

MARLIN DEVELOPER COMMUNITY  
PARTNER AGREEMENT

This Marlin Developer Community Partner Agreement ("Agreement") is made and entered into as of \_\_\_\_\_ (the "Effective Date") by and between the Marlin Developer Community LLC ("MDC"), a Delaware corporation with offices at 415-112 N. Mary Ave. # 383; and \_\_\_\_\_ a \_\_\_\_\_ corporation ("Partner"); (each a Party and collectively the Parties), with reference to the following:

MDC: Marlin Developer Community LLC.

Name of the Contact Person authorized to execute this Agreement on behalf of the MDC:

\_\_\_\_\_

Name of Partner:

\_\_\_\_\_

Name of the Contact Person authorized to execute this Agreement on behalf of Partner:

\_\_\_\_\_

Contact Person's Contact Information:

Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

## Recitals

- A. Whereas MDC has developed certain Specifications and Source Code implementations of those Specifications for digital rights management (“DRM”) technology (collectively, the “Marlin Technology”) to further the Marlin initiative.
- B. Whereas Partner would like to evaluate the Marlin Technology for non-commercial internal evaluation purposes.
- C. Whereas MDC wishes to promote deployment of the Marlin Technology in the context of open and industry wide initiatives and in general online broadband content distribution services, and Partner wishes to join in the promotion or deployment activities conducted by MDC.
- D. Now therefore, in consideration of the mutual covenants contained herein, the Parties, intending to be legally bound, agree to the following terms and conditions.

### 1. DEFINITIONS

The definitions set forth in this Section 1 shall apply to the following terms when used with initial capital letters in this Agreement and amendments hereto. The terms "reproduce," "reproduction," "derivative works," and "distribution" have the same meaning here as under U.S. copyright law.

- a. “Specification(s)” means the specification(s) for DRM technology that have been adopted or approved as a Final Specification in accordance with the MDC procedures including any updates or revisions as adopted and approved for release by the MDC and made available at a website designated and controlled by MDC.
- b. “Source Code” means computer program statements written in any high-level, human readable form suitable for modification and development approved by the MDC for dissemination to Partner under this Agreement through means designated by the MDC.

### 2. LICENSE GRANT

Partner acknowledges and agrees that the Marlin Technology is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Therefore, subject to Partner’s compliance with the terms and conditions contained in this Agreement, MDC grants to Partner during the Term, or Renewal Term of this Agreement (as defined in Section 9) a personal, limited, non-exclusive, revocable, license under MDC's copyrights in and to the Marlin Technology solely to download, reproduce, or use the Marlin Technology for Partner’s non-commercial: internal evaluation purposes only.

### 3. LEGAL LIMITATIONS ON USE OF MARLIN TECHNOLOGY

This Agreement does not grant Partner any right to distribute, market or otherwise transfer or disclose the Marlin Technology or any derivative works thereof, nor to make, have made, sell, offer for sale, or distribute any product or service incorporating any portion of the Marlin Technology. Partner shall not claim that anything it has developed is compliant with the Marlin Technology.

### 4. NO OTHER LICENSES

MDC, all parties contributing to the Marlin Technology and their respective third party licensors, if any, reserve all rights not expressly granted to Partner including any worldwide rights in or to any copyrights, patents, trade secrets, trademarks or any other intellectual property interest. Partner acknowledges and agrees that except as expressly set forth in Section 2 of this Agreement, nothing contained in this Agreement shall be construed as granting, by implication, estoppel or otherwise, any right or license to any patent, copyright, trademark, know-how or trade secrets or any intellectual property right or other proprietary right.

### 5. TRAINING, MAINTENANCE, AND SUPPORT

During the Term, or Renewal Term of this Agreement, MDC shall provide up to eight (8) hours of free training to Partner in a form and location to be determined by MDC in the reasonable exercise of its discretion. Other than the obligation explicitly stated in the foregoing sentence, MDC shall have no obligation to provide any training or support in the use of the Marlin Technology, nor any maintenance of the Marlin Technology whatsoever. Any training, support, or maintenance of the Marlin Technology other than above, if provided at the sole discretion of MDC, shall be provided in accordance with the terms and conditions of this Agreement unless otherwise agreed by MDC and Partner in writing.

### 6. MARKETING COMMITMENTS

Partner and the MDC shall collaborate on Marlin Technology promotion as set forth in this Section 6.

#### a. MDC Commitments

MDC shall set up and maintain a web site (“Marlin Marketing Web Portal” or “MMWP”) describing the Marlin Technology and Marlin initiative to potential partners and eco-system participants (operators and service providers; system integrators, technology solution providers, device vendors and content owners). The content of the MMWP shall be under the sole control of MDC. The MMWP shall include a listing of each Partner (“Partner Listing”). Each Partner Listing shall be displayed in a prominent location on the MMWP, and a Partner may be included in an appropriate category (e.g., Technology Solution Provider, or

Systems Integrator). A Partner Listing shall include a link to a page (“Partner Page”) provided by MDC.

MDC, from time to time, may issue press releases and conduct workshops, seminars, demonstrations, presentations, participate in trade shows, and conduct other outreach events (collectively “Promotion Events”). The timing and content of such press releases and events shall be at the sole discretion and control of MDC.

b. Partner Commitments

Partner shall provide a short company description for its Partner Listing. Before being posted to its Partner Listing, such description shall be reviewed and approved by the MDC, such approval shall not be unreasonably withheld.

Partner shall provide a description of their technology, technical solution or expertise, and contact details for its Partner Page, and MDC shall have final approval of such content before Partner posts the foregoing information to its Partner Page, such approval shall not be unreasonably withheld. Partner from time to time may modify its Partner Page, subject to MDC’s approval of such modifications, such approval shall not be unreasonably withheld. Partner Page may have a link to its own company web site.

During the Term, or Renewal Term of this Agreement, Partner shall grant MDC the right to use its company name, company description, and logo in the Partner Listing, Partner Page and Promotion Events in the manner reasonably expected to achieve the purpose of this Agreement.

Partner acknowledges that MDC remains committed to neutrality amongst all partners and shall not favor one Partner over another in its press releases, events, or referrals made in any form or manner.

Partner shall not engage in promotional or other public activities in the name of MDC except with the prior written approval of the MDC.

7. CONFIDENTIALITY

To the extent either Party may receive from the other Party information (in connection with this Agreement) that is proprietary to the disclosing Party, and is marked as confidential or a similar notice (if disclosed in writing or tangible form), identified as confidential (if disclosed verbally), or should reasonably be treated as confidential under the context in which disclosure was made (“Confidential Information”), the receiving Party will: (i) safeguard Confidential Information with the same degree of care as it exercises with its own confidential information, but no less than reasonable care; (ii) not disclose any Confidential Information to third parties other than its agents who have a need to know and are bound by

confidentiality agreement; and (iii) will use the other Party's Confidential Information solely in the exercise of the rights and obligations under this Agreement and for no other purpose. Confidential Information does not include information that the receiving Party can demonstrate: (i) is or has become public knowledge through no fault of the receiving Party; (ii) is rightfully obtained by the receiving Party from a third party as non-confidential information without any breach by either the receiving Party or such third party of any confidentiality obligation; or (iii) is independently developed by employees of the receiving Party without use of or reference to such information. The receiving Party may disclose Confidential Information if required by a regulation, law or court order, but only to the extent required to comply with such regulation, law or order, and only after providing reasonable advance notice to the originally disclosing Party to allow such Party to contest such disclosure.

## 8. TERM AND TERMINATION

a. This Agreement shall commence on the Effective Date and shall continue for two (2) years from such Effective Date ("Term"). Notwithstanding the foregoing sentence, the Term of this Agreement may be extended or renewed for another two-year period or multiple two-year periods (hereinafter collectively "Renewal Term") upon written request of Partner and approval at the sole discretion of MDC.

b. A party may terminate this Agreement upon thirty (30) days written notice to the other party.

c. Upon termination of this Agreement for whatever reason by MDC, Partner shall immediately cease using and return or securely destroy the Marlin Technology and any copies thereof it obtained from MDC.

d. All provisions of this Agreement, the survival of which is necessary for the interpretation or enforcement of a Party's rights or obligations, shall survive termination of this Agreement and shall continue in full force and effect.

## 9. FEES, PAYMENTS, AND EXPENSES

a. Within thirty (30) days of executing this Agreement, Partner shall pay to MDC without any deductions for taxes, tariffs, duties, or other charges a non-refundable amount of US\$5,000.00 ("Annual Partner Fee"). Upon receipt of such Annual Partner Fee, MDC shall activate or otherwise allow public access to Partner Listing, any link to Partner Page, and Partner Page itself. Upon each anniversary of the Effective Date, Partner shall pay to MDC without any deductions for taxes, tariffs, duties, or other charges the non-refundable Annual Partner Fee. All payments shall be made by wire transfer or remittance in accordance with MDC's instructions. Past due amounts shall bear interest at the lower of 1-1/2% per month or the maximum rate allowed by law until paid in full. Partner shall be responsible for any costs resulting from collection by MDC of any such past due amounts, including without limitation, reasonable attorneys' fees and court costs.

Subject to approval by MDC, a Partner may be eligible for a waiver of the Annual Partner Fee so long as it satisfies all of the following requirements: (i) it has executed the Participant Agreement, version 2.0 published by the MDC on January 24, 2007 with MDC (hereinafter "Participant Agreement"), as of the Effective Date of this Agreement; and (ii) it has paid its Annual Participant Fees (as defined in such Participant Agreement), as of the Effective Date of this Agreement; and (iii) it is a Participant (as defined in such Participant Agreement) in good standing. If Partner fails to satisfy item (iii) above, it immediately loses the aforementioned eligibility for a waiver from the date on which such a failure by Partner occurred, and Partner shall be obligated to pay to MDC Annual Partner Fee for the year in which such Partner's failure occurred.

b. Partner shall pay for its expenses and costs associated with support, training or promotional events.

## 10. COPYRIGHT NOTICES

Partner shall not remove or vary the copyright notice or otherwise denigrate the integrity of the copyright notice in the Marlin Technology and all copies or reproductions of the Marlin Technology shall bear a clear notice asserting MDC's or its third party licensors' copyright. The notice shall use the exact wording employed by MDC or its third party licensors in its copyright notice on the Marlin Technology.

## 11. NO WARRANTIES

THE MARLIN TECHNOLOGY, ANY SERVICE (INCLUDING, BUT NOT LIMITED TO, TRAINING OR SUPPORT), AND ANY AND ALL OTHER INFORMATION ARE PROVIDED TO PARTNER "AS IS". MDC ON BEHALF OF ITSELF AND ALL PARTIES CONTRIBUTING TO THE MARLIN TECHNOLOGY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, COMPLETENESS OR NON-INFRINGEMENT.

IF ANY EXCLUSION IS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE UNENFORCEABLE, THEN ONLY THOSE INVALID EXCLUSIONS SHALL BE STRICKEN AND ALL OTHERS WILL REMAIN IN FULL FORCE AND EFFECT.

## 12. INDEMNIFICATION

Partner agrees that Partner will, without prejudice to any other right of action which the MDC may have, at all times keep the MDC fully and effectively indemnified against and hold MDC harmless against any and all liability (which liability shall include, without limitation, all losses, costs, claims, expenses, demands, actions, damages, legal and other professional fees and expenses on a full indemnity basis) which the MDC may suffer or incur as a result of, by reason of or in connection with any breach or non-fulfillment of

any of Partner's obligations regarding this Agreement, or any content provided at its Partner Page.

### 13. LIMITATION OF LIABILITY

THE CUMULATIVE LIABILITY OF MDC FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT OR THE MARLIN TECHNOLOGY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL NOT EXCEED US\$100.00. IN NO EVENT SHALL MDC OR ITS SUPPLIERS BE LIABLE TO PARTNER, OR ANY OTHER THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, LOSSES, COSTS OR EXPENSES OF ANY KIND, HOWEVER CAUSED AND WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE) STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY AND INCLUDING DAMAGES FOR INTERRUPTION OF BUSINESS, PROCUREMENT OF SUBSTITUTE GOODS, LOST PROFITS, OR THE LIKE, EVEN IF MDC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES, COSTS OR EXPENSES. THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES SHALL APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE BEEN DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE INVALID, VOID OR UNENFORCEABLE. THE LIMITED WARRANTY, LIMITED REMEDIES, WARRANTY DISCLAIMER AND LIMITED LIABILITY ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN MDC AND PARTNER AND MDC WOULD NOT PROVIDE THE MARLIN TECHNOLOGY WITHOUT SUCH LIMITATIONS.

### 14. NO ASSIGNMENT

This Agreement is not assignable, in whole or in part, to any third party without the prior written consent of the MDC, and any attempt to do so shall be null and void.

### 15. NO WAIVER

No waiver of any breach of any provision of this Agreement will constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving Party.

### 16. SEVERABILITY

If any of the provisions of this Agreement conflict with governing law or are determined to be null, void, or otherwise invalid or unenforceable by a court of competent jurisdiction, then such provision will be deemed stricken from this Agreement, and the remaining terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect.

## 17. ENTIRE AGREEMENT

This Agreement sets forth the entire understanding and agreement between Partner and the MDC as to the subject matter of this Agreement and supersedes, cancels and merges all prior agreements, negotiations, commitments, communications and discussions as to the subject matter hereof, including without limitation, any earlier versions of licenses under the Marlin Technology accepted by Partner. This Agreement may not be modified except by a written document signed by authorized representatives of MDC and Partner.

## 18. COMPLIANCE WITH LAWS AND REGULATIONS

Partner agrees to comply at all times with all applicable laws, rules and regulations of the European Union, United States and other jurisdictions including without limitation, export control and antitrust laws.

## 19. REMEDIES

Partner acknowledges and agrees that any unauthorized use of the Marlin Technology would result in irreparable injury to MDC for which money damages would be an inadequate remedy and MDC shall have the right, in addition to other remedies available at law and in equity, to seek immediate injunctive relief to prevent any such unauthorized use.

## 20. APPLICABLE LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the state of California. Any action or litigation concerning this Agreement must take place exclusively in the federal courts, and if federal jurisdiction does not exist, then state courts, in each case located in Santa Clara County, and the Parties expressly consent to the exclusive jurisdiction of and venue in such courts and waive all defenses of lack of personal jurisdiction and forum non conveniens.

## 21. INDEPENDENT CONTRACTOR STATUS

The Parties are and intend to remain independent contractors. Nothing in this Agreement shall be construed as an agency, joint venture or partnership between the Parties.

## 22. HEADINGS

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

## 23. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Execution and delivery of this Agreement may be evidenced by facsimile transmission.

#### 24. NOTICE

Any notice to be provided pursuant to this Agreement shall be given in writing, sent to a Party at the address specified in the first page of this agreement, and shall be deemed properly given seven (7) days after having been sent by registered or certified mail, return receipt requested, postage prepaid or two (2) business days after deposit with a internationally recognized private industry express courier (e.g. Federal Express or DHL), with written confirmation of receipt.

**[Remainder of page intentionally left blank; next page is signature page]**

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of the date first written above by the undersigned duly authorized officers.

**MDC**

**PARTNER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_