**Marketing Agreement**

This Marketing Agreement (hereinafter „**Agreement**“) is made on the last date of signature below between:

**[insert name of Party A, B, C, D and/or E in bold]**, a company incorporated in [INSERT: country] and registered in commercial registry under number [INSERT: registration number], whose registered office is at [INSERT: address] (hereinafter „**Company**“); and

**[insert name of Contractor in bold]** *[COMMENT: Contractor may be one of the Parties, their Affiliated Entity or a third party.][TIP: if the Contractor is a third party, it must be listed in Annex “List of Third Parties” of the Multi-Party Collaboration Framework Agreement]*, a company incorporated in [INSERT: country] and registered in commercial registry under number [INSERT: registration number], whose registered office is at [INSERT: address] (hereinafter „**Contractor**“); and

hereinafter also referred to individually as „**Party**“ and collectively as „**Parties**“.

WHEREAS:

1. Company is in the business of, among other things, [manufacturing, distributing, licensing, and promoting products and services in the field of] [INSERT: Company’s industry or field of activity];
2. Contractor has the financial and technical capabilities, and the skills and knowledge required to advertise, market and otherwise promote the Products pursuant to the provisions of this Agreement;
3. Company and Contractor desire to establish a[n exclusive] strategic cooperation relationship whereby the Contractor promotes the sale of the Products and solicits orders from (potential) Customers to the Company;

IT IS AGREED AS FOLLOWS:

1. **Definitions**

## Capitalized words and phrases used in this Agreement shall have the same meanings as are ascribed to them in the Framework Agreement, unless new words or expressions are introduced in this Agreement. *[TIP: leave this clause in if you want the capitalised words defined in the Multi-Party Collaboration Framework Agreement to have the same meaning in this Agreement. Otherwise this Agreement uses its own definitions.]*

* 1. In this Agreement, unless inconsistent with or otherwise indicated by the context, the following expressions have the meaning set opposite below:

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| **Agreement:** | this document, including its Annexes and sub documents, as amended from time to time in accordance with this Agreement. |
| **Customer:** | any potential entity in the Territory that Contractor and its sub-contractors have identified and wish to exploit and any entity that has issued an order to the Contractor, or any of its sub-contractors, for purchasing a Product. |
| **Customer Agreement:** | the agreement signed between Contractor, or its sub-contractor, and the Customer for concluding the sales of a Product or Customer License. In case of Customer License, the Customer Agreement must contain the terms and conditions of Customer License as provided by Company on a case by case basis and any changes of which must be preapproved by Company. |
| **Customer License:** | a permission to use a copy of the Product for Customer’s own internal purposes to the extent as necessary for the normal use of the relevant Product, and, as far as technically essential, to maintain such Product [and to create interacting interoperable Software for Customer’s own end-use]. If the Product contains Software, the Customer License covers only the use of Object Code therein, unless expressly agreed otherwise in this Agreement. |
| **Framework Agreement:** | the Multi-Party Collaboration Framework Agreement concluded between [some of] the Parties on [INSERT: date of entry into force] |
| **Marks:** | the Company’s service marks, trademarks, trade names and logos, industrial designs, corporate slogans, graphics, photos, drawings, shapes, colours, sounds and other perceptible characteristics or trade dress elements identifying the Company, Products or the qualities thereof. |
| **Price list:** | the current price list for calculating the Contractor’s commission fee as provided in Annex “Price List” and as amended from time to time. |
| **Product:** | a solution as further described in Annex “Product description”. |
| **Territory:** | the geographic regions where Contractor is permitted to promote Products under this Agreement. Under this Agreement, the term “Territory” shall comprise [all territories globally, i.e. no territories are excluded][INSERT: specific country or region]. |

1. **The object and scope of the Agreement**
   1. This Agreement governs the conditions under which Contractor can advertise, market and otherwise promote the Products and solicit orders from (potential) Customers to the Company.
   2. This Agreement is a sub-agreement to the Framework Agreement and thus subject to the terms and conditions thereof. In case of contradiction, the terms and conditions of the Framework Agreement shall prevail.
   3. [*OPTION:* The Company reserves the right to grant any other person within the Territory the right to advertise, market and otherwise promote the Products, including exercise those rights himself.][*OPTION:* The Company shall not, during the life of this Agreement, grant any other person within the Territory the right to advertise, market or otherwise promote the Products. *[COMMENT: Use this option only if the Contractor is granted exclusive rights to act in the Territory.][TIP: Check for compliance with applicable competition laws.]*]
   4. The Agreement shall not render the Contractor a representative of the Company.
2. **Functions of the Contractor**
   1. The Contractor agrees to use its best endeavors to promote the sale of the Products in the Territory in accordance with the Company's reasonable instructions and shall protect the Company's interests with the diligence expected from an agent in professional business, including:
      1. actively and diligently promote Products within Territory;
      2. participate[, with explicit consent from the Company,] at significant trade shows, fairs and exhibitions within the Territory and outside;
      3. establish direct relationships with the local specialised press, marketing and sales networks;
      4. maintain a competent and experienced sales force sufficient to adequately serve the Territory.
   2. The Contractor shall not do or permit anything to be done to prejudice the market image of the Product(s) or the Company.
   3. The Contractor shall not solicit orders from outside the Territory unless permitted to do so by the Company.
   4. Unless otherwise specifically agreed, the Contractor has no authority to make contracts on behalf of, or in any way to bind the Company towards third parties. He only solicits orders from Customers for the Company, who is free to accept or to reject them.
   5. When negotiating with Customers, the Contractor shall offer the Customer Licenses strictly in accordance with the terms and conditions of the Customer Agreement which the Company has communicated to it.
   6. The Contractor is not entitled to receive payments on the Company's behalf without prior written authorization from the Company to that effect. When the Contractor has been so authorized, it must transmit them as soon as possible to the Company and until then hold them separately on deposit on the Company's behalf.
3. **Orders to be accepted**
   1. The Company shall inform the Contractor without undue delay of its acceptance or rejection of the orders transmitted by the latter. The Company may accept or reject any individual order transmitted by the Contractor at its own discretion.
   2. The Company may not however unreasonably reject the orders transmitted by the Contractor. In particular, a repeated refusal of orders contrary to good faith (e.g. if made for the only purpose of hindering the Contractor's activity) shall be considered as a breach of Agreement by the Company.
4. **Promoting sales**
   1. The Contractor shall provide an adequate organization to promote sales and, where appropriate, after-sale service, with all necessary means and personnel, in order to ensure the fulfillment of its obligations throughout the Territory under this Agreement.
   2. The Contractor may engage sub-contractors, provided it informs the Company at least one month before such engagement. The Contractor shall be responsible for the activities of its sub-contractors.
   3. The Parties may agree on the advertising to be jointly made in the Territory. The contents of any advertising must be approved by the Company. The cost of advertising carried out by the Contractor shall be [borne by the Company][borne by the Contractor][apportioned between the Parties if in equal shares].
   4. The Parties shall agree on their participation in fairs or exhibitions within the Territory. The cost of the Contractor's participation in such fairs and exhibitions shall be [borne by the Company][borne by the Contractor][apportioned between the Parties if in equal shares].
5. **Support**
   1. Company agrees to provide reasonable sales and marketing support to Contractor for it to be able to identify potential Customers and facilitate successful purchase orders.
   2. Company shall provide the Contractor with Product training at Company’s cost and Company shall train up to [5][10][30] employees from Contractor’s organization on the Product functionalities, features and sales strategies. The training will be held at Company’s premises or at Contractor’s premises, as agreed on a case by case basis. All travel and subsistence that may be required for Contractor’s employees to attend the training will be borne by Contractor.
6. **Sales targets**
   1. The Parties may agree annually on the sales targets of the Contractor for the forthcoming year.
   2. The Contractor shall make its best efforts to attain the targets agreed upon, but the non-attainment shall not be considered as a breach of the Agreement by the Contractor, unless the Contractor is clearly at fault.
7. **Information**
   1. The Contractor shall exercise due diligence to keep the Company informed about (i) its activities, (ii) market conditions, (iii) the state of competition within the Territory, (iv) the laws and regulations which are to apply in the Territory to which the Products must conform (e.g. import regulations, labelling, technical specifications, safety requirements, etc.), and (v) the laws and regulations concerning the Contractor’s activity, as far as they are relevant for the Company.
   2. The Contractor shall answer any reasonable request for information made by the Company.
   3. The Company shall provide the Contractor with all necessary written information relating to the Products (such as price lists, brochures, etc.) as well as with the information needed by the Contractor for carrying out its obligations under the Agreement. The Company shall furthermore inform the Contractor without undue delay of its acceptance, refusal and/or non-execution of any purchase orders and other business transmitted by the Contractor.
   4. If the Company expects that its capacity of supply will be significantly lower than that which the Contractor could normally expect, it will inform the Contractor within a reasonable time.
   5. The Contractor shall immediately inform the Company of any observations or complaints received from Customers in respect of the Products. The Parties hereto shall deal promptly and properly with such complaints. The Contractor has no authority to engage in any way the Company, unless after it has received a specific authorization to such effect from the Company.
8. **Contractor’s financial responsibility**
   1. The Contractor shall not transmit purchase orders from Customers of which it knows or ought to know that they are in a critical financial position, without informing the Company in advance of such fact.
   2. The Contractor shall sell Products or Customer Licenses to Customers on credit only if, and to the extent, the Parties have expressly agreed so in written form.
   3. Either Party shall pay all their costs and expenses incurred in connection with this Agreement, unless expressly agreed otherwise in the Agreement.
9. **Company's intellectual property**
   1. The Contractor acknowledges that all the intellectual property (e.g. copyright, trademarks, inventions, industrial design etc irrespective whether registered or not) made accessible to the Contractor under this Agreement is the sole property of the Company or its licensors and its use is allowed only in strict accordance with the applicable laws or license from the Company.
   2. Company hereby grants to Contractor, and Contractor hereby accepts, , a[n exclusive][non-exclusive] license for Contractor to use, publicly display and reproduce Marks in any documentation, sales literature, product information or promotional materials created by Contractor in connection with performing its rights in the Territory as provided in this Agreement. Company shall have the right to inspect and approve such documentation, sales literature, product information or promotional materials prior to any disclosure of the same and to require such changes as Company may deem necessary or appropriate to protect the Marks. All Marks shall remain in their exact form and shall not be translated into any other language by Contractor without express prior written permission of Company. *[TIP: Parties may conclude a separate license agreement, to further specify the use of Marks.]*
   3. With respect to the rights granted under this Agreement, the Contractor further agrees to comply with any usage guidelines and instructions communicated by Company to Contractor in writing from time to time and to fully correct and remedy any deficiencies in its use of Marks upon reasonable notice from Company.
   4. Contractor’s use of Marks under permission shall inure solely to the benefit of Company or its licensors as the case may be. Contractor acknowledges Company’s, or Company’s licensors’ as the case may be, sole ownership of Marks and any Intellectual Property Rights therein and thereto worldwide. Contractor agrees not to take any action that is in derogation of any of the rights of Company or Company’s licensors or that would unreasonably harm such goodwill
   5. The Contractor hereby agrees neither to register, nor to have registered, any Marks or any other objects and any Intellectual Property Rights therein or thereto that belong to the Company (or which are confusingly similar with the Company's), in the Territory or elsewhere.
   6. If the Product contains Software, then the Contractor agrees not to, and shall assure that its sub-contractors do not, modify, reverse engineer, reverse compile or disassemble the Products or otherwise attempt to learn the Source Code underlying the Products.
   7. The Contractor shall notify the Company of any infringement of the Marks or any other objects and any Intellectual Property Rights therein or thereto that belong to the Company, that come to its notice., and to the best of its ability assist the Company in its efforts to stop such malpractices.
10. **Conflict of interest**
    1. The Contractor or an entity affiliated with the Contractor may order the Products and conclude a Customer Agreement only if a conflict of interests is precluded.
    2. In the case a conflict of interest exists, the Contractor shall inform the Company of the Contractor’s direct or indirect interest in a purchase order of Products or a conclusion of a Customer Agreement. Conclusion of such Customer Agreement or fulfilling such order does not restrict the right of the Contractor to receive commission if a conflict of interests is precluded.
11. **Commissions**
    1. The Contractor is entitled to the commission on Customer Agreements solicited by him which are made during the life of this Agreement with Customers established in the Territory. Amount of commission is calculated as a specific amount or percentage according to Price List added as Annex to the Agreement. The Contractor shall acquire the right to commission upon conclusion of the Customer Agreement by the Customer and the Company.
    2. Purchase orders transmitted by the Contractor or received by the Company from Customers established in the Territory before the expiry or termination of this Agreement and which result in the conclusion of a Customer Agreement not more than [6][9][12] months after such expiration, shall entitle the Contractor to commission.
    3. If the Contractor, when dealing with Customers established in the Territory, solicits purchase orders resulting in Customer Agreements with Customers established outside the Territory, and if the Company accepts such orders, the Contractor shall be entitled to receive a reduced commission, the amount of which shall be decided on a case-by-case basis. Similarly, the Contractor's commission shall be reduced when another agent of the Company, who deals with Customers established outside the Territory, solicits purchase orders resulting in Customer Agreements with Customers established within the Territory.
    4. Unless otherwise agreed in written form, the commission covers any expenses incurred by the Contractor in fulfilling its obligations under this Agreement (such as telephone, office expenses, travel expenses, etc.).
    5. The Company shall provide the Contractor with a statement of the commissions due in respect of each quarter of a calendar year (if not agreed a shorter period) by the 5th day of the month following the relevant quarter and shall set out all the business in respect of which such commission is payable. The commission shall be paid not later than the last day of the month following the relevant quarter.
    6. The Company shall pay commission to the Contractor on the basis of invoices issued by the Contractor. The Contractor shall issue an invoice on the 15th day of the month following the relevant quarter for commission earned during the previous quarter. If no Customer Agreement were concluded the previous quarter then no invoice shall be issued.
    7. Except as otherwise agreed, the commission shall be calculated in the currency of the Customer Agreement in respect of which the commission is due.
    8. Any taxes imposed on the Contractor's commission in the Territory are for the Contractor's account.
    9. If any Party fails to make any payment due to another Party under this Agreement, without prejudice to any other right or remedy available to that other Party, that other Party may charge interest (both before and after any judgement) on the amount outstanding, on a daily basis *[OPTION:]* [at the rate of [4] per cent of the due payment per annum (365 days)] *[OPTION:]* [in accordance with the Estonian Law of Obligations Act]. That interest will be calculated from the date of last date for payment to the actual date of payment, both dates inclusive, and will be compounded quarterly. The Party that is late paying will pay that interest on demand.
12. **Non-concluded Customer Agreements**
    1. No commission shall be due in respect of purchase orders transmitted by the Contractor and not accepted by the Company.
    2. If a Customer Agreement made by the Company as a result of purchase orders transmitted by the Contractor is not thereafter put into effect, the Contractor shall be entitled to commission unless the non-effectiveness of the Customer Agreement is due to reasons for which the Company is not responsible.
13. **Termination**
    1. Each Party may terminate this Agreement, by notice given in written form by means of communication ensuring evidence and date of receipt (e.g. registered mail with return receipt, special courier):
       1. with immediate effect in case of a substantial breach by the other Party of the obligations arising out of the Agreement, or in case of exceptional circumstances justifying the earlier termination;
       2. with [3][6][9] months prior notice without cause.
    2. For avoidance of doubt, the Contractor is in substantial breach of the Agreement, if it has considerably prejudiced the market image of the Product(s) or the Company. *[COMMENT/TIP: the other occasions of substantial breach may be further specified in here.]*
    3. Circumstances in which it would be unreasonable to require the terminating Party to continue to be bound by this Agreement, shall be considered as exceptional circumstances mentioned above. Furthermore, the Parties agree that the following situations shall be considered as exceptional circumstances which justify the earlier termination by the other Party: insolvency, declaration of bankruptcy, moratorium, liquidation or any circumstances which are likely to affect substantially one Party's ability to carry out its obligations under this Agreement.
    4. Provisions of this Agreement that by their nature regulate the rights and obligations of the Parties after the termination of this Agreement shall remain in force after the termination of this Agreement. This concerns, above all, the provisions regulating dispute resolution, confidentiality and liability of the Parties.
    5. Upon expiry or termination of this Agreement the Contractor shall (i) cease all promotions of Products and Company’s services; (ii) cease all use of Company’s technology and Marks; and (iii) cease making Company's services available in or through a website or otherwise, and (iv) upon request, to promptly destroy or return all copies (electronic or written) of the content, technology, advertising material and any other confidential or proprietary information in Contractor’s possession or control. Without limiting the foregoing in any way, the Parties agree that following termination, each Party may continue to make their products/services available directly to users subscribing to the product/service prior to termination, without any liability or obligation to the other Party.
14. **Confidentiality**
    1. The contents of this Agreement are confidential and may be disclosed by one Party only upon prior consent of the other Party. For the protection of this and the rest of the confidential information exchanged between the Parties, the Parties have concluded a Non-Disclosure Agreement on [INSERT: date of entry into force] which shall also govern the confidentiality obligations under this Agreement.
    2. The receipt of Confidential Information pursuant to this Agreement will not prevent or in any way limit any Party from developing, making or marketing products or services that are or may be competitive with the products or services of any of the other Parties; or providing products or services to others who compete with any of the other Parties; as long as those results have not become from a breach of this Agreement. *[SOURCE: IPR Helpdesk Mutual Non-Disclosure Agreement Template 2012 clause 5][TIP: if Parties wish to introduce a more strict non-competition obligation, then it needs to be verified that such non-competition obligation is in compliance with applicable competition laws.]*
    3. Except as otherwise expressly provided in this Agreement, the Parties agree that any press release, public announcement, confirmation or other information regarding this Agreement or the transactions contemplated thereby shall be made only after each Party has approved at least in a format that can be reproduced in writing the time, form and content of any such information to be disseminated to third parties or the public.
15. **Notices**
    1. Any notice to be given under this Agreement must be in a format which can be reproduced in writing (e-mail, document print-out, Skype-message etc), unless this Agreement expressly requires the notice to be given in written form (i.e. signed by hand or equivalent).
    2. Notice shall be deemed served, if hand delivered, at the time the notice is delivered in person to the individual or member or officer of the entity for whom it was intended, or, if sent by courier, at the date of signature of the notified Party, or, if sent by registered letter, at the date 3 (three) days after the registered sending, or, if sent by fax or email, at the date after the email was sent, provided the sender does not receive a notice of error or failure to complete the transmission to the correct fax number or email address.
    3. Contact details of the Parties:
       1. Company: name: [INSERT: name] address: [INSERT: address], phone: [INSERT: number], e-mail: [INSERT: address], fax: [INSERT: number];
       2. Contractor: name: [INSERT: name] address: [INSERT: address], phone: [INSERT: number], e-mail: [INSERT: address], fax: [INSERT: number];
16. **Final clauses**
    1. The Agreement shall enter into force on the last date of signature below and shall remain in effect indefinitely, until terminated.
    2. This Agreement is governed by, and is to be construed in accordance with, the laws of the Republic of Estonia without regard to the conflicts of law principles thereof.
    3. No variation or amendment of this Agreement will be effective unless it is made in writing and signed by each respective Party's duly authorised representative.
    4. Any differences between Parties in the interpretation or application of this Agreement will be settled amicably by mutual consultation. In case an amicable settlement cannot be reached, the dispute shall be resolved in the Harju County Court, Republic of Estonia.
    5. None of the Parties may assign or transfer this Agreement as a whole, or any of its rights or obligations under it, without first obtaining the written consent of all of the other Parties. That consent may not be unreasonably withheld or delayed.
    6. If the Agreement is signed by hand, then the Agreement shall be signed in identical counterparts equal to the number of the Parties, of which each Party shall have one copy.
17. **Annexes**
    1. Territory
    2. Customer Agreement
    3. Price List
    4. Product description
18. **Signatures**

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| --- | --- |
| **Company:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: [INSERT: name]  Title: [INSERT: title]  Date of signing: [INSERT: date] | **Contractor:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: [INSERT: name]  Title: [INSERT: title]  Date of signing: [INSERT: date] |