

## MASTER MARKETING AGREEMENT

This MASTER MARKETING AGREEMENT (the "Master Agreement") is entered into effective as of \_\_\_\_\_, 20\_\_ ("Effective Date"), by and between Company A, a \_\_\_\_\_ corporation having its principal place of business at \_\_\_\_\_ ("Company A"), and Company B, a \_\_\_\_\_ corporation having its principal place of business at \_\_\_\_\_ ("Company B").

### BACKGROUND

- A. Company A is in the business of \_\_\_\_\_. Company B is in the business of \_\_\_\_\_.
- B. The parties desire to enter into a Master Marketing Agreement setting forth a general legal framework for joint marketing projects by the parties, with the details of the specific marketing projects to be agreed upon and set forth in specific Marketing Project Addenda to be executed and attached hereto.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

#### 1.0 DEFINITIONS

- 1.1 "Company A Products" shall mean Company A's products which are (i) sold to Company B under the ***[name relevant sales agreement]*** and (ii) specified in the applicable Marketing Project Addendum.
- 1.2 "Deliverables" shall mean shall mean the material described in a Marketing Project Addendum to be delivered by the named party with respect to the Marketing Activities set forth therein.
- 1.3 "Executive Sponsor" shall mean that member of a party's senior executive management appointed by that party to act as an executive sponsor for dispute resolution.
- 1.4 "Company B Products" shall mean Company B's products which are (i) sold to Company A under the ***[name relevant sales agreement]*** and (ii) specified in the applicable Marketing Project Addendum.
- 1.5 "Marketing Activities" shall be those marketing activities which the parties agree to undertake jointly, including, but not limited to, the types of activities listed in Section 4 below, the details of which shall be set forth in an executed Marketing Project Addendum.
- 1.6 "Marketing Project" shall mean such Marketing Activities as the parties may mutually agree to undertake from time to time, the details of which shall be set forth in an executed Marketing Project Addendum.
- 1.7 "Marketing Project Addendum" shall mean an addendum to this Master Marketing Agreement that defines a particular Marketing Project to be undertaken by the parties, as more specifically described in Section 3.1. Each Marketing Project Addendum shall be given a unique Marketing Project name or identification for ease of identification by the parties and must be executed by the parties to be effective.
- 1.8 "Project Manager" shall mean the person designated by each of the parties who shall act as liaison to the other party with respect to performance of the Marketing Activities contemplated under a particular Marketing Project Addendum and who shall provide the other party from time to time with the names and telephone numbers of additional specific contact persons (e.g., to communicate specific information regarding specific aspects of the Marketing Project) when such direct contact is preferable. The names, addresses and telephone and fax numbers of the Project

Managers shall be set forth in each Marketing Project Addendum. In the event that either party appoints a new Project Manager, such party will promptly notify the other party.

- 1.9 “Products” shall mean, collectively, Company B Products and Company A Products.
- 1.10 “Property” shall mean all property, including designs, software, hardware, documentation, models, tools, devices and other materials, owned by or licensed to the named party.

## 2.0 PURPOSE AND SCOPE

- 2.1 Purpose. The purpose of this Master Marketing Agreement is to set forth the parties’ agreement with respect to the basic legal framework for certain joint Marketing Activities, the terms of which will be more specifically defined and agreed upon in the various specific Marketing Project Addenda to be executed hereunder.
- 2.2 Relationship with Other Agreements. The parties acknowledge and agree that this Master Marketing Agreement is generally intended to address only the marketing terms and conditions agreed upon by the parties. The parties agree that any sales of Product, development work, testing, licensing, distribution, support, maintenance, manufacture rights or interoperability obligations shall be set forth in separate written agreements signed by the parties.

## 3.0 PROCEDURE

- 3.1 Marketing Project Addenda. It is contemplated that the parties will pursue various Marketing Projects pursuant to this Master Marketing Agreement. For each such Marketing Project, the parties shall in good faith negotiate a Marketing Project Addendum, each of which upon execution by the parties shall be deemed a part of this Master Marketing Agreement.
  - 3.1.1 *Contents*. Each Marketing Project Addendum may include, for the particular Marketing Project covered by the Marketing Project Addendum, one or more of the following:
    - 3.1.1.1 Marketing Project name and definition;
    - 3.1.1.2 Project Managers from Company B and Company A for the Marketing Project;
    - 3.1.1.3 Products covered by the Marketing Project;
    - 3.1.1.4 Marketing Activities, including those defined in Section 4 below, to be undertaken as part of the Marketing Project;
    - 3.1.1.5 each party’s Deliverables and a detailed description of the responsibilities of each party with respect to the Marketing Activities undertaken; and
    - 3.1.1.6 a reasonably detailed target schedule for Marketing Activities, Deliverables and fulfillment of the parties’ responsibilities.
  - 3.1.2 *Obligations and Execution*. The parties shall use reasonable commercial efforts to conduct the Marketing Activities and deliver the Deliverables pursuant to the terms and/or conditions provided in each Marketing Project Addendum. Each Marketing Project Addendum shall be signed by authorized representatives of the parties. This Master Marketing Agreement may cover more than one Project Addendum at any given time. An outline of a Marketing Project Addendum is attached as Exhibit A and the parties may vary the format and contents thereof as appropriate to the particular Marketing Project.

- 3.2 Delays. Each party agrees to provide the other with notice of any anticipated delays. Further, the parties agree that the due date for any Marketing Activities, Deliverables and fulfillment of the parties' responsibilities hereto, performance of which was delayed on account of failure of the other party to complete any of its prerequisite obligations in a timely fashion, shall be extended by one day for each day of lateness by the other party. As appropriate, the parties agree to negotiate in good faith remedial action that may be required due to delays.
- 3.3 Changes to the Project Addendum. In the event of a proposed change in any material aspect of a Project Addendum, the parties must mutually agree to any such change in writing prior to its implementation.
- 3.4 Relationship with Marketing Project Addenda. The parties acknowledge and agree that any of the terms and condition of this Master Marketing Agreement may be varied by the terms and conditions of a Marketing Project Addendum with respect to any Marketing Activities, Deliverables and obligations covered by such Project Addendum. In the case of a conflict, the terms and conditions of the Project Addendum shall take precedence over those of this Master Marketing Agreement.

#### 4.0 MARKETING ACTIVITIES

- 4.1 Marketing Activities. The parties shall include in the Marketing Project Addendum any type of joint Marketing Activity which they agree to undertake, including, but not limited to, the following:
- (a) Interoperability testing. If the Marketing Project will include interoperability testing, the parties shall set forth the details necessary to perform interoperability testing, including such items as the specific Products, identification and procurement of testing guidelines, allocation of testing responsibility, identification of testing party, party Property, payment responsibility, consequences of testing failure, form of test reports and results, retesting responsibility and payment in the event of a change in any Product, release of testing information and results to third parties and any other matters regarding interoperability testing upon which the parties have agreed. Any Property loaned by one party to the other for interoperability testing shall only be loaned pursuant to an executed equipment loan agreement, a copy of which shall be attached to the applicable Marketing Project Addendum. The parties agree, that unless otherwise set forth in the Marketing Project Addendum, interoperability test results and other information regarding interoperability testing, will be used to verify interoperability and for no other purpose. Test results will not be used to report product shortcomings nor as benchmarks or to illustrate competitive advantages or disadvantages of products from different parties.
  - (b) Laboratories. If the Marketing Project will include laboratory activities, the parties shall set forth the details necessary to perform the laboratory activities, including such items as laboratory location, party Property, procurement and payment for laboratory and Property, responsibility for daily operation of laboratory, rules of use, security measures, confidentiality and any other matters regarding laboratory activities upon which the parties have agreed.
  - (c) Marketing Materials and Product Information. If the Marketing Project will include sharing of marketing materials and Product information, the parties shall set forth the details regarding such marketing materials and Product information, including the specific types, quantities and use of such items and any other matters regarding such materials and information upon which the parties have agreed.
  - (d) Joint collateral and sales tools. If the Marketing Project will include use of joint collateral and sales tools, the parties shall set forth the details regarding such joint collateral and sales tools, including the specific types of joint collateral and other sales

tools, responsibility for the development, procurement and payment therefor, approval process for each party for such items, distribution, dissemination and use of such items and any other matters regarding such joint collateral and sales tools upon which the parties have agreed. The parties agree that no collateral or sales tools which mentions the joint marketing relationship between the parties, the other party or its Products shall be used by either party without the prior review and consent to the format, content, timing and use of such items by the appropriate representatives for each party.

- (e) Joint sales calls. If the Marketing Project will include joint sales calls, the parties shall set forth the details regarding such calls, including the customers, schedule and coordination for such calls and any other matters regarding joint sales calls upon which the parties have agreed.
- (f) Advertising and media campaigns. If the Marketing Project will include advertising and media campaigns, the parties shall set forth the details regarding such advertising and media campaigns, including the hiring of consultants, responsibility for the development, procurement and payment therefor, approval process for each party for such items, distribution, dissemination and use of such items and any other matters regarding advertising and media campaigns upon which the parties have agreed. The parties agree that no advertising or media campaign which mentions the joint marketing relationship between the parties, the other party or its Products shall be used by either party without the prior review and written consent to the format, content, timing and use of such items by the appropriate representatives for each party.
- (g) Customer training, seminars and forums. If the Marketing Project will include customer training, seminars and forums, the parties shall set forth the specific details of any training, seminars or forums for customers, customers who will participate, planning and coordination, hiring of consultants, responsibility for development, procurement and payment for the facilities, materials, consultants, payment of customer expenses, schedules and any other matters regarding such customer training, seminars and forums upon which the parties have agreed.
- (h) Participation in trade shows and conferences. If the Marketing Project will include joint participation in trade shows and conferences, the parties shall set forth the details regarding such trade shows and conferences, including a schedule of such trade shows or conferences, coordination and planning of participation, responsibility for development, procurement and payment of materials, Property and any other matters regarding such joint participation upon which the parties have agreed.
- (i) Websites, and references and cross-references to the parties' websites. If the Marketing Project will include joint creation or use of a marketing website and any referencing or cross-referencing from one party's website to the other, the parties shall set forth the details regarding such websites and references to which the parties have agreed. The parties agree that no website which mentions or cross-references to the other party, its Products, its website or the joint marketing relationship between the parties shall be used by either party without the prior review and *[written]* consent to the format, content, timing and use thereof by the appropriate representatives for each party.
- (j) Press releases and news conferences. If the Marketing Project will include press releases or new conferences, the parties shall set forth the details regarding such press releases or new conferences, including the specific details of any press releases or announcements mentioning the parties' Products or describing the joint marketing relationship between the parties, including the timing, media and formats therefor and any other matters regarding press releases or new conferences upon which the parties have agreed. The parties agree that no press release or announcement which mentions the joint marketing relationship between the parties, the other party or its Products shall be used by either

party without the prior review and consent to the format, content, timing and use of such items by the appropriate representatives for each party.

- (k) Engaging consultants. If the Marketing Project will include engaging consultants, the parties shall set forth the details regarding such engagement, including the scope of the engagement, supervision of the consultant, the ownership of the consultant's work, procurement, payment and necessary documentation of engagement and any other matters regarding the engagement of consultants upon which the parties have agreed. Neither party shall have the authority to engage a consultant on behalf of the other party.
- (l) Market research. If the Marketing Project will include any joint market research to be conducted by or for the parties, the parties shall set forth the details regarding such research, including the scope of such research, the hiring of consultants, the payment therefor, the use and disclosure of any market research results and any other matters regarding such market research upon which the parties have agreed.
- (m) Other Matters. If the Marketing Project will include any other joint marketing activities not enumerated in this Section 4, the parties shall set forth the specific details of any other agreement regarding marketing. Such items include, but not are limited to, matters such as sharing of marketing feedback and market reaction, sharing of sales and marketing leads and opportunities, sharing of information gathered regarding the other party's Products and issues with the other party's Products and any other marketing matters upon which the parties desire to collaborate.

## **5.0 RIGHTS AND RESPONSIBILITIES OF EACH PARTY**

- 5.1 Expenses. Unless otherwise specifically agreed in a Marketing Project Addendum, each party shall be responsible for all of its respective costs, expenses and liabilities incurred by it in performing its obligations under this Master Marketing Agreement and any Marketing Project Addendum.
- 5.2 Sales. Each party shall be solely responsible for the sale and marketing of its own Products. Any sale of Product shall be pursuant to a separate written agreement or agreements signed by the parties.
- 5.3 Training. Unless otherwise specifically agreed in a Marketing Project Addendum, each party shall be responsible for training its own employees and sales force with respect to the terms and conditions of this Master Marketing Agreement and the general nature of the other party's Products and neither party shall have any obligation to train the other party's employees or sales force.
- 5.4 Product Support. Each party is responsible for providing customer support for its own Products. Any support for Product shall be pursuant to a separate written agreement or agreements signed by the parties.
- 5.5 Loaned Equipment. Pursuant to a particular Marketing Project Addendum, a party may provide that party's Property, equipment, designs, materials, software and other property (collectively "Loaned Equipment") to the other party for its use in fulfilling its obligations pursuant to the a particular Marketing Project Addendum. All Loaned Equipment furnished in connection with this Master Marketing Agreement shall (i) be clearly marked or tagged as the property of the loaning party; (ii) be and remain personal property; (iii) be used only to fulfill a party's obligations hereunder or pursuant to the Marketing Project Addendum; (iv) be kept free of liens and encumbrances; and (v) not be modified or copied in any manner by a party without prior written consent of the loaning party. No Loaned Equipment shall be delivered until the parties have executed an equipment loan agreement which shall be attached to the Marketing Project

Addendum, in which event, the provisions of the equipment loan agreement shall control over the provisions of the preceding sentence of this section.

- 5.6 Restrictions. With respect to any computer software contained in the other party's Products to which a party is provided access hereunder, each party agrees, as a condition of the rights granted under this Master Marketing Agreement and except as otherwise expressly and unambiguously authorized hereunder, (i) not to create or attempt to create, by reverse engineering or otherwise, the source code or internal structure of the other party's Product or any part thereof from the object code or from the information made available to it, (ii) not to remove any copyright, trademark or other notice of the other party nor relocate or alter any proprietary rights marking or notice appearing on or in any party's Property or Products, (iii) not to use for any purpose other than performance of this Master Marketing Agreement or to disclose to third parties (iv) not to copy, modify or distribute the other party's Products and (v) prior to disposing of any media or apparatus, to destroy completely any Confidential Information contained therein.
- 5.7 Responsibility of Project Managers. The Project Managers shall (i) serve as the primary point of contact between the parties, (ii) coordinate the parties' undertakings and activities in connection with the relevant Marketing Project Addendum including without limitation, defining and tracking schedules, facilitating Project reviews, coordinating efforts of the parties, if necessary, (iii) address technical and resource allocation issues arising in connection with the relevant Marketing Project Addendum, and (iv) have first tier responsibility for resolving disputes. The Project Managers shall be responsible for escalating disputes and issues to the Executive Sponsors for resolution, as required. The Project Managers shall arrange and hold meetings during the course of any undertaking set forth in a Marketing Project Addendum. The location, specific times and attendees shall be as agreed by the Project Managers.
- 5.8 Correction of Inaccuracies. Each party shall always portray the other party and its products fairly and will make no representations or guarantees concerning the other party or its Products that are false or misleading. Each party agrees to promptly correct any statement or representation made by that party upon written notice from the other party that such statement or representation is not accurate.

## 6.0 OWNERSHIP AND LICENSE

- 6.1 No Ownership Interest/License Conveyed. No ownership interest in, nor license to, any Products, Property, technology or services is conveyed under this Agreement.
- 6.2 Trademark License. During the term of this Agreement, each party grants to the other party a nonexclusive, nontransferable license to use the trademarks, trade names, logos and slogans *[as mutually agreed upon by the parties from time to time] [as listed on Exhibit C hereto]* as updated by the party, in connection with the Marketing Projects undertaken pursuant to this Master Marketing Agreement.

## 7.0 DISPUTE RESOLUTION

- 7.1 Dispute Resolution Procedure.
- 7.1.1 *Project Managers*. In the event of disagreement with respect to any aspect of this Master Marketing Agreement, the parties agree to discuss it in good-faith to reach an amicable resolution, and to escalate such resolution process first to the Project Managers for the relevant Marketing Project Addendum.
- 7.1.2 *Executive Sponsors*. If the Project Managers are unable to resolve the dispute within fifteen (15) days the parties shall escalate the dispute to the Executive Sponsors for resolution.

7.1.3 *Mediation and Legal Action.* In the event that the Executive Sponsors are unable to resolve any dispute within ten (10) days as set forth above, then the parties may agree to submit the matter to mediation. In the event that the parties are unable to resolve the dispute or choose not to submit the dispute to mediation, then any party shall have the right to pursue any remedies available to it under law or equity.

7.2 Other Remedies Not Affected. Nothing in this Section 7 shall preclude a party from seeking injunctive relief or other equitable relief in court to prevent or stop breach of its intellectual property rights or disclosure of Confidential Information in violation of this Master Marketing Agreement.

## **8.0 CONFIDENTIALITY**

8.1 Master Marketing Agreement as Confidential Information. Each party shall obtain the other's written consent prior to any publication, advertisement, presentation, public announcement or press release concerning the existence or terms and conditions of this Master Marketing Agreement, including any particular Marketing Project Addendum.

8.2 Confidential Information. The parties shall comply with the provisions of the "Non-Disclosure Agreement" attached hereto as Exhibit B ("NDA"). For purposes of this Master Marketing Agreement, the term "Confidential Information" shall have the meaning ascribed to it in the NDA. To the extent that the term stated in the NDA terminates prior to the termination of this Master Marketing Agreement or a Marketing Project Addendum, the parties agree that the term of the NDA shall be automatically extended to the term of this Master Marketing Agreement or the Marketing Project Addendum.

8.3 Marketing/Customer Disclosures. It is contemplated that pursuant to a particular Marketing Project, the parties may need the right to disclose certain Confidential Information of the other party to customers and potential customers for marketing purposes. The parties shall set forth in the Marketing Project Addendum how and under what restrictions such Confidential Information may be disclosed to customers or potential customers.

## **9.0 DISCLAIMER OF ALL WARRANTIES**

ALL TECHNICAL INFORMATION, HARDWARE, SOFTWARE, MATERIALS, PRODUCTS, PROPERTY AND CONFIDENTIAL INFORMATION PROVIDED BY EITHER PARTY TO THE OTHER IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. THE ENTIRE RISK OF USE IS ASSUMED BY THE PARTY USING SUCH ITEMS. EACH PARTY SPECIFICALLY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, WITH RESPECT TO SUCH ITEMS.

## **10.0 LIMITATION OF LIABILITY**

10.1 CONSEQUENTIAL DAMAGES EXCLUSION. EXCEPT FOR BREACH OF THE NDA AND BREACH OF SECTION 8 (CONFIDENTIALITY), UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER ANY CONTRACT, STRICT LIABILITY, NEGLIGENCE OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR LOST PROFITS IN CONNECTION WITH THE SUBJECT MATTER OF THIS MASTER MARKETING AGREEMENT OR ANY MARKETING PROJECT ADDENDA.

10.2 DIRECT DAMAGES. EXCEPT FOR BREACH OF THE NDA AND BREACH OF SECTION 8 (CONFIDENTIALITY) THE PARTIES AGREE THAT NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES ARISING FROM ITS PERFORMANCE OF ANY MARKETING

PROJECT ADDENDUM IN EXCESS OF ALL AMOUNTS PAID BY A PARTY PURSUANT TO THE THAT MARKETING PROJECT ADDENDUM.

**11.0 TERM AND TERMINATION**

- 11.1 Term. This Master Marketing Agreement shall be effective upon the Effective Date and shall remain in force for a period of \_\_\_\_\_ ( ) years, unless terminated sooner as set forth in this Section 11. Each Marketing Project Addendum shall have the term set forth therein. Expiration or termination of this Master Marketing Agreement shall result in expiration or termination, as the case may be, of all Marketing Project Addenda unless the parties otherwise agree in writing.
- 11.2 Termination for Cause. This Master Marketing Agreement may be terminated by either party for cause immediately upon the occurrence of and in accordance with the following:
- (a) Insolvency Event. A party may terminate this Agreement by delivering written notice to the other party upon the occurrence of any of the following events: (i) a receiver is appointed for the other party or its property; (ii) the other party makes a general assignment for the benefit of its creditors; (iii) the other party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, which proceedings are not dismissed within sixty (60) days; or (iv) the other party is liquidated, dissolved or ceases normal business operations.
  - (b) Default. A party may terminate this Master Marketing Agreement effective upon written notice to the other party if the other party violates any covenant, agreement, representation or warranty contained herein in any material respect or defaults or fails to perform any of its obligations or agreements hereunder in any material respect, which violation, default or failure is not cured within thirty (30) days after notice thereof from the non-defaulting party stating its intention to terminate this Agreement by reason thereof.
- 11.3 Termination for Convenience. A party may terminate this Agreement hereunder at any time for its convenience, with or without cause, upon delivery of sixty (60) days' written notice to the other party.
- 11.4 Survival of Rights and Obligations Upon Termination. Sections 1, 5, 6, 7.1.3, 7.2, 8, 9, 10, 11.4, 11.5 and 12 shall survive termination or expiration of this Master Marketing Agreement. Upon termination of this Master Marketing Agreement, any party that is required to make payment will immediately pay the party entitled to payment for all authorized charges or expenses incurred by it up to the date of the relevant termination notice, and the paying party will receive all services, materials and items for which it has paid. Should the sum of such amounts be less than any advance payment received by a party, such party will refund the difference within thirty (30) days of receipt of an invoice from the paying party. No new payment obligations or rights shall arise after the notice of termination.
- 11.5 Return of Materials Upon Termination. On or before thirty (30) days after the termination of this Master Marketing Agreement for any reason, each party shall return to the other party all Confidential Information and Property and Property belonging to the other party. The parties agree to discuss in good faith any issues that may arise with respect to the return of such Confidential Information and Property.

**12.0 MISCELLANEOUS**

- 12.1 Non-Exclusive Relationship. Nothing in this Master Marketing Agreement shall be construed as limiting in any manner either party's marketing or distribution activities or prohibiting either party from entering into similar joint marketing arrangements with third parties. Each party may in its

sole discretion decide whether or not to market, use or distribute or sell any Product as it deems appropriate.

- 12.2 Independent Contractors. The relationship of the parties under this Master Marketing Agreement is that of independent contractors, and no party is an employee, agent, partner or joint venturer of the other.
- 12.3 Compliance with Laws. Each party shall comply with all applicable national, federal, state and local laws, regulations and ordinances, including but not limited to the laws and regulations of the United States, relating to this Agreement and the services and/or Products provided hereunder.
- 12.4 Jurisdiction and Venue and Controlling Law. This Master Marketing Agreement and any action arising out of it shall be governed by the laws of the State of California and the United States, without regard to the conflicts of laws provisions thereof. The exclusive jurisdiction and venue of any action with respect to the subject matter of this Master Marketing Agreement shall be the state courts of the State of California or the United States District Court for the Northern District of California and each party hereto submits itself to the exclusive jurisdiction and venue of such courts for the purpose of any such action. The parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods.
- 12.5 Severability. If any provision of this Master Marketing Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect, and the parties will negotiate in good faith a substitute, valid and enforceable provision which most nearly effects the parties' intent in entering into this Master Marketing Agreement.
- 12.6 Headings. The captions and headings used in this Master Marketing Agreement are for convenience of reference only and are not to be construed in any way as material terms or be used to interpret the provisions of this Master Marketing Agreement.
- 12.7 Waiver. Failure by a party to enforce any provision of this Master Marketing Agreement will not be deemed a waiver of future enforcement of that or any other provision. Any waiver, amendment or other modification of any provision of this Master Marketing Agreement will be effective only if in writing and signed by the parties.
- 12.8 Force Majeure. Nonperformance of a party will be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, terrorism, war or other similar reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party, provided that the non-performing party gives prompt notice of such conditions to the other party and makes all reasonable efforts to perform.
- 12.9 Import. Each party shall provide all information under its control which is necessary or useful for the other party to obtain any import licenses required for a party to receive the other party's Property, Products and Confidential Information. This information is to be provided within ten (10) business days of a party's request.
- 12.10 Export.
- 12.10.1 Each party hereby acknowledges that technical Information, hardware, software, materials, Products, Property and Confidential Information supplied under this Master Marketing Agreement may be subject to export controls under the laws and regulations of the United States (U.S.). Each party shall comply with such laws and regulations, and, agrees not to knowingly export, re-export, or transfer any technical Information, hardware, software, materials, Products, Property and Confidential Information without first obtaining all required U.S. or other governmental authorizations or licenses. Each party agrees to provide the other party such information and assistance as may

reasonably be required by the other party in connection with securing such authorizations or licenses, and to take timely action to obtain all required support documents.

- 12.10.2 Each party agrees to maintain required records of exports, re-exports, and transfers of such technical Information, hardware, software, materials, Products, Property and Confidential Information.
- 12.11 No Third Party Beneficiaries. Unless otherwise expressly provided, no provisions of this Master Marketing Agreement are intended or shall be construed to confer upon or give to any person or entity other than the parties any rights, remedies or other benefits under or by reason of this Master Marketing Agreement.
- 12.12 Equitable Relief. Each party acknowledges that a breach by the other party of any confidentiality or proprietary rights provision of this Master Marketing Agreement may cause the non-breaching party irreparable damage, for which the award of damages would not be adequate compensation. Consequently, the non-breaching party may institute an action to enjoin the breaching party from any and all acts in violation of those provisions, which remedy shall be cumulative and not exclusive, and a party may seek the entry of an injunction enjoining any breach or threatened breach of those provisions, in addition to any other relief to which the non-breaching party may be entitled at law or in equity.
- 12.13 Exhibits. Each Exhibit referred to in this Master Marketing Agreement is incorporated in full in this Master Marketing Agreement wherever reference to it is made.
- 12.14 Legal Notices. Any notice required or permitted to be given by a party under this Master Marketing Agreement shall be in writing and shall be personally delivered or sent by a reputable overnight mail service (e.g., Federal Express), or by first class mail (certified or registered), or by facsimile confirmed by first class mail (registered or certified), to the other party's representative designated below. Notices will be deemed effective (i) three (3) working days after deposit, postage prepaid, if mailed, (ii) the next day if sent by overnight mail, or (iii) the same day if sent by facsimile and confirmed as set forth above. A copy of any notice shall be sent to the following:
- |               |           |
|---------------|-----------|
| Company A.    | Company B |
| Attn: Counsel | Attn:     |
| Fax:          | Fax:      |
- 12.15 Assignment. Neither party may assign its rights or delegate its obligations under this Master Marketing Agreement, either in whole or in part, whether by operation of law or otherwise, without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment or delegation without written consent will be void. The rights and liabilities of the parties under this Master Marketing Agreement will bind and inure to the benefit of the parties' respective successors and permitted assigns.
- 12.16 Entire Agreement. This Master Marketing Agreement, including all exhibits, attachments, supplements and addenda thereof, constitute the entire agreement between the parties with respect to its subject matter. This Master Marketing Agreement supersedes and replaces all prior and contemporaneous understandings or agreements, written or oral, regarding the specific subject matter thereof.
- 12.18 Counterparts. This Master Marketing Agreement may be executed in two counterparts, each of which shall be an original and together which shall constitute one and the same instrument.

12.19 English Language. All correspondence or other matter covered by or pertaining to this Master Marketing Agreement shall be in the English language.

**IN WITNESS WHEREOF**, the parties hereto have executed this Master Marketing Agreement by persons duly authorized as of the date and year first above written.

**Company A**

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

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

Title: \_\_\_\_\_

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

**Company B**

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

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

Title: \_\_\_\_\_

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

**TABLE OF EXHIBITS**

<b>EXHIBIT A</b>	<b>MARKETING PROJECT ADDENDUM</b>
<b>EXHIBIT B</b>	<b>NON-DISCLOSURE AGREEMENT</b>
<b>EXHIBIT C</b>	<b>TRADEMARKS <i>[optional]</i></b>

## EXHIBIT A

### MARKETING PROJECT ADDENDUM

MARKETING PROJECT ADDENDUM FOR \_\_\_\_\_ PROJECT

This Marketing Project Addendum, effective as of \_\_\_\_\_, is incorporated into, and a part of, the Master Marketing Agreement between Company A and Company B dated \_\_\_\_\_, 20\_\_\_. The parties acknowledge and agree that any of the terms and condition of the Master Marketing Agreement, in particular, may be varied by the terms and conditions of a Marketing Project Addendum with respect to any Marketing Activities, Deliverables and party responsibilities covered by a Marketing Project Addendum and that in case of conflict, the terms and conditions of this Marketing Project Addendum shall take precedence over those of the Master Marketing Agreement.

SECTION A. Marketing Project Name and Definition. Provide a Marketing Project and definition including Deliverable(s) to result from the Marketing Project. Do not use this Marketing Project Addendum for development activities. Development activities must be documented by a separate written agreement.

SECTION B. Company A Property. Provide a detailed description of all Company A Property to be the subject of, used in and/or to be transferred to Company B pursuant to the Marketing Project. (Any loaned equipment must be covered by an equipment loan agreement and attached as Attachment I hereto.) Any specific terms and conditions (such as a component licensed from a third party) should be identified.

SECTION C. Company B Property. Provide a detailed description of all Company B Property to be the subject of, used in and/or to be transferred to Company A pursuant to the Marketing Project. (Any loaned equipment must be covered by an equipment loan agreement and attached as Attachment I hereto.) Any specific terms and conditions (such as a component licensed from a third party) should be identified.

SECTION D. Project Managers. Set forth the names and contact information for the Project Manager for each party.

SECTION E. Marketing Activities/Parties' Tasks and Responsibilities Therefor. Set forth each Marketing Activity the parties will undertake and provide a detailed description of the tasks and responsibilities for each party therefor, including a reasonably detailed target schedule for Marketing Activities, Deliverables and fulfillment of the parties' responsibilities. (Identify which the following Marketing Activities are undertaken and the specific details of each.)

(a) Interoperability testing: *[Set forth the details necessary to perform interoperability testing, including such items as the specific Products, identification and procurement of testing guidelines, allocation of testing responsibility, identification of testing party, party Property, payment responsibility, consequences of testing failure, form of test reports and results, retesting responsibility and payment in the event of a change in any Product, release of testing information and results to third parties and any other matters regarding interoperability testing upon which the parties have agreed.]*

(b) Laboratory: *[Set forth the details necessary to perform the laboratory activities, including such items as laboratory location, party Property, procurement and payment for laboratory and Property, responsibility for daily operation of laboratory, rules of use, security measures, confidentiality and any other matters regarding laboratory activities which the parties have agreed.]*

(c) Marketing Materials and Product Information: *[Set forth the details regarding such marketing materials and product information, including the specific types, quantities and use of such items and any other matters regarding such materials and information upon which the parties have agreed.]*

- (d) Joint collateral and sales tools: [Set forth the details regarding joint collateral and sales tools, including the specific types of joint collateral and other sales tools, responsibility for the development, procurement and payment therefor, approval process for each party for such items, distribution, dissemination and use of such items and any other matters regarding such joint collateral and sales tools upon which the parties have agreed.]
- (e) Joint sales calls. [Set forth the details regarding such calls, including the customers, schedule and coordination for such calls and any other matters regarding joint sales calls upon which the parties have agreed.]
- (f) Advertising and media campaigns. [Set forth the details regarding such advertising and media campaigns, including the hiring of consultants, responsibility for the development, procurement and payment therefor, approval process for each party for such items, distribution, dissemination and use of such items and any other matters regarding advertising and media campaigns upon which the parties have agreed.]
- (g) Customer training, seminars and forums. [Set forth the specific details regarding such training, seminars and forums, including the specific details of any training, seminars or forums for customers, customers who will participate, planning and coordination, hiring of consultants, responsibility for development, procurement and payment for the facilities, materials, consultants, payment of customer expenses, schedules and any other matters regarding such customer training, seminars and forums upon which the parties have agreed.]
- (h) Participation in trade shows and conferences. [Set forth the details regarding such trade shows and conferences, including a schedule of such trade shows or conferences, coordination and planning of participation, responsibility for development, procurement and payment of materials, Property and any other matters regarding such joint participation upon which the parties have agreed.]
- (i) Websites, and references and cross-references to the parties' websites. [Set forth the details regarding such websites and references, including the approval process for such websites and references for each party and any other matters regarding such websites and references upon which the parties have agreed.]
- (j) Press releases and news conferences. [Set forth the details regarding such press releases and new conferences, including the specific details of any press releases and announcements mentioning both parties' products or describing the joint marketing relationship between the parties, including the timing, media and formats therefor, the approval process for such items for each party and any other matters regarding press releases and news conferences upon which the parties have agreed.]
- (k) Engaging consultants. [Set forth the details regarding such engagement, including the scope of the engagement, supervision of the consultant, the ownership of the consultant's work, procurement and payment and necessary documentation of engagement, the approval process for such an engagement for each party and any other matters regarding the engagement of consultants upon which the parties have agreed.]
- (l) Market research. [Set forth the details regarding such research, including the scope of such research, the hiring of consultants, the payment therefor, each party's approval process for hiring of such consultants, the use and disclosure of any market research results and any other matters regarding such market research upon which the parties have agreed.]
- (m) Other Matters. [Set forth the specific details of any other agreement regarding marketing, including, but not are limited to, matters such as sharing of marketing feedback and market reaction, sharing of sales and marketing leads and opportunities, sharing of information gathered regarding the other party's product and issues with the other party's products and the details of any other marketing matters upon which the parties desire to collaborate].

The foregoing Project Addendum for the \_\_\_\_\_ Project including Attachments I through \_\_\_ has been reviewed and agreed to by Company A and Company B as if the date first set forth above.

Company A  
By: \_\_\_\_\_

Company B  
By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**ATTACHMENT I TO MARKETING PROJECT ADDENDUM**  
**EQUIPMENT LOAN AGREEMENT**

*[optional]*  
**EXHIBIT C**  
**TRADEMARKS**