

**SCALA<sup>®</sup> PLATFORM PARTNER, REPLICATION AND DISTRIBUTION  
AGREEMENT**

This Scala Platform Partner, Replication and Distribution 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 Platform Partner” or “SPP”) (each a “Party,” collectively the “Parties”).

**BACKGROUND**

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

**B.** Whereas, SPP (i) is a supplier of either pre-configured stand alone hardware systems or displays including integrated PC type hardware upon which Scala applications may run, (ii) desires to integrate their hardware systems with Scala Software, (iii) desires to obtain certification of their hardware system and (iv) desires the right to replicate, package, and distribute Scala’s Software and Documentation according to the terms of this Agreement; and

**C.** Whereas Scala desires to enter into a Platform Partner Replication and Distribution Agreement with SPP whereby SPP will be responsible for (i) replicating Scala’s Software and Documentation, (ii) bundling and packaging the Scala Software and Documentation with SPP’s hardware system identified in Exhibit A and (iii) distributing such packaged hardware and software products to Scala Solution Sales Partners and/or Network Operating Partners in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, the parties hereby agree as follows:

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

(a) **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).

(b) **Agreement** shall mean this Agreement, fully executed by the Parties, which includes all Exhibits and Attachments.

- (c) **Bundled Product** means a copy of the Scala Software, Documentation, End User License Agreement, and SPP Materials, if any, packaged together in accordance with this Agreement.
- (d) **Confidential Information** shall have the meaning set forth in Section 14.
- (e) **Documentation** means all collateral materials normally provided from time to time by Scala to End Users for use of the Scala Software (such as, instruction/user manuals, templates, overlays, quick reference guides, brochures, data sheets, and registration cards), which are identified in Exhibit A, and all subsequent versions thereof provided to SPP pursuant to this Agreement.
- (f) **End User** means a person or entity that acquires a Bundled Product for use rather than resale or distribution.
- (g) **End-User License Agreement (EULA)** means the written license agreement attached as Exhibit C, which governs the use of the Scala Software by End Users and which is to be included with each copy of the Bundled Product packaged by SPP hereunder.
- (h) **Hardware** means either a PC based system or display including integrated PC type hardware manufactured by SPP on which the Scala Software is installed prior to sale.
- (i) **Scala Certified Partner** means a third party who acquires Bundled Products from SPP pursuant to a SPP Partner Agreement that complies with the requirements of this Agreement, and that grants such party the right to distribute Products to End Users but without the right to license any other dealers or distributors.
- (j) **Scala Software** means all current and future executable object code for Scala's software products identified in Exhibit A, including all subsequent versions thereof provided to SPP pursuant to this Agreement.
- (k) **Scala Trademarks** means the trademarks, trade names, and logos used by Scala that are identified in Exhibit A.
- (l) **SPP Materials** means printed and/or computer readable materials provided by SPP for inclusion in a package containing the Scala Software, Documentation, and End User License Agreement, all of which have been approved in advance, in writing, by Scala.
- (m) **Territory** means all countries in the world except (i) countries to which export or re-export of any Bundled Product, or the direct products of any Bundled Product, is prohibited by United States law without first obtaining the permission of the United States Office of Export Administration or its successor, and (ii) countries that may be hereafter excluded pursuant to the terms of this Agreement.

**2. SPP Benefits.** Upon execution of the Agreement by Scala and SPP, and provided SPP continues to meet the requirements outlined in Exhibit B-2 SPP shall be eligible to receive the benefits outlined by Scala in Exhibit B-1 of this Agreement and in the Partner Guide referenced at [www.scala.com/partnerguide](http://www.scala.com/partnerguide).

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

**4. SPP Hardware Certification.** Prior to any replication and/or distribution rights accruing to SPP, SPP agrees to have their Hardware product tested and certified by Scala for compatibility with the Scala Software. SPP shall be responsible for a product validation fee as outlined in Exhibit B-2.

## **5. License**

**(a) Rights Granted to SPP.** For each SPP Hardware that passes Scala's product validation test, per Section 4, Scala grants SPP a royalty free, non-exclusive license and right to:

- (i)** Reproduce the Scala Software, Documentation, and EULA;
- (ii)** Modify the Documentation to incorporate SPP's name, subject to the prior approval of Scala;
- (iii)** Preload the Scala Software on the SPP Hardware, and bundle Documentation, SPP Materials, and EULA in the manner specified by Scala;
- (v)** Distribute the Bundled Product to Scala Certified Partners in the Territory for further distribution to End Users in the Territory, and distribute the Bundled Product directly to End Users in the Territory, subject to the restrictions set forth in this Agreement.

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

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

- (i)** SPP shall not acquire Scala Software for use by SPP Affiliates unless permission is granted by Scala.
- (ii)** SPP may not, directly or indirectly, sell, resell, license or otherwise distribute or permit to be distributed Not-For-Resale Copies.
- (iii)** SPP shall not offer for sale, license or otherwise distribute or permit to be distributed any Scala Software or Bundled Product over third party websites, including but not limited to, e-bay, amazon.com, etc.

(iv) SPP shall not copy, translate, disassemble, decompile or reverse engineer the Scala Software, in whole or in part. To the extent that copies, corrections, translations, adaptations, arrangements or modifications may be necessary for the proper use of the Scala Software, or if information may be necessary to investigate the interoperability of Scala Software with other software, SPP 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. SPP shall not make copies of or make media translations of the user documentation for the Products, unless advance written approval is received from Scala.

## 6. SPP Reproduction Requirements

(a) **Reproduction and Packaging.** SPP agrees to accurately replicate the Scala Software and print the Documentation provided by Scala and to apply Microsoft Windows license labels as specified by SPP's Agreement with the Microsoft Corporation at the SPP's sole expense, and to package these items as specified by Scala. SPP also agrees to place a Scala license sticker over the power input port of the Hardware saying "By breaking this seal, you agree to the terms and conditions of the enclosed Scala End User License Agreement".

(b) **Scala Trademarks and Legends.** On all copies of the Documentation that SPP prints, SPP shall include copies of the Scala Trademarks, Scala's copyright notices, and other proprietary rights legends in the manner specified by Scala. If SPP wants to modify the use of a Scala Trademark, a copyright notice or proprietary rights legend, or include its own trademark, trade name, copyright notice, or proprietary rights legend, SPP shall obtain Scala's prior written approval of the proposed modification before implementing it.

(c) **Subcontracting.** SPP may subcontract to third parties such portions of the reproduction, printing, and packaging of the Scala Software, Documentation, EULA, and SPP Materials as SPP may, in its discretion, determine; provided, however, that SPP remains primarily liable for the performance of any such subcontractor and that any replication of the Scala Software may be subcontracted only to parties who have been previously approved by Scala and who have agreed in writing to be bound by the confidentiality provisions of this Agreement.

## 7. SPP Distribution Requirements

(a) **Inventory.** SPP will maintain an inventory of Bundled Products sufficient to adequately serve the needs of Scala Certified Partners and End Users.

(b) **Packaging.** SPP will distribute the Bundled Products only as packaged in accordance with this Agreement, with all packaging, warranties, disclaimers, and EULAs intact. SPP will make copies of the applicable EULA available to its Retail Dealers and End Users.

(c) **Product Returns.** SPP agrees to honor any refund requests received from Scala Certified Partners or End Users pursuant to the terms of the applicable EULA relating to Bundled Products distributed by SPP. SPP also agrees to provide all global warrantee service on SPP Hardware products that are sold to Scala Certified Partners or End Users per the SPP's standard terms. SPP will hold Scala harmless of any in or out of warrantee claims on the Hardware products sold to Scala Certified Partners or End Users.

(d) **Cost of Distribution.** All costs relating to replication, packaging, and distribution of the Scala Software and Documentation shall be borne by SPP.

(e) **Prices.** SPP is free to determine its own prices for the Bundled Products sold to Scala Certified Partners and End Users.

(f) **Reseller Agreements.** SPP may only sell Scala Software Products with SPP Hardware Products to Scala Certified Partners and End Users in the Territory, on such terms and conditions as may be determined by SPP.

(g) **Compliance with U.S. Export Laws.** SPP acknowledges that the export of the Products may be subject to compliance with the Export Administration Act Regulations of the Department of Commerce of the United States, as amended, and other export controls of the United States ("Export Laws"), which restrict the export and re-export of software media, technical data, and direct products of technical data. SPP agrees and shall cause each of its partners, employees, agents, and representatives to agree not to export or re-export any Bundled Products, or direct products of the Bundled Products, to any prohibited country in violation of the export laws. SPP agrees to indemnify Scala against any claim, demand, action, proceeding, investigation, loss, liability, cost, and expense, including attorney's fees, suffered or incurred by Scala and arising out of or related to any violation (whether intentional or unintentional) by SPP, its employees, agents, representatives, and Partners of any of the warranties or covenants of this Section 7(g).

(h) **Compliance with Foreign Law.** SPP will comply with all applicable international, national, state, regional, and local laws and regulations in performing its duties hereunder and in any of its dealings with Scala Certified Partners or End Users with respect to the Bundled Products.

(i) **Foreign Government Approvals.** For each country in which SPP intends to distribute Bundled Products, SPP shall, at its own expense, obtain and arrange for all foreign government approvals, consents, licenses, authorizations, declarations, filings, and registrations as may be necessary or advisable for the distribution of Bundled Products according to the terms and conditions of this Agreement, including but not limited to foreign exchange approvals, import licenses, fair trade approvals, and customs clearance. Scala shall have no right to ship Bundled Products to any country until SPP has provided Scala with satisfactory evidence that such approval or registration is not required or that it has been obtained.

(j) **Right to Restrict Scope of Territory.** Scala may, by written notice to SPP at least 60 days in advance, remove from the definition of Territory any country where Scala has specific reasons to believe that local laws, regulations, treaties, or enforcement policies or practices will not adequately protect Scala Trademarks, Scala's copyrights, and/or Scala's other rights in and to the Bundled Products. Such notice shall include a statement setting forth the reasons for such exclusion.

## 8. SPP Marketing Obligations

(a) **Marketing Efforts.** SPP agrees to use its reasonable efforts to market, promote, sublicense, and distribute the most current version of the Scala Software and Hardware. SPP agrees to advertise the Scala Software and Hardware in appropriate commercial media, to identify and contact potential Scala Certified Partners and End Users using direct mailings and other reasonable means, and to accurately advise potential Scala Certified Partners and End Users on the specifications, selection, use, and functionality of the Software and Hardware in accordance with the Documentation.

(b) **Marketing Plan.** SPP and Scala mutually agree that SPP shall create and execute a detailed plan for the marketing and sublicensing effort it will undertake as a SPP for the Scala Software and Hardware. Copies of such plan will be sent to Scala within thirty (30) days of the date of this Agreement.

## 9. Scala's Delivery Obligations

(a) **Initial Deliverables.** Scala will deliver the current version of the Scala Software and Documentation to SPP following execution of this Agreement and Scala's certification of SPP's Hardware. Scala will provide SPP with copies of the Scala Software on master diskettes or in another mutually agreeable computer-readable form that can be reproduced by SPP, and one copy of the Documentation in either camera-ready copy or computer-readable form.

(b) **New Versions.** Scala shall from time to time provide SPP copies of all new releases, updates, or revisions of the Scala Software and Documentation within a reasonable time if and when such release is made generally available by Scala. Scala will notify SPP of its plans for each new release, update, or revision of the Scala Software or Documentation within a reasonable time prior to such release.

(c) **New Products.** SPP understands and acknowledges that Scala continues to review software products available on the market and to conduct its own research and development activities with respect to the internal development of such new products. Scala makes no representations or warranties with respect to the continued availability of any of the Scala Software covered by this Agreement or with respect to the nature or availability of any future modifications, updates, or enhancements thereto. Similarly, Scala makes no representations with respect to any

new product offerings it may make in the future, the compatibility of such products with the Scala Software covered by this Agreement, or the availability of such new products to SPP.

## 10. Scala's Support Obligations

(a) **Support For End Users.** Scala will provide support to Scala Certified Partners and End Users of the Software to be distributed hereunder, in accordance with its then-current published software support policy.

(b) **Support for SPP.** While a SPP in good standing, Scala will give SPP, without charge, the technical information, current maintenance documentation, and telephone assistance needed to enable SPP to effectively reproduce, package, and distribute the Scala Software. SPP is not entitled to the source code for the Scala Software.

(c) **SPP Training.** Within thirty (30) days of the date of this Agreement, SPP agrees to attend Scala Software education classes at Scala's designated site to assist and train SPP's employees in the marketing and use of the Scala Software. Thereafter, additional training will be available at SPP's option. All training shall be provided at Scala's then-current charges. All out-of-pocket travel and lodging expenses incurred by SPP are SPP's responsibility.

## 11. Scala's Warranties

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

(b) **Media.** Scala warrants to SPP that the media on which the Scala Software is delivered to SPP is free from defects in material and workmanship. Scala agrees to replace any media delivered to SPP that proves defective.

(c) **Non-infringement.** Scala warrants to SPP that the reproduction and distribution of the Scala Software and Documentation by SPP, the marketing and distribution thereof by Scala Certified Partners, and the use of the Scala Trademarks in connection therewith will not infringe or misappropriate the proprietary rights of any third party.

(d) **End User Warranties.** Scala will provide a warranty for the End Users of the Software as set forth in the EULA attached as Exhibit B. SPP is not authorized to make any other warranties on Scala's behalf.

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

## 12. SPP Warranties

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

(b) **Replication.** SPP represents and warrants that it will accurately replicate the Scala Software and Documentation and that the Hardware and Scala Software distributed by SPP will not contain any viruses, worms, date bombs, time bombs, or other code that is specifically designed to cause the software to cease operating or to damage, interrupt, or interfere with any End User's Software or data.

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

## 14. Confidentiality

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

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

(b) Permitted Use and Disclosures. Notwithstanding the provisions of Section 14(a) above, each Party may disclose the other Party's Confidential Information to the extent such disclosure is reasonably necessary to comply with applicable governmental laws, regulations, or orders; provided that if a Party is required to make any such disclosure of the other Party's Confidential Information, it will, to the extent it may legally do so, give reasonable advance notice to the latter Party of such disclosure sufficient to give the disclosing Party an opportunity to secure confidential treatment of such information prior to its disclosure (whether through protective orders or otherwise). Each Party may otherwise use the Confidential Information of the other as reasonably necessary to enforce, or perform its obligations under, this Agreement.

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

## 15. Scala Trademarks

(a) Use. Distributor acknowledges that the Scala Trademarks are trademarks owned solely and exclusively by Scala. Scala hereby grants SPP 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 Bundled Product in accordance with this Agreement and (ii) as part of the SPP

Trademarks to market and promote SPP's business and the Scala Software. SPP agrees to use the Scala Trademarks only in the form and manner (with appropriate legends) prescribed by Scala. SPP agrees not to use any other trademark or service mark in connection with any of the Scala Trademarks without prior written approval of Scala. SPP agrees to mark all advertising and other uses of the Scala Trademarks with a legend indicating that the Scala Trademarks are the property of Scala and that they are being used under license from Scala, together with any other legends or markings that may be required by law. All ownership and goodwill from the use of the Scala Trademarks shall inure solely to the benefit of Scala.

(b) **Scala Review.** From time to time as Scala shall reasonably request, SPP shall furnish to Scala for its examination a copy of all Bundled Product packaging and Documentation, as well as advertising, brochures, and other materials used to market the Scala Software.

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

(d) **Recordation.** Scala has the right to provide and record in the Territory a separate trademark license for SPP for the Scala Trademarks. SPP shall cooperate in the preparation and execution of such document. Upon termination of the trademark license set forth in this Section 15, SPP shall cooperate in the cancellation of any trademark licenses that have been recorded. All domain names through which the Scala Software are provided shall be registered in the name of Scala or its Affiliate or other designee. SPP shall not register any Scala mark or any other mark confusingly similar to any Scala mark.

(e) **Failure to Obtain Trademark Protection.** If Scala is unable to secure trademark registration in any country in the Territory, the Territory shall be amended to exclude such country, and this Agreement shall otherwise continue in full force and effect and SPP shall make no claim whatsoever against Scala.

## **16. Indemnification**

(a) **By Scala.** Scala will defend, indemnify, and hold SPP harmless from and against any and all liabilities, losses, damages, costs, and expenses (including legal fees and expenses) associated with any claim or action brought against SPP for actual or alleged infringement of any registered and valid U.S. patent, copyright, trademark, service mark, trade secret, or other property right based on the duplication, sale, license, or use of the Scala Software or Documentation in accordance with this Agreement, provided that SPP promptly notifies Scala in writing of the claim and allows Scala to control, and fully cooperates with Scala in, the defense and all related settlement negotiations. Scala shall have no liability for any settlement or compromise made without its consent. Upon notice of an alleged infringement, or upon Scala's conclusion that such a claim is likely, Scala shall have the right, at its option, to obtain the right for SPP to continue to exercise the rights granted under this Agreement, substitute other

computer software with similar operating capabilities, or modify the Scala Software so that it is no longer infringing. If none of the above options are reasonably available, in Scala's sole opinion, Scala may terminate this Agreement. Scala shall have no liability regarding any infringement claim arising out of: (i) use of the Scala Software in combination with non-Scala software, data or equipment if the infringement was caused by such use or combination; (ii) any modification, alteration or derivation of the Scala Software made by or on behalf of SPP; or (iii) SPP's use of third party software or works of authorship in conjunction with the Scala Software. THE FOREGOING STATES SCALA'S ENTIRE LIABILITY AND SPP'S EXCLUSIVE REMEDY FOR INFRINGEMENT OR CLAIMS OF INFRINGEMENT OF ANY COPYRIGHT, PATENT AND OTHER PROPRIETARY RIGHTS BY THE SCALA SOFTWARE.

(b) **By SPP.** SPP shall indemnify and hold Scala harmless from and against any and all liabilities, losses, damages, costs, and expenses (including legal fees and expenses) associated with (i) any claim or action brought against Scala that may arise from SPP's improper or unauthorized replication, packaging, marketing, distribution, installation, or support of the Bundled Product or Hardware, including claims based on representations, warranties, or misrepresentations made by SPP; (ii) inadequate installation, support, or assistance by SPP; (iii) any representations, warranties, or covenants made with respect to the Scala Software/Bundled Product, beyond the Scala Software use terms or beyond the representations and warranties made by Scala; (iv) otherwise arising out of the marketing, promotion, commercialization or use of the Bundled Product pursuant to this Agreement; (v) or any other improper or unauthorized act or failure to act on the part of SPP.

## **17. Limitation of Liability**

(a) EXCEPT FOR EITHER PARTY'S LIABILITY ARISING UNDER ARTICLE 14, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR LOST PROFITS OR REVENUE, COST OF SUBSTITUTE GOODS OR SERVICES, OR ANY SPECIAL, CONSEQUENTIAL, RELIANCE, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE.

(b) EXCEPT FOR ANY UNAUTHORIZED USE OR EXPLOITATION BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY OR A FAILURE TO COMPLY WITH ARTICLE 14, AND EXCLUDING EACH PARTY'S RESPONSIBILITIES UNDER ARTICLE 16, IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE TOTAL PAYMENTS MADE BY ONE PARTY TO THE OTHER DURING THE TWELVE MONTHS PRECEDING IMPOSITION OF SUCH LIABILITY.

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

## 18. Term and Termination

(a) **Term.** This Agreement will continue in effect for two (2) years from the date hereof (“Initial Term”). Upon expiration of the Initial Term and each Renewal Term thereafter, this Agreement will be automatically renewed for an additional one (1) year term (“Renewal Term”) unless terminated by either party upon ninety (90) days notice prior to the expiration of the Initial Term or any Renewal Term.

(b) **Termination for Breach.** Either party may terminate this Agreement prior to the expiration of any Term in the event of a material breach of the terms or conditions of this Agreement by the other party if that breach is not cured within thirty (30) days of written notice from the party not in breach. In addition to these rights of termination, each party will have the right, in the event of an uncured breach by the other party, to avail itself of all remedies or causes of action, in law or equity, for damages as a result of such breach.

(c) **Effect of Termination.** Upon termination of this Agreement for any reason, SPP shall immediately cease duplication of the Scala Software and Documentation, and will return to Scala, at SPP’s expense, the master versions of all Scala Software, Documentation, and Confidential Information of Scala. SPP shall remit all royalties and other fees due to Scala within ten (10) days of such termination. The obligation of confidentiality set forth in this Agreement shall remain in effect notwithstanding any termination of this Agreement.

(d) **Effect on End Users.** Termination by either party will not affect the rights of any End User under the terms of the EULA.

## 19. General Provisions

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

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

To: Scala, Inc.

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

To: SPP

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

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

(e) **Force Majeure.** Neither party shall be responsible for delays or failure of performance resulting from acts beyond the reasonable control of such party. Such acts shall include, but not be limited to, acts of God, strikes, walkouts, riots, acts of war, epidemics, failure of suppliers to perform, governmental regulations, power failures, earthquakes, or other disasters.

(f) **Survival of Certain Provisions.** The indemnification and confidentiality obligations set forth in the Agreement shall survive the termination of the Agreement by either party for any reason.

(g) **Headings.** The titles and headings of the various sections and paragraphs in this Agreement are intended solely for reference and are not intended for any other purpose whatsoever or to explain, modify, or place any construction on any of the provisions of this Agreement.

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

(i) **Entire Agreement.** The parties have read this Agreement and agree to be bound by its terms, and further agree that it constitutes the complete and entire agreement of the parties and supersedes all previous communications, oral or written, between them relating to the license

and to the subject matter hereof. No representations or statements of any kind made by either party that are not expressly stated herein shall be binding on such party.

(j) **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, SPP 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 SPP in obtaining, retaining or directing any business.

(k) **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.

(l) **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.

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

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

SPP:

SCALA:

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

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

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

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

Its: \_\_\_\_\_ Its: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT A**

**I. SOFTWARE**

Scala 5 Player

**DOCUMENTATION**

Scala Quick Start Guide

**II. HARDWARE**

**III. SCALA TRADEMARKS**

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## EXHIBIT B-1

### Scala Platform Partner Benefits

Below are the benefits you are eligible to receive based upon your partnership level. The \$ symbol represents benefits that may involve additional fees and the \* requires executive approval based on the quality of business and the opportunity available. These benefits are described in more detail in the Partner Guide referenced at [www.scala.com/partnerguid](http://www.scala.com/partnerguid).

Benefits	Certified Partner
Program Specific Logo Use	✓
Training (# of Courses)	1
Partner Listing on Website	Full
Joint Case Studies	✓
Partner Portal Access	✓
Not for Resale Software ( <i># of Starter Kits, # of players</i> )	1, 1
Development Software ( <i>APIs, etc.</i> )	✓
Technical Incident Support	\$
Exhibit at Scala Connected Signage Conference	\$
Training Discount Off Partner Price	10%
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>	Unlimited
Joint Press Release <i>(Press release announcing partnership including an endorsement by Scala)</i>	1
Product/Service Validation <i>(Stamp of approval for Scala on the Partners product)</i>	\$
Promotion in Partner Newsletter	1
Scala Partner Plaque	✓

**EXHIBIT B-2**

**Scala Platform Partner Requirements**

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

Requirements	Certified Partner
Entry Fee	See Regional Addendum
Annual Partner Program Fee	See Regional Addendum
Dedicated Scala Alliance Manager <i>A Scala point person at the partner's location</i>	✓
Validated Product - Per Product Fee <i>Product that has been tested and an image created by Scala</i>	\$
Business Plan/ Marketing Plan <i>(An outline of how each of these requirement will be met)</i>	Marketing Plan

## EXHIBIT C

### **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.

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- 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.
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- 1.5. "Software Maintenance" means the provision of Software Updates.
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- 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.

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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.

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- 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

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**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.