7.1, Licensee shall indemnify, defend and hold Scala, its directors, officers, agents and employees harmless from any claims, demands, or causes of action whatsoever by a third party against Scala arising as a result of Licensee's use or operation of the Scala Software. For the avoidance of doubt, and without limiting the scope of the immediately preceding sentence, Licensee shall indemnify, defend and hold Scala, its directors, officers, agents and employees harmless from any third party claims, demands, or causes of action whatsoever arising from or related to the display, broadcast, reproduction, performance or other use or distribution of audio, visual, graphical and textual information developed by or on behalf of Licensee and not included in the Scala Software.

8. TERMINATION.

- 8.1 **By Licensee.** Licensee may terminate this Agreement at any time without notice to Scala. The license fee is not refundable and Scala will have no obligation to refund any amounts paid by Licensee under this Agreement upon its termination (except for any right of refund as set forth in Sections 5 and 7.3).
- 8.2 **Scala.** Scala may terminate this Agreement and all licenses granted hereunder upon thirty (30) days prior written notice if Licensee fails to comply with any of the terms and conditions of this Agreement or any Schedule to this Agreement, and such noncompliance is not cured within such thirty (30) day period.
- 8.3 **Return of Software.** Upon any termination of this Agreement, Licensee must cease all use of the Scala Software, and return to Scala all copies of the Scala Software, including license keys, together with the Documentation, or shall return all license keys and certify to Scala's reasonable satisfaction the destruction or permanent deletion of all copies of the Scala Software and Documentation from its computer systems.

9. GENERAL.

- 9.1 **Audit Rights.** Scala shall have the right reasonably to audit the deployment and use of the Scala Software by Licensee, including without limitation Licensee's conformance with the provisions of Section 3 herein. Licensee agrees to cooperate with Scala's reasonable request for access to Licensee's computer systems to ensure Licensee's adherence with the license terms hereunder.
- 9.2 **Purchase in Canada.** If Licensee acquired this software in Canada, Licensee agrees to the following: The parties hereto have expressly required that the present Agreement and any exhibits hereto be drawn up in the English language. / Les parties aux présentes ont expressément exigé que la présente convention et ses Annexes soient rédigées en langue anglaise.
- 9.3 **Notices.** Any notice required or permitted to be given by Licensee hereunder shall be in writing and shall be deemed to have been duly given (i) upon hand delivery, (ii) on the third day following delivery to the postal service as certified mail, return receipt requested and postage prepaid, or (iii) on the first day following delivery to a recognized overnight courier service, fee prepaid and return receipt or other confirmation of delivery requested. Any such notice shall be delivered or sent to Scala at the address as set forth below, or to such other address as Scala may designate from time to time. **Scala, Inc., 350 Eagleview Boulevard, Suite 150, Exton, PA 19341, USA.**

NOTICE ABOUT THE MPEG-2 VISUAL STANDARD. This software may include MPEG-2 visual decoding technology. MPEG LA, L.L.C. requires this notice: USE OF THIS PRODUCT IN ANY MANNER THAT COMPLIES WITH THE MPEG 2 VISUAL STANDARD IS PROHIBITED, EXCEPT FOR USE DIRECTLY RELATED TO (A) DATA OR INFORMATION (i) GENERATED BY AND OBTAINED WITHOUT CHARGE FROM A CONSUMER NOT THEREBY ENGAGED IN A BUSINESS ENTERPRISE, AND (ii) FOR PERSONAL USE ONLY; AND (B) OTHER USES SPECIFICALLY AND SEPARATELY LICENSED BY MPEG LA, L.L.C. If you have questions about the MPEG-2 visual standard, please contact MPEG LA, L.L.C., 250 Steele Street, Suite 300, Denver, Colorado 80206; <http://www.mpegla.com>.

NOTICE ABOUT THE AVC VISUAL STANDARD. This software may include AVC visual decoding technology. MPEG LA, L.L.C. requires this notice: THIS PRODUCT IS LICENSED UNDER THE AVC PATENT PORTFOLIO LICENSE FOR THE PERSONAL AND

NONCOMMERCIAL USE OF A CONSUMER TO (i) ENCODE VIDEO IN COMPLIANCE WITH THE AVC STANDARD ("AVC VIDEO") AND/OR (ii) DECODE AVC VIDEO THAT WAS ENCODED BY A CONSUMER ENGAGED IN A PERSONAL AND NON-COMMERCIAL ACTIVITY AND/OR WAS OBTAINED FROM A VIDEO PROVIDER LICENSED TO PROVIDE AVC VIDEO. NO LICENSE IS GRANTED OR SHALL BE IMPLIED FOR ANY OTHER USE. ADDITIONAL INFORMATION MAY BE OBTAINED FROM MPEG LA, L.L.C. SEE [HTTP://WWW.MPEGLA.COM](http://www.mpegla.com)

9.4 **Governing Law.**

A. United States Sales. If you acquired the Scala Software in the United States, Pennsylvania state law governs the interpretation of this agreement and applies to claims for breach of it, regardless of conflict of laws principles.

B. Sales Outside the United States. If you acquired the Scala Software in any other country outside the United States, the laws of the country of the majority-owned Scala subsidiary that sold the Scala Software to you applies, regardless of such country's conflicts of law provisions.

9.5 **Legal Effect.** This Agreement describes certain legal rights. You may have other rights under the laws of your state or country. You may also have rights with respect to the party from whom you acquired the Scala Software. This Agreement does not change your rights under the laws of your state or country if the laws of your state or country do not permit it to do so.

9.6 **U.S. Government Restricted Rights Legend.** The Scala Software, hardware, and Documentation provided under this Agreement bear restricted rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the rights in technical data and computer software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software Restricted Rights clause at 48 CFR 52.277-19, as applicable. Scala, Inc., 350 Eagleview Boulevard, Suite 150; Exton, PA 19341 USA.

9.7 **Assignment.** Neither party may assign any rights, duties, obligations or privileges under this Agreement without the prior written consent of the other party. A change of control or ownership shall not be deemed to be an assignment under this Section so long as the new owner has expressly assumed in writing all of the duties and obligations of the assignor and further provided, that Licensee shall remain liable and responsible to Scala (and its licensors) for the performance and observance of all such duties and obligations.

9.8 **Severability.** Should any part or provision of this Agreement be held unenforceable or in conflict with the law of any jurisdiction, the validity of the remaining parts or provisions shall not be affected by such holding.

9.9 **Limitation on Effect of Waiver.** Failure on the part of Scala to exercise, or Scala's delay in exercising, any of Scala's rights hereunder shall not be construed as a waiver or waiver of other breaches of this Agreement. Any single or partial exercise by a party of any right shall not preclude any other or future exercise thereof or the exercise of any other right in the Agreement.

9.10 **Entire Agreement.** This Agreement contains the entire understanding of the parties with respect to the transactions contemplated and supersedes any prior agreements or understandings among the parties with respect to the subject matter hereof. This Agreement may be amended only by a writing that refers to this Agreement and is signed by both parties.

- 9.11 **Export Law Assurances.** Licensee acknowledges that the Scala Software included herewith is subject to restrictions and controls imposed under the U.S. Export Administration Act and Canadian Exportation Laws. Licensee must comply with all domestic and international export laws and regulations that apply to the software. These laws include restrictions on destinations, end users and end use. Licensee hereby expressly agrees to defend, hold harmless and indemnify Scala, its directors, officers, and employees, from any claim, suit or dispute alleging that Licensee has exported the Scala Software in violation of any domestic or international export laws.
- 9.12 **Construction.** The headings in this Agreement are for convenience of the parties only. They do not constitute a portion of this Agreement and shall not be used in interpreting the construction of this Agreement.
- 9.13 **Third Party Beneficiary.** Licensee hereby agrees that the licensors of Third Party Software shall be considered third party beneficiaries of this Agreement and shall be entitled to bring a direct action against Licensee in the event of breach of any applicable provisions of this Agreement, pursuant to the terms and conditions of this Agreement.
- 9.14 **Force Majeure.** Neither party shall be in default if failure to perform any obligation hereunder is caused solely by unforeseen supervening conditions beyond that party's reasonable control, which could not have been prevented by the non-performing party's reasonable precautions, commercially accepted processes or substitute services, including acts of God, civil disturbances, strikes and labor disputes.
- 9.15 **Negation of Agency and Similar Relationships.** Nothing contained in this Agreement shall be deemed to create an agency, joint venture or partnership relationship.

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EXHIBIT 1.8
SCALA TRADEMARKS

The registered trademarks of Scala, Inc. include:

- Scala
- InfoChannel
- The Exclamation Point Logo

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EXHIBIT 1.11
SNP TERRITORY

CONFIDENTIAL**EXHIBIT 2.3****Scala Network Partner Benefits**

Below are the benefits you are eligible to receive. 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	Strategic Partner
Program Specific Logo Use	Hosted	Hosted
Training (# of Courses)	1	5
Partner Listing on Website	Basic	Full
Joint Case Studies	✓	✓
Partner Portal Access	✓	✓
Not for Resale Software (<i># of Starter Kits, # of players</i>)	1, 2	3, 10
Script Kits	\$	✓
Development Software (<i>APIs, etc.</i>)	✓	✓
Technical Support Incidents	Separate Agreement Required	
Exhibit at Scala Connected Signage Conference	\$	\$
Training Discount Off Partner Price	0%	10%
Joint Selling (<i>Scala Sales Person to Attend Customer Presentations with Partner</i>)		✓
Assigned Scala Point Person	✓	✓
Participation in Scala Booth at Industry Trade Shows		\$
Staff to Attend Scala Connected Signage Conference (<i>fee applies for all attendees</i>)	5	Unlimited
Co-Op Marketing Funds (\$5,000 cap)	2%	5%
Integration Assistance (<i>Assist from Scala R&D/Experts Group on integrating the Partners Product/Service with Scala Software</i>)	\$	\$
Quarterly Call with Executive Team Member		✓
Co-Managed Business Plan (<i>Scala assigned Point Person will review the partner's business plan annually</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	✓	✓

CONFIDENTIAL**EXHIBIT 2.3****Scala Network Partner Requirements**

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

Requirements	Certified Partner	Strategic Partner
Entry Fee	See Regional Addendum	See Regional Addendum
Annual Partner Program Fee	See Regional Addendum	See Regional Addendum
Trained and Certified Technicians	1	3
Demonstrated Ability to Implement Scala	✓	✓
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>	See Regional Addendum	See Regional Addendum
Operate a Scala Solution Centers <i>A Partner maintained demo area that includes Scala products</i>		1
Partnership Approval by Scala Executive Team		✓
Business Plan/ Marketing Plan <i>(An outline of how each of these requirement will be met)</i>	Marketing Plan	Marketing Plan

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EXHIBIT 2.3(h)

SNP BUSINESS PLAN FOR SCALA PRODUCTS

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EXHIBIT 2.5

SUPPORT BY SCALA TO SNP

Support by Scala under this Exhibit 2.5 shall apply only during those periods for which SNP has paid the partner fees for the Partner Program and associated Product maintenance fees, as applicable, under the Agreement. If support is terminated at any time, it shall be renewed only to the extent mutually agreed by the Parties in writing.

1. Support Services Requirement

Subject to the terms and conditions contained in this Exhibit and SNP's payment of the applicable partner fees and Product maintenance fees for their End Users Product deployments, the Scala Support Organization will provide SNP software Product maintenance (Product upgrades and updates) and incident support to SNP as further described hereunder. SNP understands and agrees that the partner fees and Product maintenance fees are non-refundable.

2. Term

With the exception of Player and Player related EX Products, initial Product maintenance to be supplied under this Agreement will commence upon installation and delivery of the product and shall remain in force for one year. Initial Product maintenance for Player and Player related EX Products will commence upon installation and delivery of the product and shall remain in force until the first anniversary of the associated Content Manager renewal date, regardless of the purchase date of the Player or Player related EX Product.

The SNP may renew Product maintenance for additional one (1) year periods (each, a "Renewal Term") upon mutually agreeable terms, provided that SNP indicates its desire to renew the Agreement at least thirty (30) days prior to the end of the Initial Period or a Renewal Term, as applicable.

3. Software Updates

Provided the SNP has paid for applicable Product maintenance, Scala will deliver to SNP new releases of software upgrades and updates on appropriate computer media or electronically, if and when they become available for general commercial release during the maintenance period for the Products purchased by and being supported for the SNP. SNP has the responsibility

and obligation to download the software upgrade/update and pertinent documentation for each affected Product covered by Scala Product maintenance. SNP agrees that, unless otherwise agreed to in writing by Scala and SNP, the installation and use of any software upgrades/updates shall be governed by the underlying End User License Agreement agreed to by SNP and Scala.

Scala may defer, postpone or withhold software upgrades/updates pursuant to this Agreement in the event SNP unreasonably delays installation of any new Product release, upgrade or update delivered to SNP pursuant to the terms hereunder.

SNP acknowledges and agrees that SNP is solely responsible for the acquisition and maintenance of the computer hardware, firmware, telecommunications, and information technology systems necessary to use and operate with the Scala Products. The Product documentation includes information regarding recommended hardware and software configurations for operation of the Product, and Scala may provide advice regarding appropriate operating system(s) configuration for use of the Product.

SCALA SHALL NOT BE RESPONSIBLE FOR CORRECTING ERRORS OR MALFUNCTIONS OF THE PRODUCT OR PRODUCT UPGRADES RELATED TO OR ARISING AS A RESULT OF SNP'S FAILURE TO MAINTAIN COMPUTER SYSTEMS ADEQUATE TO OPERATE THE SOFTWARE, OR USE OR OPERATION OF HARDWARE OR PRODUCT SYSTEMS THAT ARE INCOMPATIBLE WITH OR DEGRADE THE PERFORMANCE OF THE PRODUCT.

4. Incident Support

As part of the Partner Program benefits per Exhibit 2.3, Scala will provide technical support incidents. In the event technical support incidents exceed the amounts indicated, Scala shall invoice SNP based on the then current rates offered for incident support.

SNP's initial responsibility to seek Product support shall be via the Scala Support Portal. When registering the incident via the Scala Support Portal, SNP is responsible for informing Scala of the problem severity. Subsequent to registration on the Scala Support Portal, Scala will provide SNP internet and/or e-mail and/or telephone and/or facsimile support for problems associated with the use and operation of the Product. This support will be provided directly to the SNP. Scala reserves the right to refuse to provide incident support services, or to adjust the fee based on the environment

(hardware or operating systems) and/or age of the product(s) and current status of the product(s) respectively.

All incident support services to be provided under this Exhibit shall be provided Monday through Friday (excluding Scala public holidays) between the hours of:

In the U.S.

9:00 a.m. to 8:00 p.m. ET

In Europe

9:00 to 17:00 CET

Scala shall use commercially reasonable efforts to investigate problems reported by the SNP. Subject to the exceptions set forth at Section 5, if Scala determines that the problem is the result of a reproducible error, defect, or malfunction in the supported Product, Scala will make reasonable efforts to correct the problem. A Scala representative will provide SNP with a correction, a report/determination that further research is required, or confirmation that the system works per design specifications.

If a reproducible error is not correctable, a Product performance report will be generated and sent to Scala's Quality Assurance group. The correction for the error would be incorporated in the next release or software updates, if practical.

5. Services Not Covered

The following services are not covered by this Agreement:

a. Maintenance of facilities external to the Product; hardware support; questions regarding hardware installation, support or maintenance, telecommunications systems.

b. Repair or damage resulting from malfunction of electrical power or heating, ventilation and air conditioning; water damage; fire damage; theft; integration of the Product with non-compatible systems or software; misuse or improper use of the Product (including without limitation any use not specifically authorized in the EULA, documentation or manuals); vandalism; civil commotion or war; or any combination thereof.

- c. Support for altered or modified Product, other than that altered or modified by Scala and/or authorized agents of Scala; support versions of Product that have been superseded by a new release (provided that Scala will continue to support superseded versions for a reasonable period, not to exceed forty-five (45) days, sufficient for SNP to implement the newest version).
- d. Supervision of repairs on associated equipment.
- e. Telephone support of the end user is not part of the Partner Program.
- f. Services including programming, graphic design, media encoding, training, etc. are not part of the Partner Program.

6. SNP Responsibilities

- a. The SNP must have a valid license to use the Product from Scala and be in material compliance with the terms and conditions of such license.
- b. The SNP must be current in its payment obligations under this Agreement.
- c. The SNP shall be responsible for security of its confidential, proprietary and classified information as well as for the maintenance of adequate backup procedures for files, as Scala will not be responsible for loss of or altered files, data or programs.
- d. The SNP agrees to provide a safe and secure installation environment which meets the specified requirements of the computer system(s) on which the Software is running, including without limitation environmental controls, electric supply, service clearances, cable runs

7. Non-Payment

Scala reserves the right to decline to provide Support under this Agreement if any amounts invoiced to the SNP have not been paid.

8. Extraordinary Support Expenses

Scala reserves the right to charge for unusual or excessive telephone, shipping, handling, media or user manual expenses in connection with the Support to be provided hereunder. In all cases, Scala will notify the Customer of these costs in advance.

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EXHIBIT 4.4
SNP SCALA PRICE LIST