1  
 EXHIBIT 10.1  
  
  
CERTAIN PORTIONS OF THIS EXHIBIT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR  
CONFIDENTIAL TREATMENT UNDER RULE 24b-2 OF THE SECURITIES EXCHANGE ACT OF 1934,  
AS AMENDED. A COMPLETE COPY OF THIS EXHIBIT HAS BEEN FILED WITH THE SECURITIES  
AND EXCHANGE COMMISSION.  
  
 MEMORANDUM OF AGREEMENT  
  
 THIS MEMORANDUM OF AGREEMENT (the "MOA") is made as of September 15,  
1999 (the "Effective Date") by and between QUOKKA SPORTS, INC., a corporation  
organized under the laws of Delaware, with principal offices at 000 Xxxxxxx  
Xxxxxx, Xxx Xxxxxxxxx, XX. 00000 ("Quokka") and INTEL CORPORATION, a corporation  
organized under the laws of the state of Delaware, with principal offices at  
0000 Xxxxxxx Xxxxxxx Xxxx., Xxxxx Xxxxx, Xxxxxxxxxx 00000 ("Intel").  
  
 RECITALS  
  
Quokka provides digital interactive media coverage of various sporting events  
through, among other channels, a site on the World Wide Web located currently at  
the URL "xxxx://xxx.xxxxxx.xxx" (the "Site"). Intel is a manufacturer of  
microprocessors, software and systems, and internet services and solutions.  
  
Intel desires to be a digital entertainment sponsor in connection with  
xxxxxx.xxx and the event coverage therein, and to receive the rights and  
benefits as more fully described herein.  
  
Quokka desires to secure certain promotional consideration and exposure in  
connection with Intel promotional activities.  
  
Quokka wishes to purchase and Intel wishes to provide certain Internet data  
services as more fully set forth herein.  
  
In accordance with that certain Software License and Development Agreement dated  
Xxxxx 00, 0000 (xx amended on August 10, 1998) between Intel and Quokka (the  
"Original Development Agreement"), the parties (among other things)  
cooperatively participated in the development of an application and related  
software for the purposes of production and delivery of multiple high bandwidth  
media streams to allow end users to customize their viewing experience of a live  
sporting event (the "Application"). Quokka wishes to acquire from Intel, and  
Intel wishes to provide to Quokka, certain development services to further  
develop the Application, as well as other projects.  
  
NOW THEREFORE, in consideration of the mutual covenants contained herein and  
other good and valuable consideration, the receipt and sufficiency of which is  
hereby acknowledged, the parties agree as follows:  
  
1. TERM: The term of this MOA shall commence on September 15, 1999 and  
 conclude December 31, 2002, unless terminated sooner in accordance with  
 the terms of this MOA (the "Term").  
  
  
  
 1 of 25  
 2  
  
2. OBLIGATIONS OF THE PARTIES  
  
 2.1. Development.  
  
 2.1.1. Development Resources. Intel will, upon Quokka's  
 request, provide to Quokka the services of  
 appropriate engineering resources ("Engineers"), who  
 will complete the Projects (as defined in Section  
 2.1.2 below). [\*] Engineers will be charged against  
 Quokka's payments set forth in Section 2.1.4 at [\*]  
  
 2.1.2. Identification of Projects and Development Process.  
  
 2.1.2.1. The parties agree that the first two  
 development projects to be undertaken  
 pursuant to this MOA ("Projects") will be  
 [\*]  
  
 2.1.2.2. For additional development projects, Quokka  
 may request certain development projects  
 which will be undertaken by the parties, and  
 Intel will reasonably consider such  
 requests. The specific projects undertaken  
 will be by mutual agreement of the parties.  
 Prior to selection of a Project, Intel and  
 Quokka will consult regarding various  
 projects already under development at Intel  
 and/or Quokka, and the parties' selection of  
 Projects will take into account such  
 projects under development in order to  
 maximize the utility of the development  
 efforts in connection with the Projects.  
  
 2.1.2.3. The Projects may include integration of  
 existing third party products and  
 technologies, as agreed by the parties.  
  
 2.1.2.4. As part of the mutual selection of the  
 Projects, the parties develop an agreed  
 Project Requirements Document ("PRD"),  
 including technical specifications, staffing  
 requirements, development milestones,  
 budgets, licensing, and intellectual  
 property ownership and related issues within  
 a reasonable time after project selection.  
 The Engineers' time in connection with  
 preparing the PRD will be chargeable to  
 Quokka. If Intel and Quokka are unable to  
 agree on a PRD the parties will escalate the  
 disagreement to their respective senior  
 managements, who will attempt to  
  
  
  
[\*] Confidential treatment requested.  
  
  
 2 of 25  
 3  
  
 resolve the disagreement in good faith. If,  
 within a reasonable time of senior  
 management discussion, the parties are  
 unable to agree on a PRD, the parties are  
 not obligated to go forward with that  
 Project. Upon reaching agreement on the PRD,  
 the parties will undertake to develop the  
 Project in accordance with the PRD. All  
 projects will be subject to a mutually  
 agreed change control process.  
  
 2.1.3. Licenses and Intellectual Property Ownership.  
  
 2.1.3.1. For the [\*]  
  
 2.1.3.2. For the [\*] The parties anticipate that the  
 [\*] functionality shall be provided in  
 conjunction with hosting or distribution  
 services offered by Intel, and that if such  
 functionality is not offered by Intel in  
 conjunction with such services, Intel will  
 license use of the [\*] separately on  
 reasonable terms.  
  
 2.1.3.3. For additional Projects, the parties will  
 agree on the intellectual property licensing  
 terms and conditions at the time the PRD is  
 agreed to, as part of the agreement to  
 undertake the Project.  
  
 2.1.4. Development Services Payment. In consideration of the  
 development services to be provided by Intel, Quokka  
 will make the following payments in the amount of [\*]  
 to Intel on the following schedule:  
  
  
  
  
[\*] Confidential treatment requested.  
  
  
 3 of 25  
  
 4  
  
  
  
  
 Due Date Amount  
 -------- ------  
   
 October 1, 1999 [\*]  
  
 January 1, 2000 [\*]  
  
 April 1, 2000 [\*]  
  
 July 1, 2000 [\*]  
  
 October 1, 2000 [\*]  
  
 January 1, 2001 [\*]  
  
 April 1, 2001 [\*]  
  
 July 1, 2001 [\*]  
  
 October 1, 2001 [\*]  
  
 January 1, 2002 [\*]  
  
 April 1, 2002 [\*]  
  
 July 1, 2002 [\*]  
  
 October 1, 2002 [\*]  
  
  
 Intel will invoice Quokka thirty (30) days prior to  
 the Due Date set forth above ("Invoice Date").  
 Payments received by Intel more than sixty (60) days  
 after the Invoice Date will bear interest at the rate  
 of 1.5% per month from the original Due Date to the  
 date the payment is received.  
  
 2.2. QPT Sponsorship. Quokka hereby designates Intel as the  
 exclusive "Quokka Performance Team Official Partner" ("QPT  
 OP") in the "Internet Services" category (the "Exclusive  
 Category"). The "Internet Services" category will be defined  
 more fully in the definitive agreement. As a QPT OP, Quokka  
 will provide to Intel the rights and benefits set forth on  
 Exhibit A. In addition, during the Term, subject to any  
 restrictions that may be imposed by any rightsholder, Quokka  
 shall utilize Intel as [\*] Furthermore, Intel acknowledges  
 that Quokka shall not immediately utilize Intel's web hosting  
 services on an exclusive basis, but that there shall be a  
 reasonable transition period based on Quokka's existing  
 obligations to current service providers and any technical  
 issues impacting such transition.  
  
  
  
  
  
[\*] Confidential treatment requested.  
  
  
 4 of 25  
  
 5  
  
  
 2.2.1. Payment. In consideration of the QPT OP benefits set  
 forth on Exhibit A, Intel shall make payments to  
 Quokka in the total amount of [\*] in accordance with  
 the following schedule:  
  
  
  
  
 Due Date 1999 2000 2001 2002  
 -------- ---- ---- ---- ----  
   
 January 15 [\*] [\*] [\*]  
 April 15 [\*] [\*] [\*]  
 July 15 [\*] [\*] [\*] [\*]  
 October 15 [\*] [\*] [\*] [\*]  
  
  
 Promotional value will not be specified on a  
 quarterly basis. Quokka will invoice Intel thirty  
 (30) days prior to the due date ("Invoice Date").  
 Payments received by Quokka more than sixty (60) days  
 after the Invoice Date will bear interest at the rate  
 of 1.5% per month from the original Due Date to the  
 date the payment is received.  
  
 2.2.2. Program Review. To facilitate the attainment of the  
 Parties' goals within the context of the relationship  
 created by this QPT sponsorship, authorized  
 representatives from the Parties' product and  
 marketing teams will meet at least semi-annually in  
 order to discuss the sponsorship and promotional  
 plans relevant to the Parties' goals under this  
 sponsorship and to attempt to resolve in good faith  
 any issues arising from the implementation of the  
 sponsorship (the "Working Team Review Meetings"). The  
 responsible Intel and Quokka Program Managers will  
 confer and agree before each meeting on the  
 anticipated time, place, duration and number of  
 attendees for each meeting.  
  
 2.2.3. Executive Review. In addition to the Working Team  
 Review Meetings, responsible executives representing  
 the Parties will meet at least semi-annually to  
 review the success of this sponsorship in achieving  
 their respective goals, to review the sponsorship and  
 marketing performance of the sponsorship, and to  
 attempt in good faith to resolve any issues arising  
 from the implementation of the sponsorship which  
 could not be resolved in the Working Team Review  
 Meetings.  
  
 2.2.3.1. Mediation. If disputes remain after  
 Executive Review, the parties shall select a  
 neutral third party to mediate any remaining  
 disputes on valuation of promotional efforts  
 and activities. If the parties cannot agree  
 on a neutral third party, each party shall  
 nominate a mediator, and the two selected  
 mediators shall jointly select a third, and  
 the three mediators shall resolve such  
 disputes by a majority vote amongst  
 themselves.  
  
  
[\*] Confidential treatment requested.  
  
  
 5 of 25  
 6  
  
 2.2.3.2. Corrective Action Plan; Termination. At [\*]  
 of the Term, if Intel is unsatisfied with  
 the performance of the sponsorship, it may  
 invoke a "Corrective Action Plan" ("CAP") in  
 order to "make good" the value received by  
 Intel from the sponsorship. The CAP shall  
 identify deficiencies and remedies as agreed  
 by the parties, and set forth the criteria  
 which the parties agree will remedy such  
 deficiencies. Should the criteria agreed by  
 the parties not be met at the end of the CAP  
 period of [\*], then Intel may terminate the  
 sponsorship. In the event of termination of  
 the sponsorship pursuant to this Section  
 2.2.3.2, neither party shall have any  
 further obligations to the other in  
 connection with the sponsorship (e.g.,  
 Intel's payment obligations in connection  
 with the sponsorship shall cease, but Intel  
 shall not be entitled to any refund of prior  
 payments in connection with the  
 sponsorship).  
  
2.3. Promotion by Intel.  
  
 2.3.1. Intel will provide [\*] in promotional value to Quokka  
 during the Term. Such value will not be specified on  
 a quarterly basis and is dependent on the Quokka  
 Programming Schedule available in any given year, the  
 resulting traffic and number of registrants for [\*].  
  
 2.3.1.1. Intel understands that Quokka desires that  
 Intel's promotional efforts maximize the  
 amount of television advertising and retail  
 promotions, but Quokka acknowledges that the  
 [\*]  
  
 2.3.2. Program Review. To facilitate the attainment of the  
 Parties' goals within the context of the relationship  
 created by this promotional commitment, authorized  
 representatives from the Parties' product and  
 marketing teams will meet at least semi-annually in  
 order to discuss the sponsorship and promotional  
 plans relevant to the Parties' goals under this  
 commitment and to attempt to resolve in good faith  
 any issues arising from the implementation of the  
 commitment (the "Working Team Review Meetings"). The  
 responsible Intel and Quokka Program Managers will  
 confer and agree before each meeting on the  
 anticipated time, place, duration and number of  
 attendees for each meeting.  
  
 2.3.3. Executive Review. In addition to the Working Team  
 Review Meetings, responsible executives representing  
 the Parties will meet at least semi-annually to  
 review the success of this commitment in  
  
  
  
[\*] Confidential treatment requested.  
  
  
 6 of 25  
 7  
  
 achieving their respective goals, to review the  
 commitment and marketing performance of the  
 sponsorship, and to attempt in good faith to resolve  
 any issues arising from the implementation of the  
 commitment which could not be resolved in the Working  
 Team Review Meetings.  
  
 2.3.3.1. Mediation. If disputes remain after  
 Executive Review, the parties shall select a  
 neutral third party to mediate any remaining  
 disputes on valuation of promotional efforts  
 and activities. If the parties cannot agree  
 on a neutral third party, each party shall  
 nominate a mediator, and the two selected  
 mediators shall jointly select a third, and  
 the three mediators shall resolve such  
 disputes by a majority vote amongst  
 themselves.  
  
 2.3.4. Corrective Action Plan; Termination. At [\*], if  
 Quokka is unsatisfied with the performance of the  
 promotional efforts, it may invoke a "Corrective  
 Action Plan" ("CAP") in order to "make good" the  
 value received by Intel from the promotion  
 commitment. The CAP shall identify deficiencies and  
 remedies as agreed by the parties, and set forth the  
 criteria which the parties agree will remedy such  
 deficiencies. Should the criteria agreed by the  
 parties not be met at the end of the CAP period of  
 [\*], then Intel may terminate the promotion  
 commitment. In the event of termination of the  
 promotion commitment pursuant to this Section 2.3.4.,  
 neither party shall have any further obligations to  
 the other in connection with the promotion (e.g.,  
 Quokka's payment obligations in connection with the  
 promotion shall cease, but Quokka shall not be  
 entitled to any refund of prior payments in  
 connection with the promotion).  
  
2.4. Internet Services.  
  
 2.4.1. SERVICE: Quokka agrees to purchase at least [\*] of  
 services from Intel for Internet Services, from Intel  
 Online Services ("IOS"), Intel Content Services  
 ("ICS"), and Intel Edge Services ("IES")  
 (collectively, the "Services") as set forth herein.  
  
 2.4.2. IOS  
  
 2.4.2.1. MASTER CUSTOMER AGREEMENT FOR HOSTING AND  
 DATA CENTER SERVICES; SERVICE LEVEL  
 AGREEMENTS: Quokka agrees to execute  
 simultaneously with this MOA, the "Intel  
 Online Services Master Customer Agreement"  
 attached hereto as Exhibit B (the "MCA").  
 The parties agree to negotiate in good faith  
 a "Service Level Agreement" ("SLA") setting  
 forth the service standards and other terms  
  
  
[\*] Confidential treatment requested.  
  
  
 7 of 25  
 8  
  
 applicable to the provision by Intel of the  
 services contemplated by the MCA. The SLA  
 will provide for service levels by Intel [\*]  
  
 2.4.2.2. INITIATION OF HOSTING AND DATA CENTER  
 SERVICES: Subject to execution of a mutually  
 acceptable SLA, Quokka will initiate use of  
 Intel's hosting services in October 1999.  
 Quokka agrees, at a minimum, to purchase [\*]  
 of hosting and data center services from  
 Intel during 1999 and 2000. The initial  
 configuration of servers will be hosted at  
 Intel's Santa Xxxxx facility. The  
 anticipated number of servers, bandwidth  
 requirements and the associated charges are  
 set forth in the following table:  
  
  
  
  
 SERVERS/B/W OCT 99 TOTAL SERVERS/B/W JAN TOTAL'00  
 ----------- --- -------- ----------- --- --------  
   
Web [\*] [\*] [\*] [\*] [\*] [\*]  
App [\*] [\*] [\*] [\*] [\*] [\*]  
Dbase [\*] [\*] [\*] [\*] [\*] [\*]  
b/w [\*] [\*] [\*] [\*] [\*] [\*]  
total monthly [\*] [\*] [\*] [\*]  
  
  
Setup [\*] [\*] [\*] [\*]  
Total Cost [\*] [\*] [\*] [\*]  
Prepayment [\*] [\*]  
  
  
Total Cost w/Prepayment [\*] [\*]  
  
Total servers [\*] [\*]  
  
  
  
 2.4.2.3. Additional services above and beyond this  
 initial setup and configuration will be  
 jointly forecasted between Quokka and Intel  
 on a monthly basis.  
  
 2.4.2.4. PRICING. Quokka has reviewed and accepts  
 Intel's standard pricing as set forth on  
 Exhibit C. Quokka understands that such  
 standard prices may change upon notice from  
 Intel, unless the parties agree otherwise in  
 an SLA.  
  
  
[\*] Confidential treatment requested.  
  
  
 8 of 25  
 9  
  
 2.4.2.5. LAUNCH PARTICIPATION. Upon reasonable  
 request, Quokka agrees to participate in  
 Intel's launch activities for Intel's IDS-1  
 data center. Quokka's reasonable  
 participation may include a joint  
 announcement mutually approved by the  
 parties and inclusion of Quokka on an  
 initial list of Intel's customer  
 commitments.  
  
 2.4.3. ICS AND IES: In addition to hosting and data center  
 services, Quokka may purchase certain services from  
 ICS and IES. ICS will provide [\*] IES will provide  
 [\*] Service requirements, delivery timeframes and  
 charge will be agreed upon as specified in a mutually  
 acceptable project requirements documents.  
  
 2.4.4. PAYMENT: In consideration of the services to be  
 provided by Intel, Quokka will make the following  
 payments in the amount of [\*] to Intel on the  
 following schedule:  
  
  
  
  
[\*] Confidential treatment requested.  
  
  
 9 of 25  
 10  
  
  
  
  
 Due Date Amount  
 -------- ------  
   
 October 1, 1999 [\*]  
 January 1, 2000 [\*]  
 April 1, 2000 [\*]  
 July 1, 2000 [\*]  
 October 1, 2000 [\*]  
 January 1, 2001 [\*]  
 April 1, 2001 [\*]  
 July 1, 2001 [\*]  
 October 1, 2001 [\*]  
 January 1, 2002 [\*]  
 April 1, 2002 [\*]  
 July 1, 2002 [\*]  
 October 1, 2002 [\*]  
  
  
 2.4.4.1. Intel will invoice Quokka thirty (30) days  
 prior to the Due Date set forth above  
 ("Invoice Date"). Payments received by Intel  
 more than sixty (60) days after the Invoice  
 Date will bear interest at the rate of 1.5%  
 per month from the original Due Date to the  
 date the payment is received.  
  
 2.4.4.2. Services will be charged against Quokka's  
 payments. If charges for Services utilized  
 by Quokka exceed in aggregate the amount  
 Quokka has paid to Intel hereunder in  
 aggregate, Intel may invoice Quokka for such  
 excess amount. Such excess amount will be  
 credited against Quokka's next payment  
 amount. In the event that Quokka utilizes  
 Services that exceed in aggregate the amount  
 of Quokka's payment obligations in any  
 calendar year Intel will charge Quokka for  
 such Services [\*]  
  
2.5. Quokka Proprietary Configured Systems.  
  
 2.5.1. Quokka may satisfy up to [\*] of its cash payment  
 obligations set forth in Section 2.4.4 by [\*] to  
 Intel.  
  
 2.5.2. The pricing, quantities, specifications and purchase  
 schedule are to be determined by the mutual agreement  
 of the parties; provided that such purchase must be  
 completed by [\*]  
  
  
  
[\*] Confidential treatment requested.  
  
  
 10 of 25  
 11  
  
3. CONFIDENTIALITY: This MOA and the terms hereof are confidential and  
 shall not be disclosed to any third party without the prior written  
 consent of the non-disclosing party. Except as expressly provided  
 herein, this MOA and all disclosures relating thereto shall be governed  
 by CDNA # 101693 executed by the parties on November 18, 1997.  
  
4. INDEPENDENT CONTRACTORS: Notwithstanding the use of the term  
 "partnership" in this MOA, the relationship of the parties shall be as  
 independent contractors and nothing contained herein shall constitute  
 the creation of any partnership, agency or joint venture relationship  
 between the parties hereto. Neither party shall have the right to  
 obligate or bind the other in any manner whatsoever.  
  
5. CONSEQUENTIAL DAMAGES: In no event shall either party be liable to the  
 other party or to third parties for lost profits or other  
 consequential, incidental, indirect, special, damages of any nature  
 whatsoever, including, without limitation, loss of profits, loss of  
 business, or anticipatory profits, even if such party has been apprised  
 of the likelihood of such damages.  
  
6. ASSIGNMENT: Neither party may assign any of its rights, obligations, or  
 privileges (by operation of law or otherwise) hereunder without the  
 prior written consent of the other, except that Intel may assign its  
 rights and obligations under this MOA to one or more of its  
 majority-owned subsidiaries, and Quokka may assign its rights and  
 obligations to any entity that acquires all or substantially all of its  
 assets or a controlling interest of Quokka's outstanding equity  
 (subject to Intel's prior written consent, which will not be  
 unreasonably withheld).  
  
7. ENTIRE AGREEMENT: The entire understanding between the parties is  
 incorporated herein and supersedes all prior discussions and agreements  
 between the parties relating to the subject matter hereto. This MOA can  
 be modified only by a written amendment executed by both parties.  
  
8. SEVERABILITY: If any provision or provisions of this MOA shall be held  
 to be invalid or unenforceable, such provision shall be enforced to the  
 fullest extent permitted by applicable law and the validity, legality  
 and enforceability of the remaining provisions shall not in any way be  
 affected or impaired thereby.  
  
9. TERMINATION: Either party may terminate its performance of related  
 obligations under this MOA if the other party fails to cure a material  
 breach under a portion of this MOA within thirty (30) days of receipt  
 by the breaching party of written notice of such breach from the  
 non-breaching party. The parties agree that the failure or termination  
 of any portion or relevant provision of this MOA will not be  
  
  
  
 11 of 25  
 12  
  
 a basis for terminating other severable obligations or provisions of  
 this MOA, unless the failure or breach is such that the entire MOA  
 loses substantially all of its value to the non-breaching party.  
  
10. NOTICE: Notices required or permitted hereunder shall be in writing and  
 deemed given and received when properly posted by registered or  
 certified mail, postage prepaid, first class, in an envelope properly  
 addressed  
  
 (i) if to Intel, to: Intel Corporation  
 0000 Xxxxxxx Xxxxxxx Xxxx.  
 Xxxxx Xxxxx, Xxxxxxxxxx 00000  
 ATTN: General Counsel  
  
  
 (ii) if to Quokka: Quokka Sports, Inc.  
 000 Xxxxxxx Xxxxxx, Xxxxxx Xxxxx  
 Xxx Xxxxxxxxx, XX 00000  
 ATTN: General Counsel  
  
14. WAIVER: Any waiver of any kind by either party of a breach of this MOA  
 shall not operate or be construed as a waiver of any subsequent breach  
 by the other party. Any delay or omission in exercising any right,  
 power or remedy pursuant to a breach or default by one party shall not  
 impair any right, power or remedy which the other party may have.  
  
15. GOVERNING LAW: This MOA shall be governed exclusively by and construed  
 in accordance with the substantive laws of the State of Delaware,  
 without regard to principles of conflicts of law. The parties agree  
 that any legal proceedings shall be conducted in Santa Clara,  
 California.  
  
16. NATURE OF AGREEMENT: This MOA constitutes a binding obligation of the  
 parties. Upon execution, the parties will enter into good faith  
 negotiations to enter into a definitive agreement that more fully sets  
 forth the respective rights and obligations of the parties (the  
 "Definitive Agreement"); provided, however, that until the parties  
 execute the Definitive Agreement, this MOA shall constitute a valid and  
 binding agreement of the parties hereto. The Definitive Agreement will  
 contain such additional terms and conditions as are customary in  
 agreements of this nature, including without limitation,  
 indemnification provisions, warranties and disclaimers thereof and  
 limitations of liability.  
  
  
  
 12 of 25  
 13  
  
ACCEPTED AND AGREED:  
  
  
INTEL CORPORATION  
  
  
By: /s/ Xxxxxx X. Xxxxxxxx  
 ----------------------------------------  
Name: Xxxxxx X. Xxxxxxxx  
 --------------------------------------  
Its: Senior Vice President  
 ---------------------------------------  
  
  
QUOKKA SPORTS, INC.  
  
  
By: /s/ Xxxx Xxxxxxx  
 ----------------------------------------  
Name: Xxxx Xxxxxxx  
 --------------------------------------  
Its: President and CEO  
 ---------------------------------------  
  
  
  
  
  
  
 13 of 25  
 14  
  
 EXHIBIT A  
  
 RIGHTS AND BENEFITS  
  
  
I. RIGHTS  
  
 1. EXCLUSIVE CATEGORY RIGHTS  
  
 Quokka will not grant any of the rights and benefits as set forth  
 herein to any other party in the Exclusive Category unless any event  
 rightsholder requires Quokka to offer another party any such rights and  
 benefits in connection with coverage of such rightsholder's event. [\*]  
  
 2. WORLDWIDE USAGE BY INTEL OF MARKS AND OFFICIAL DESIGNATIONS  
  
 A. Worldwide use of the following marks, subject to mutually  
 agreeable trademark licenses and usage terms:  
  
 - Quokka Performance Team xxxx  
  
 - Quokka Sports xxxx  
  
 X. Worldwide use of the following official designations, subject  
 to mutually agreeable trademark licenses and usage terms:  
  
 - Official Worldwide Partner of the Quokka  
 Performance Team  
  
 - Official Worldwide On Line Services Partner  
 of the Quokka Performance Team  
  
 3. [\*]  
  
II. BENEFITS  
  
 A. MEDIA BENEFITS  
  
  
  
[\*] Confidential treatment requested.  
  
  
 14 of 25  
 15  
  
 1. Branded Media Impressions: Quokka Performance Team branding and  
 placement for Intel on or within [\*] of the cumulative Projected  
 Branded Impressions set forth below. At least [\*] of such  
 cumulative Projected Branded Impressions shall represent solo  
 branding and placement for Intel.  
  
  
  
  
 Projected  
 Year Branded Impressions  
 ---- -------------------  
   
 1999 [\*]  
  
  
 2000 [\*]  
  
  
 2001 [\*]  
  
  
 2002 [\*]  
  
  
 TOTAL [\*]  
  
  
 2. Premium multimedia advertising design, strategic consulting,  
 creative services, and production furnished by Quokka (e.g.,  
 pop-ups, interstitials, distributed applications and broadband  
 media advertisements) to deliver Intel messaging as part of the  
 Quokka Brand Immersion process.  
  
 3. Monthly Network viewer/audience reports, including Branded  
 Impressions.  
  
 B. SPONSORSHIP/CONTENT BENEFITS  
  
 1. Intent Optimized Content: Production of [\*] mutually agreed content  
 features for inclusion in Intel Promotional Programs during each  
 full year on the Term [\*]  
  
 2. Hospitality programs, as mutually agreed, in connection with events  
 covered by Quokka, to the extent that Quokka may provide such  
 rights.  
  
 C. SALES BENEFITS  
  
 1. Real-time Intel and Quokka Performance Team Product Showcase within  
 the Site.  
  
 2. Intel Sales Tools [\*]: Quokka will create a custom CD and custom  
 URL within xxxxxx.xxx for exclusive use by Intel to showcase Intel  
 equipment and technology.  
  
 3. Access to Quokka content for Intel advertising and marketing  
 efforts, to the extent that Quokka may license such right.  
  
  
[\*] Confidential treatment requested.  
  
  
 15 of 25  
 16  
  
 4. Access to the Quokka Digital Studio for real time product  
 showcasing and corporate customer and employee events. In addition,  
 appropriate Intel branding will be present in the studio.  
  
 5. Direct Marketing: Commercial efforts to promote QPT and Intel's  
 role therein in online newsletters direct mail relationship  
 marketing efforts.  
  
 D. QPT PUBLIC RELATIONS/COMMUNICATIONS BENEFITS  
  
 1. When available, Quokka will recognize and endorse the Quokka  
 Performance Team partnership alliance and Intel's official  
 designation in off-line media relations, public announcements,  
 advertising and keynote addresses done by Quokka Sports.  
  
 2. Quokka will supply executive speakers (such as Xxxx Xxxxxxxx and  
 Xxxx Xxxxxxx) to speak to Intel meetings, events and trade shows  
 regarding Intel's Digital Marketing initiatives. All speaker fees  
 shall be waived for Intel. Engagements will be subject to speaker  
 availability.  
  
 3. Quokka will participate in Intel promotional events, both online  
 and otherwise.  
  
 E. CATEGORY LEADERSHIP BENEFITS  
  
 1. Quokka will appoint a designated Intel Relationship manager to  
 manage and maximize to the extent possible the benefits described  
 in this agreement.  
  
 2. Intel Digital Entertainment Partnership Plan prepared jointly by  
 Quokka Sports and INTEL focused on executing against Intel's  
 business strategies.  
  
 3. Annual ROI-based Assessment Report.  
  
  
  
  
 16 of 25  
 17  
  
 EXHIBIT B  
  
 STANDARD PRICING SCHEDULE  
  
  
  
  
  
  
OFFERING STANDARD PRICE / SERVER  
-------- -----------------------  
   
IA Web/App Server [\*]  
IA DB Server [\*]  
10/50 bandwidth\* [\*]  
  
  
BANDWIDTH IS CHARGED AT [\*] for the target usage base [\*] For each incremental  
mbs above the base, [\*] is charged in the following fashion: IOS will  
monitor the bandwidth usage [\*] IOS will deduct the [\*] usage base from the  
total. The highest remaining data point [\*] will be the basis of the charge. [\*]  
  
  
  
  
  
[\*] Confidential treatment requested.  
  
  
 17 of 25  
 18  
  
 EXHIBIT C  
  
 INTEL(R) ONLINE SERVICES  
  
 MASTER CUSTOMER AGREEMENT  
  
  
  
 This Master Customer Agreement ("Agreement") is between Intel Online  
Services, Inc., a wholly owned subsidiary of Intel Corporation, ("Intel") and  
the Customer identified below ("Customer"). This Agreement includes certain  
Service Level Agreements, Attachments and Schedules to be mutually agreed in  
writing and attached in the future (together the "Schedules").  
  
1. Services. Intel will provide to Customer the internet data center services  
("Services") specified in a Service Level Agreement ("SLA") Order Form attached  
hereto or added by the parties in the future. All SLA's shall be effective upon  
the date set forth in them or a related fee schedule. In the event of any  
conflict of any SLA and this Agreement, the terms of the applicable SLA shall  
control.  
  
2. Prices and Taxes. Prices are stated in the relevant SLA or attached fee  
schedule and may be changed at any time by Intel unless they are stated to be  
firm for a certain period. If any of the Services are on a month-to-month basis,  
Intel will give Customer at least thirty (30) days notice of a price change.  
Customer is responsible for tariffs, telecommunications surcharges or other  
governmental charges due in connection with providing the Services to Customer.  
If Intel is required to pay or collect any local, value-added, goods and  
services, or any other similar taxes or duties based on the Services provided  
hereunder, then Intel shall add such taxes to the prices for Services and  
Customer agrees to pay such amounts.  
  
3. Payment. Unless otherwise stated in an SLA, Intel will invoice Customer  
monthly. Customer agrees to pay Intel within thirty (30) days from receipt of  
invoice. For overdue invoices, Customer will pay Intel interest on the overdue  
amount at a rate of one and one-half percent (1.5%) for each month or part of a  
month (or the maximum rate allowed by law, whichever is less) that the payment  
is overdue. All fees payable to Intel shall be paid by check tendered or wire  
transfer at the following addresses or to such other payment addresses as Intel  
shall designate in writing in a notice given in accordance with Section 14.1  
below:  
  
 Remittance Address: Wire Transfer Account:  
 Intel Corporation CITIBANK  
 0000 X.X. 00xx Xxx. New York, New York  
 Xxxxxxxxx, XX 00000 ABA #000000000  
 Attn: Post Contract Management General Account # 00000000  
 M/S: JF3-149  
  
Upon the request of either party, the parties agree to negotiate in good faith  
an electronic invoice and payment procedure suitable for making the payments  
contemplated under this Section.  
  
4. Term. This Agreement shall commence as of the last date of execution  
("Effective Date") and shall terminate upon the later of: (i) the last to expire  
of any SLA entered into hereunder, or (ii) December 31, 2002. Thereafter, the  
Agreement shall automatically renew for successive one (1) year periods unless  
either party gives the other written notice of intent to terminate and not renew  
at least sixty (60) days' prior to the end of the initial term or any renewal  
term.  
  
5. Termination.  
  
 5.1 General Termination Rights. Either party may terminate this  
Agreement for material breach by the other party upon written notice of not less  
than thirty (30) days and failure to cure the breach within the notice period.  
  
  
 18 of 25  
 19  
  
 5.2 Intel's Additional Rights to Restrict Services. Intel reserves the  
right with or without notice to modify or terminate any or all Services or  
restrict Customer's use in whole or in part if, in Intel's sole judgment, use of  
the Services by Customer or its end users (i) presents a material security risk  
or will interfere materially with the proper continued operation of a data  
center or related services; (ii) violates applicable laws or governmental  
regulations, including without limitation consumer protection, securities  
regulation, child pornography, obscenity, data privacy, data transfer and  
telecommunications laws; (iii) violates or infringes any intellectual property  
right of Intel or a third party; (iv) violates export control regulations of the  
United States or other applicable countries; (y) otherwise violates Intel's  
Acceptable Use Policy; or (v) is subject to an order from a court or  
governmental entity stating that such use generally or for certain activities  
must stop. Prior to modifying or terminating any Services for the reasons set  
forth in subparagraphs (iii), Intel will provide at least forty-eight (48) hours  
notice to Customer prior to taking any such action. In all other circumstances  
set forth in this Section 5.2, Intel will endeavor to provide as much prior  
notice as reasonably practicable before taking any such action; provided that  
Customer acknowledges that Intel may not be able to give any notice in such  
circumstances.  
  
 5.3 Effect of Termination. Upon termination, all rights granted to  
Customer under this Agreement terminate immediately. Intel will return to  
Customer all data files or other Customer property in Intel's possession so long  
as Intel, in its reasonable discretion, determines that such a return would not  
be a violation of any applicable law or governmental regulation. Customer  
remains liable to pay Intel for the Services received through the date of  
termination of this Agreement and for any periods during which Customer is still  
receiving all or some portion of the Services. The following sections will  
survive any expiration or termination of this Agreement: Section 6.1 (Customer's  
Responsibility for Use of the Services), Section 6.5 (Customer's Indemnity of  
Intel), Section 7 (Intel's Indemnity of Customer), Section 9 (Ownership of  
Intellectual Property), Section 10 (Confidentiality; Data Use), Section 11  
(Disclaimer of Warranties), Section 12 (Limitation of Liability; Remedies),  
Section 13 (Dispute Resolution; Governing Law), and Section 14 (Miscellaneous).  
  
6. Customer Responsibilities.  
  
 6.1 Customer's Responsibility for Use of the Services. Customer agrees  
it is solely responsible for and assumes all liability relating to the  
following:  
  
 A. All aspects of Customer's business;  
  
 B. All content and data provided to Intel by or through Customer  
 for use with the Services;  
  
 C. Decisions about Customer's computer and communications systems  
 needed to access the Services;  
  
 D. All results obtained from using the Services;  
  
 E. Compliance with all applicable laws and governmental  
 regulations regarding Customer's business or use of the  
 Services;  
  
 F. Use of the Services by Customer's end users;  
  
 G. Compliance with Intel's Acceptable Use Policy, established and  
 applicable from time to time, by Customer and its end users.  
 Should Intel change its Acceptable Use Policy, Customer shall  
 have 30 days within which to comply with the revised Policy,  
 except that no such compliance period shall be applicable for  
 categories (i), (ii), (iv), or (vi) of Section 5.2.  
  
 H. Cooperation. Customer agrees to provide Intel with all  
 cooperation and information necessary or desirable to  
 implement the Services for Customer.  
  
 6.2 End User Agreements. To protect both Customer and Intel, Customer  
shall include in agreements, if any, with its end users, (i) requirements for  
end users to comply with usage policies sufficient to ensure compliance with  
Intel's Acceptable Use Policy; (ii) limitation of liability provisions no less  
protective than those contained in Section 12.1 below; (iii) dispute resolution  
and attorneys' fees  
  
  
  
 19 of 25  
 20  
  
provisions substantially similar to those contained in Sections 13.1, 13.2, and  
13.4 below. Such provisions shall protect Customer and its service provider  
(i.e., Intel) to the same extent.  
  
 6.3 Resale. Unless expressly permitted by a Schedule or separate  
reseller agreement, Customer shall limit the use of the Services to Customer's  
purposes and those of its end users and shall not engage in the business of  
reselling Intel's hosting or other data center services to third parties (other  
than Quokka affiliates and joint ventures of which Quokka owns 50% or more).  
  
 6.4 Customer's Indemnity of Intel. Customer will indemnify Intel  
against any claim, suit, or proceeding by any end user or third party arising  
from (i) matters for which Customer has responsibility under this Section 6;  
(ii) violation by Customer of any obligations under this Section 6; (iii) claims  
that any content of Customer or its end users, including but not limited to  
data, text, multimedia images (e.g. graphics, audio and video files) or other  
materials (collectively "Content"), or the manner in which Customer or its end  
users make use of the Services, constitutes an infringement of any patent,  
copyright, trademark, trade secret, publicity, privacy, or other right of any  
third party, or (iv) any civil or criminal violations of law or governmental  
regulations occurring as a result of actions or omissions of Customer or its end  
users. Customer will defend or settle any such suit or proceeding brought  
against Intel and will pay all damages and costs finally awarded against Intel  
relating to the foregoing matters (including any indirect or consequential  
damages awarded as a result of such proceeding); provided that Intel (x)  
promptly notifies Customer in writing of any such suit or proceeding, (y)  
provides Customer with sole control over the defense or settlement of any such  
action; and (z) provides reasonable information and assistance in the defense or  
settlement of any such action. Intel may participate in any such suit or  
proceeding through counsel of its choice at Intel's own expense; provided, that  
the costs associated with Intel's counsel shall not be deemed damages or costs  
for purposes of Customer's indemnity hereunder. Notwithstanding the foregoing  
remedies, Intel reserves the right (but shall have no obligation) to delete any  
Content installed on an Intel server and to modify or terminate any or all  
Services or restrict Customer's use in whole or in part in the event of any suit  
or proceeding, or threatened suit or proceeding, which may be subject to an  
indemnity obligation under this Section; provided that Intel shall give Customer  
prior notice as set forth in Section 5.2.  
  
7 [\*]  
  
8. Announcements and Promotion. Upon execution of this Agreement, the parties  
may issue a mutually approved joint press release announcing the relationship  
formed by this Agreement. Thereafter, neither party will issue any press  
releases or use the logo of the other party in an advertisement or other public  
announcement relating to this Agreement or the relationship between the parties  
without the prior written approval of the other, including any approval given in  
a Schedule hereto. Notwithstanding the restrictions of the prior sentence, the  
parties will cooperate in good faith to advertise the relationship created in  
this Agreement on their web sites, including cross-links to their respective web  
sites and to others, under appropriate, mutually-agreed linking arrangements.  
Customer agrees that Intel may include Customer's name in listings of Intel's  
customers.  
  
  
[\*] Confidential treatment requested.  
  
  
 20 of 25  
 21  
  
9. Ownership of Intellectual Property and Equipment.  
  
 9.1 Except as expressly set forth in this Agreement or any applicable  
SLA, the parties do not, directly or by implication, by estoppel or otherwise,  
grant to each other any rights or licenses, and neither party shall have any  
ownership rights in any intellectual or tangible property of the other.  
  
 9.2 Intel shall not obtain any right, title, and/or interest in the  
Content provided by Customer or its end users and installed on Intel's hardware;  
however, Intel shall retain title to and all rights in all intellectual property  
provided by Intel, including, but not limited to, any know-how related to  
Intel-provided products or services such as hardware, software or any other  
server technology.  
  
 9.3 Except as expressly set forth in this Agreement or any applicable  
SLA, all equipment provided by Intel in connection with this Agreement or any  
SLA shall remain the property of Intel.  
  
 9.4 Notwithstanding anything in this Agreement to the contrary, the  
rights granted herein do not include any right, license, release or immunity,  
directly or indirectly, express, implied or by estoppel, in or to Intel's  
component-level, flash memory chips, video chips, or microprocessor or related  
chipset technology, or any of Intel's process technology under any patent,  
copyrights, trade secret, mask work or other intellectual property right,  
including but not limited to Intel architecture processors.  
  
10. Confidentiality; Data Use.  
  
 10.1 General Non-Disclosure. Subject to the terms of this Agreement,  
each party shall maintain the confidentiality of the information it receives  
from the other pursuant to the terms of the Corporate Nondisclosure Agreement  
("CNDA") between Intel and Customer, which is incorporated herein by this  
reference. If the parties hereafter exchange other confidential information  
relating to this Agreement during the term hereof, they may exchange that  
information under a CITR (Confidential Information Transmittal Record) to the  
CNDA. Except as otherwise expressly provided under this Agreement, neither party  
may disclose to the public or to any third party the existence of this Agreement  
or the terms and conditions hereof other than with the express prior written  
consent of the other party.  
  
 10.2 Data Use. Unless requested to do so by Customer, Intel will not  
collect or retain for its own purposes any personally identifiable information  
regarding end users who access the Services through Customer. Intel will monitor  
use of the Services and gather statistical and demographic information about the  
use of the Services by Intel's Customers and their end users. Such information  
will be used for internal statistical and marketing reports and may be shared by  
Intel with third parties in aggregate or statistical form only. Both parties  
agree to comply with all applicable privacy and data transfer statutes, rules,  
or regulations governing the respective activities of the parties.  
  
11. Disclaimer of Warranties.  
  
 11.1 General Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN AN APPLICABLE  
SLA, THE SERVICES ARE PROVIDED "AS IS" AND INTEL MAKES NO WARRANTIES OR  
REPRESENTATIONS CONCERNING THE SERVICES OR ANY RESULTS TO BE ACHIEVED THROUGH  
USE OF THE SERVICES; INTEL DISCLAIMS ALL OTHER WARRANTIES, INCLUDING THE  
WARRANTIES OF MERCHANTIBILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE,  
NONINFRINGEMENT AND TITLE, AND ALL WARRANTIES ARISING FROM A COURSE OF DEALING,  
USAGE, OR TRADE PRACTICE.  
  
  
 21 of 25  
 22  
  
 11.1 No Security Warranty. EXCEPT AS EXPRESSLY STATED IN AN APPLICABLE  
SLA, INTEL DOES NOT GUARANTEE THAT ITS PROCEDURES AND SERVICES WILL PREVENT  
LOSS, ALTERATIONS OR UNAUTHORIZED ACCESS TO CUSTOMER DATA HOSTED THROUGH AN  
INTEL FACILITY.  
  
 11.2 Disclaimer of Actions Caused by or Under the Control of Third  
Parties. INTEL DOES NOT AND CANNOT CONTROL THE PERFORMANCE OF ANY DATA,  
PRODUCTS, OR SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTION  
OR INACTION BY THIRD PARTIES CAN IMPAIR OR DISRUPT INTEL'S SERVICES. INTEL MAKES  
NO REPRESENTATIONS AND EXPRESSLY DISCLAIMS ALL WARRANTIES REGARDING THE DATA,  
PRODUCTS, OR SERVICES OF ANY THIRD PARTY, INCLUDING THE PROVIDERS OF ELECTRICAL  
OR TELECOMMUNICATIONS PRODUCTS OR SERVICES. SUCH DATA, PRODUCTS, AND SERVICES  
ARE NOT PROMISED TO BE FREE OF ERROR OR INTERRUPTION, AND INTEL EXPRESSLY  
DISCLAIMS ALL LIABILITIES ARISING FROM ANY SUCH ERROR, INTERRUPTION, OR OTHER  
FAILURE.  
  
12. Limitation of Liability; Remedies.  
  
 12.1 DAMAGES LIMITATION. LIABILITY ARISING UNDER THIS AGREEMENT SHALL  
BE LIMITED TO DIRECT, OBJECTIVELY MEASURABLE DAMAGES. NEITHER PARTY OR THEIR  
SUPPLIERS, INCLUDING SUPPLIERS OF TELECOMUNICATIONS SERVICES, SHALL HAVE ANY  
LIABILITY TO THE OTHER PARTY OR TO ANY THIRD PARTY, FOR ANY INCIDENTAL,  
PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST  
PROFITS, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR COSTS OF PROCUREMENT OF  
SUBSTITUTE GOODS OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH  
DAMAGES, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE) STRICT  
LIABILITY OR OTHERWISE. Notwithstanding anything to the contrary, the aggregate  
liability of Intel and its suppliers under this Agreement shall not exceed the  
lesser of (a) the total amounts paid by Customer to Intel hereunder [\*] which  
gave rise to the claims or (b) [\*] Customer hereby agrees and acknowledges that  
its remedies for interruption of Services due to outages or failures may be  
further limited in an applicable SLA to receipt of an outage credit toward  
payment of fees due under the SLA.  
  
 12.2 SOLE REMEDIES; MATERIALITY. INTEL AND ITS SUPPLIERS DISCLAIM ANY  
AND ALL LIABILITIES OR DAMAGES OTHER THOSE EXPRESSLY PROVIDED IN THIS AGREEMENT  
OR AN ATTACHED SLA. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE LIABILITY OF INTEL  
AND ITS SUPPLIERS ARISING UNDER THIS AGREEMENT OR IN CONNECTION WITH THE  
SERVICES SHALL BE EXPRESSLY LIMITED TO THE LIABILITY AND DAMAGES PROVIDED  
HEREIN. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS REFERENCED IN THIS SECTION  
12 ARE MATERIAL TERMS TO THIS AGREEMENT.  
  
 12.3 Force Majeure. In the event that either party is unable to perform  
any of its obligations under this Agreement or to enjoy any of its benefits  
because of any event beyond the control of the affected party, including, but  
not limited to, natural disaster, acts of God, actions or decrees of  
governmental bodies or failure of communication or electrical lines (a "Force  
Majeure Event"), the party who has been so affected shall promptly give written  
notice to the other party and shall use its best efforts to resume performance.  
Upon receipt of such notice, all obligations under this Agreement shall be  
immediately suspended for the duration of such Force Majeure Event.  
  
13. Dispute Resolution; Governing Law.  
  
 13.1 With the exception of disputes involving breach of  
confidentiality, infringement of a party's intellectual property, and other  
types of irreparable harm for which injunctive relief through the  
  
  
  
[\*] Confidential treatment requested.  
  
  
 22 of 25  
 23  
  
courts is sought by either party, all disputes arising directly under the  
express terms of this Agreement or the grounds for termination thereof shall be  
resolved as follows: The senior management of both parties shall meet to attempt  
to resolve such disputes. If the disputes cannot be resolved by the senior  
management, either party may make a written demand for formal dispute resolution  
and specify therein the scope of the dispute.  
  
 13.2 If the disagreements cannot be resolved by the senior management  
after thirty (30) days from the date any party made a written demand for  
resolution, a binding arbitration shall be held. Subject to the provisions of  
this Section, the rules of the arbitration shall be agreed upon by the parties  
prior to the arbitration and based upon the nature of the disagreement. To the  
extent that the Parties cannot agree on the rules of the arbitration, then the  
Commercial Arbitration Rules of the American Arbitration Association ("AAA") in  
effect on the Effective Date of this Agreement, or, when either of the parties  
is not a U.S. entity, then the Commercial Arbitration Rules of the International  
Chamber of Commerce ("ICC") in effect on the Effective Date of this Agreement,  
and except as the applicable rules are modified by this Agreement, shall apply.  
The proceedings shall be held in the County of Santa Clara, California, U.S.A.  
under the auspices of the AAA or the International Chamber of Commerce,  
whichever is applicable. As a minimum set of rules in the arbitration, the  
Parties agree as follows:  
  
 A. The arbitration shall be held by single arbitrator mutually  
 acceptable to both parties. If the parties cannot agree on a single  
 arbitrator within thirty (30) days from the date written demand is  
 made, each Party shall identify one independent individual who shall  
 meet to appoint a single arbitrator. If an arbitrator still cannot be  
 agreed upon within an additional thirty (30) days, one shall be  
 appointed by the AAA or ICC as applicable. The arbitrator shall be  
 knowledgeable regarding the internet hosting or data services  
 industries.  
  
 B. Prior to a final award, the parties shall equally bear the costs and  
 fees of the arbitration and each party shall bear its own legal  
 expenses. The Parties agree that a court reporter will record the  
 arbitration proceedings and that the reporter's record will be the  
 agreed transcript of the proceedings. Prior to a final award, the  
 parties will share the expenses of this reporter.  
  
 C. The arbitrator shall specify the basis for his/her decision, the  
 basis for the damages award and a breakdown of the damages awarded, and  
 the basis of any other remedy authorized under Section 12. The decision  
 of the arbitrator shall be considered as a final and binding resolution  
 of the disagreement, shall not be subject to appeal and may be entered  
 as a judgment in any court of competent jurisdiction in the United  
 States in the State of California. Each Party agrees to submit to the  
 jurisdiction of any such court for purposes of the enforcement of any  
 such decision, award, order or judgment.  
  
 D. Any arbitration proceeding hereunder shall be conducted on a  
 confidential basis.  
  
 E. The arbitrator shall apply the substantive laws of the State of  
 Delaware in interpreting and resolving disputes.  
  
 F. The parties shall agree upon what, if any, discovery shall be  
 permitted. If the parties cannot agree on the form of discovery within  
 fifteen (15) days after the appointment of the Arbitrator, then there  
 shall be neither discovery nor the issuance of subpoenas. In no event,  
 however, shall any such discovery take more than three months.  
  
 G. The duty of the parties to arbitrate any dispute within the scope of  
 this Section shall survive the expiration or termination of this  
 Agreement for any reason. The parties specifically agree that any  
 action must be brought, if at all, within two (2) years from the  
 accrual of the cause of action.  
  
  
  
 23 of 25  
 24  
  
 H. The discretion of the arbitrator to fashion remedies shall be  
 limited as stated in this Section 13 and Section 12 hereunder, and  
 shall exclude any right to award a remedy based on implied rights under  
 the Agreement.  
  
 13.3 Other Claims. Any controversy or claim which is beyond the scope  
of this Section shall be submitted by any affected party to a court of competent  
jurisdiction located in Santa Xxxxx County, California, U.S.A. and the parties  
agree to be bound by any judgment of such court. Otherwise, neither Party shall  
xxx the other where the basis of the suit is within the scope of this Section  
except for enforcement of the arbitrator's decision in the event that the other  
party is not performing in accordance with the arbitrator's decision.  
  
 13.4 Governing Law. Any claim arising under or relating to this  
Agreement shall be governed by the internal substantive laws of the State of  
Delaware and the federal courts located in Delaware, without regard to  
principles of conflict of laws. Each party hereby agrees to jurisdiction and  
venue in the courts of the State of California for all disputes and litigation  
arising under or relating to this Agreement. Furthermore, the parties agree that  
the terms of The U.N. Convention on Contracts for the International Sale of  
Goods do not apply to this Agreement.  
  
 13.5 Attorneys' Fees. In the event of any dispute or arbitration  
hereunder, the prevailing party shall be entitle to recover its costs and  
disbursements incurred, together with reasonable attorneys' fees to be fixed by  
the arbitrator or court at trial or on appeal.  
  
14. Miscellaneous.  
  
 14.1 Notice. Unless otherwise stated herein, written notices shall be  
delivered by hand, post, fax, or email (with contemporaneous delivery by one of  
the foregoing means) to the persons and at the addresses as set forth below and  
shall be deemed given upon transmission in the case of fax or email or otherwise  
upon delivery. Either party may change its address for receipt of notice to the  
other party by delivering written notice of such change pursuant to this  
Section.  
  
If to Intel: If to Customer:  
  
Intel Online Services, Inc. Quokka Sports, Inc.  
0000 Xxxxxxx Xxxxxxx Xxxx. 000 Xxxxxxx Xxxxxx, Xxxxxx Xxxxx  
Xxxxx Xxxxx, Xxxxxxxxxx 00000 Xxx Xxxxxxxxx, XX 00000  
  
 14.2 Invalidity. The invalidity or unenforceablity for any reason of  
any provision of this Agreement shall not prejudice or affect the validity or  
enforceability of its other provisions.  
  
 14.3 Assignment. Neither party may assign any of its rights,  
obligations, or privileges (by operation of law or otherwise) hereunder without  
the prior written consent of the other, except that Intel may assign its rights  
and obligations under this Agreement to one or more of its majority-owned  
subsidiaries, and Customer may assign its rights and obligations to any entity  
that acquires all or substantially all of its assets or a controlling interest  
of Customer's outstanding equity (subject to Intel's prior written consent,  
which will not be unreasonably withheld).  
  
 14.4 Headings. The headings to the Agreement provisions are for  
reference only and shall not affect their interpretation.  
  
 14.5 Independent Contractor. The parties hereto are independent  
contractors. Nothing in this Agreement will be construed to make the parties  
partners or joint venturers or to make either party liable for the obligations,  
acts or activities of the other.  
  
 14.6 No Third-Party Beneficiaries. The provisions of this Agreement are  
intended solely for  
  
  
  
 24 of 25  
 25  
  
the benefit of Customer and Intel and its suppliers and shall create no rights  
or obligations enforceable by any other party unless such beneficiaries are  
expressly set forth in a Schedule hereto.  
  
 14.7 Entire Agreement; Amendment. This Agreement, including each  
Schedule, constitutes the entire agreement between the parties with respect to  
matters contained herein, and all prior or contemporaneous agreements and  
negotiations with respect to those matters are superseded by this Agreement. No  
waiver of any breach or default shall constitute a waiver of any subsequent  
breach or default. Any changes to this Agreement, or any additional or different  
terms in Customer's purchase orders, acknowledgments or other documents, will  
not be effective unless expressly agreed to in writing by the party against whom  
enforcement is sought.  
  
Please sign and date below to indicate your understanding and acceptance of the  
terms of this Agreement.  
  
CUSTOMER: INTEL CORPORATION:  
  
By: By:  
Print Name: Print Name:  
Title: Title:  
Date: Date:  
  
  
  
  
  
  
  
  
 25 of 25