BRANDSTAND® AMERICA, INC.
BETA TEST AGREEMENT

This Beta Test Agreement (the "Agreement") by and between BrandStand® America, Inc. ("BrandStand®"), a Florida corporation having its principal place of business at 221 Blue Juniper Blvd, Venice, FL 34292, and User (either an individual or an entity), is entered into as of the date of installation of the Software as defined herein (the "Effective Date").

RECITALS

WHEREAS, BrandStand® has developed certain software, which may include associated media, printed materials, and online or electronic documentation (the "Software"), which it is providing to User as a pre-release copy, and which includes the printed or inline written reference material provided to User in combination with the Software, including, without limitation, instructions, beta testing guidelines, and end user guides (the "Documentation");

WHEREAS, User desires to test and evaluate the Software and Documentation prior to general release;

WHEREAS, the Software is copyrighted and is being licensed (not sold) to User subject to the terms and conditions contained in this Agreement;

NOW, THEREFORE, in consideration of the foregoing recitals and mutual covenants set out herein, the parties hereto agree as follows:

1. <u>Assent to be Bound</u>. By installing, copying, or otherwise using this Software, User agrees to be bound by the terms of this Agreement. If User does not agree with any term or condition, User should not download, order, open, install or use the Software.

2. <u>Scope</u>. This Agreement sets forth the terms and conditions for the beta installation, use and test of Software in a user site, prior to formal product release.

3. <u>Grant of License</u>. Subject to the terms and conditions of this Agreement, BrandStand® grants User a non-exclusive, nontransferable license (without the right to sublicense) to use the Software solely for purposes of testing and evaluation. User's rights are limited to those expressly granted in this Agreement. BrandStand® reserves all rights of reproduction, distribution and publication. Further, the license is restricted to the object code of the Software, and it is restricted to the version acquired by User; any new versions must be re-licensed.

4. <u>Ownership and Copyright of Software</u>. BrandStand® shall own and retain all right, title and interest in and to the intellectual property rights in the Software – including without limitation, patent, copyright, trademark, and trade secret – and any derivative works thereof, subject only to the limited license expressly set forth in Section 3 hereof. User does not acquire any other rights, express or implied, in the Software. The Software is copyrighted and is protected by United States copyright laws and international treaty provisions. BrandStand® reserves all rights not expressly granted hereunder.

5. <u>User Duties</u>.

    (a) <u>Restrictions</u>.

        i.   User Shall not copy or use the Software or disseminate Confidential Information, as defined below in Section 7, to any third party except as expressly permitted in this Agreement. User will not, and will not permit any third party to, sublicense, sell, rent, lease, copy, alter, modify, create derivative works of, translate, reverse engineer, decompile, disassemble, assign any portion of, or otherwise reduce to human perceivable form the Software, or any part thereof, or accompanying Documentation.

        ii.   In no event shall User use the Software for User's product development or any other commercial purpose.

        iii.   The Software and all performance data and test results, including without limitation, benchmark test results (collectively "Performance Data"), relating to the Software are the Confidential Information of BrandStand®, and will be treated in accordance with the terms of Section 7 of this Agreement. Accordingly, User will not publish or disclose to any third party any Performance Data relating to the Software.

        iv.   The transfer of the Software from one computer to another without the express written consent of BrandStand® is prohibited.

        v.   User may not remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols, or labels in or pertaining to the Software.

        vi.   User may access the Software from multiple devices (PC, Tablet, Smart Phone) provided that this access is not simultaneous.

    (b) <u>Evaluation Feedback</u>. User shall provide feedback to BrandStand® concerning the functionality and performance of the Software from time to time as reasonably requested by BrandStand®, including, without limitation, identifying potential errors, improvements, modifications, bug fixes, or enhancements ("Feedback"). Feedback and other information which is provided by User to BrandStand® in connection with the Software or this Agreement may be used by BrandStand® to improve or enhance its products.

6. <u>Limitations on BrandStand®'s Obligations</u>.

    (a) <u>No Support Services</u>. BrandStand® is under no obligation to support the Software in any way or to provide any modification, error correction, bug fix, new release, or other update to of for any Software (collectively "Update(s)"), to User. In the event BrandStand®, in its sole discretion, supplies any Update to User, such Update shall be deemed Software hereunder and shall be subject to the terms and conditions of this Agreement. Further, BrandStand® provides no assurance that any specific error or discrepancies in the Software will be corrected.

    (b) <u>No obligation to make Software commercially available</u>. In no event shall BrandStand® be obligated to provide the User a copy of the commercial release

version of the Software, if any. BrandStand® is not obligated to make the Software commercially available.

7. <u>Confidentiality</u>.

(a) "Confidential Information" shall mean all trade secrets, know-how, inventions, techniques, processes, algorithms, software programs, hardware, schematics, planned product features, functionality, methodology, performance and software source documents relating to the Software, and other information provided by BrandStand®, whether disclosed orally, in writing, or by examination or inspection, other than information which User can demonstrate (i) was already known to User, other than under an obligation of confidentiality, at the time of disclosure; (ii) was generally available in the public domain at the time of disclosure to User; (iii) became generally available in the public domain after disclosure other than through any act or omission by User; (iv) was subsequently lawfully disclosed to User by a third party without any obligation of confidentiality; or (v) was independently developed by User without use of or reference to any information or materials disclosed by BrandStand® or its suppliers. Confidential Information shall include without limitation the Software, Documentation, Performance Data, and Updates, information relating to BrandStand® products, product roadmaps, and other technical, business, financial and product development plans, forecasts and strategies.

(b) User shall not use any Confidential Information for any purpose other than as expressly authorized under this Agreement. In no event shall User use the Software or any Confidential Information to develop, manufacture, market, sell or distribute any product or service. In no event shall User disclose any Confidential Information to any third party. User agrees to implement reasonable security measures to protect such Confidential Information, but without limitation to the foregoing, shall use best efforts to maintain the security of the Software provided to User by BrandStand®. User will use User's best efforts to cooperate with and assist BrandStand® in identifying and preventing any unauthorized use, copying, or disclosure of the Software, Documentation, or any portion thereof.

(c) Neither party shall disclose, advertise, or publish the terms and conditions of this Agreement without the prior written consent of the other party. Any press releases or publication regarding this Agreement is subject to prior review and written approval of the parties.

8. <u>Term of Agreement</u>.

(a) The term of this Agreement shall commence on the Effective Date and will end upon the commercial release of publicly available Software.

(b) BrandStand® may terminate this Agreement at any time, for any reason or no reason, by providing User written notice thereof.

(c) Upon any expiration or termination of this Agreement, the rights and licenses granted to User under this Agreement shall immediately terminate, and User shall immediately cease using, and will return to BrandStand® (or, at BrandStand®'s request, destroy), the Software, Documentation, and all other tangible items in User's possession or control that are proprietary to BrandStand® or contain Confidential Information, and certify in writing as to such action.

9. <u>Limitation of Liability</u>. It is understood that the Software and Documentation are provided without charge for limited testing and feedback purposes. In no event shall BrandStand® or its suppliers have liability for any direct, indirect, incidental, special, or consequential damages (including, without limitation, damages for loss of business profits, business interruption, or loss of business information), however caused and on any theory of liability, even if BrandStand® and its suppliers have been advised of the possibility of such damages. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

10. <u>WARRANTY DISCLAIMER</u>. It is understood that the Software, Documentation, and any Updates may contain errors and are provided for limited testing and feedback only. The Software, Documentation, and any Updates are provided "AS IS" without warranty of any kind, whether express, implied, statutory, or otherwise. BrandStand® and its suppliers specifically disclaim all implied warrants of merchantability, noninfringement, and fitness for a particular purpose, or arising from a course of dealing, usage or trade practice. User acknowledges that BrandStand® has not publicly announced the availability of the Software, that BrandStand® has not promised or guaranteed to User that such Software will be announced or made available to anyone in the future, that BrandStand® has no express or implied obligation to User to announce or introduce the Software, and that BrandStand® may not introduce a product similar or compatible with the Software. Accordingly, User acknowledges that any research or development that it performs regarding the Software or any product associated with the Software is done entirely at its own risk. Specifically, the Software may contain features, functionality or modules that will not be included in the final production version of the Software, if released, or that will be marketed separately for additional fees.

11. <u>Miscellaneous</u>.

(a) <u>Governing Law</u>. This Agreement, and all disputes arising out of or related thereto, shall be governed by and construed under the laws of the State of Florida without reference to conflict of laws principles. All such disputes shall be subject to the exclusive jurisdiction of the state and federal courts located in Sarasota County, Florida, and the parties agree and submit to the personal and exclusive jurisdiction and venue of these courts.

(b) <u>Assignment</u>. User shall not assign this Agreement or any rights or obligations hereunder, directly or indirectly, by operation of law, merger, acquisition of stock or assets, or otherwise, without the prior written consent of BrandStand®. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the

Parties to this Agreement and their respective officers, directors, stockholders, agents, employees, servants, predecessors, successors, assigns, licensees, parent companies, subsidiaries, affiliates, heirs, personal representatives, and all other persons, firms, companies, associates, or partnerships claiming through any of them.

(c) <u>Amendments</u>.   There shall be no amendments or modifications to this Agreement unless such amendment or modification is in writing and signed by all Parties to this Agreement.   Any alleged or purported amendment or modification shall be totally void and unenforceable unless it is in writing and signed by all Parties to this Agreement.

(d) <u>Entire Agreement</u>. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof. Accordingly, this Agreement supersedes and replaces all prior negotiations, agreements, understandings and/or contracts between the Parties, whether written or oral, on this subject matter.

(e) <u>Severability</u>. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provisions or applications. To this end, the provisions of this Agreement are declared to be severable.

(f) <u>United States Government Restricted Rights</u>. The Software and Documentation are provided with Restricted Rights. Use, duplication, or disclosure by the government is subject to restrictions as set forth in subparagraph (c)(f)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c) (1) and (2) of the Commercial Computer Software-Restricted Rights at 48 C.F.R. S:52.227-19, as applicable.

(g) <u>Export Restrictions</u>. User acknowledges that the Software is of U.S. origin. User agrees to comply with all applicable international and national laws that apply to the Software, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments.

(h) <u>Notices</u>. Notices under this agreement shall be sent to the addresses set forth in the introductory paragraph of this Agreement.

(i) <u>Counterparts</u>. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which will be one and the same document. Facsimiles and electronic copies in portable document format ("PDF") containing original signatures shall be deemed for all purposes to be originally signed copies of the documents that are the subject of such facsimiles or PDF versions.

12. <u>Contact Info</u>. Any questions about this Agreement can be directed to: BrandStand® America, Inc., 221 Blue Juniper Blvd, Venice, FL 34292.