Marketing Trial Agreement for Voice Activated Television Control Service

This Marketing Trial Agreement (the "Agreement") is made this 11th day of May, 2005 (the "Effective Date") by and between AgileTV Corporation, a Delaware corporation with offices at 333 Ravenswood Avenue, Building 202, Menlo Park, CA 94025 ("AgileTV") and Comcast Cable Communications Management, LLC ("Comcast") a Delaware corporation with offices at 1500 Market Street, Philadelphia, PA 19102.

WHEREAS, AgileTV is in the business of developing and licensing voice recognition technology to enable voice-activated remote control over the television and to give digital cable television subscribers an easy and intuitive television interface through which they can access a variety of programming and information services;

WHEREAS, Comcast is in the business of evaluating new technology and making strategic recommendations regarding new broadband products, services and technologies to its Affiliates;

WHEREAS, Comcast wishes to conduct a field trial of limited scope and duration in which it evaluates AgileTV's voice-activated remote control and programming interface products and services (the "AgileTV System") and measures consumer demand for voice-activated products and services in general (the "Trial"); and

WHEREAS, AgileTV wishes the opportunity to participate in the Trial in order to facilitate Comcast's evaluation of the AgileTV System and identification of the technical, operational and integration issues associated with the use of the AgileTV System in a cable television system environment.

NOW THEREFORE, in consideration for the mutual covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Comcast and AgileTV (each individually a "Party", or collectively the "Parties") hereby agree as follows:

Section 1. Definitions

- 1.1 **Affiliate** means any corporation or other entity that controls, is controlled by or is under common control with a Party.
- 1.2 **AgileTV System** means the software, equipment (including Head-end Equipment and Customer Premises Equipment) and documentation that enables the provision of AgileTV's voice-activated remote control and program navigation products and services known as "Promptu".
- 1.3 **Agreement** means this Marketing Trial Agreement for Voice Activated Television Control Service, including the Statement of Work attached as **Attachment A**

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- 1.4 **Confidential Information** means information that is confidential in nature as defined in the Confidentiality Agreement between AgileTV and Comcast Corporation, dated August 27, 2003.
- 1.5 **Customers** means subscribers to a Trial Cable System. Customers may include employees of Comcast or its Affiliates.
- 1.6 **Customer Premises Equipment** means the components of the AgileTV system that are installed in the Customers' homes, including the VoiceRemote control and the VoiceLink receiver. Customer Premises Equipment does not include the set-top box or any other equipment located at the Customers' premises that is not provided by AgileTV or specific to the AgileTV system and service. The Customer Premises Equipment is more completely described in Exhibit A to Attachment A, the Product Description.
- 1.7 **Head-end** means the physical head-end facility of a Comcast cable system, or a separate but functionally equivalent Comcast facility having suitable connectivity to the actual cable system head-end.
- 1.8 **Head-end Equipment** means the components of the AgileTV System that are installed in the Head-end, including the speech recognition server cluster, the related local area network and network attached storage, and any other components specific to the AgileTV System. Head-end Equipment does not include the upstream and downstream cable networking equipment or other equipment in the cable plant that is not provided by AgileTV or specific to the AgileTV System and Promptu Service. The Headend Equipment is more completely described in Exhibit A to Attachment A, the Product Description.
- 1.9 **Statement of Work** means a detailed description of the AgileTV System, the services to be provided by AgileTV, the reporting requirements assumed by AgileTV and any other deliverables of the Parties that is annexed hereto as **Attachment A**. If the Parties agree to additional work not covered by Attachment A, a new Statement of Work will be drafted and executed by the Parties and annexed hereto as Attachment A-1, A-2, etc.
- 1.10 **Joint Research Agreement** means the anticipated three-way agreement between AgileTV, Comcast and Time Warner Cable Inc. ("Time Warner") governing the conduct of the Market Research, the Usage Research and the Technical Research and setting forth the respective rights and obligations of the Parties thereto.
- 1.11 **Market Research** means the research that will be conducted with both the technical trial participants and the Trial Customers. This research is further defined in the Joint Research Agreement but may include research tactics such as telephone surveys and in-home usability studies.
- 1.12 **Technical Research** means the measurements and analysis conducted by Comcast and AgileTV of the impact that the AgileTV System and the Trial Customers' use of the AgileTV System has (a) on the existing video and other services provided by the Trial Cable System, (b) on the Comcast network, and (c) on the hardware and

software attached to the AgileTV System at the Comcast lab, the Trial Cable System head end or the Trial Customers' homes.

- 1.13 **Technical Trial Agreement** means that certain Trial Agreement for Voice Activated Television Control Service between the Parties, dated August 13, 2004.
- 1.14 **Trial** means the marketing trial conducted by Comcast and AgileTV and observed by Time Warner, which will take place as further described below in Section 2 and on Attachment A.
- 1.15 **Trial Cable System** means a Comcast-affiliated cable system that is participating in the Trial, and includes the cable head-end, Customer premises and all other components of the cable plant. The specific system initially included is the Comcast-affiliated cable system in Willow Grove PA, operated from Comcast's Torresdale Ave. head-end in Northeast Philadelphia, PA.
- 1.16 **Trial Customers** means Customers who have the AgileTV System installed in their homes and use the AgileTV System during the Trial.
- 1.17 **Trial Period** means the period of time from the commencement of the Trial to the sooner of the end of the Trial or the time Comcast notifies AgileTV that it wishes to conclude the Trial. The Parties further agree that the Trial Period shall not continue beyond November 15, 2005 unless specifically extended in writing by the Parties.
- 1.18 **Usage Research** means the measurement and analysis conducted by Comcast and AgileTV of the usage activity of the AgileTV System by Trial Customers, also known as Usage Data. Usage Research also means usage feedback shared by customers during the Market Research. The Usage Data will be compiled on an anonymous basis and, to the extent it is shared with any third Party, it will be shared only in the form of reports of aggregate usage that do not correlate the activities of any individual Trial Customer or Customer to any personally identifiable information about that Trial Customer or Customer. Usage Data includes data gathered and reports generated from Trial Customer usage of the AgileTV System and Promptu, Customer service calls and other Trial Customer contact with the Comcast customer service organizations regarding service issues, provided that such data and reports will not contain any individually identifiable Trial Customer information.

Section 2. The Trial

- 2.1 **Trial Description**. The Trial involves the deployment of the AgileTV System on a trial basis to approximately 275 Trial Customers in the Trial Cable System, as further described in the Statement of Work. The projected date for the Trial is May 11, 2005.
- 2.2 **Location**. The Trial will take place primarily at the Trial Cable System. The Trial also will involve components located at AgileTV's facility at 333 Ravenswood Ave., Building 202, Menlo Park, CA and will require network interconnects including virtual private network ("VPN") links between the sites.

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- 2.3 **Purpose**. The Trial is intended to (a) measure the consumer response to a voice-activated remote control platform in general, (b) measure consumer demand for a voice activated remote control platform, (c) measure the performance of the AgileTV System in a live environment; and (d) gather information about how Customers use the AgileTV service.
- 2.4 **Branding**. The AgileTV service will be branded and positioned to Customers under the "Promptu" brand available from Comcast. Comcast will have the sole authority to make final decisions regarding branding, marketing strategy and tactics and general positioning of the AgileTV service to Customers, requiring only that such decisions are consistent with AgileTV's standard guidelines regarding uses of trademarks and other marks owned by AgileTV. Without limiting the foregoing, for the duration of the Trial, AgileTV shall ensure that the "promptu.com" domain name points to a website that is in full compliance with the requirements defined in Section 7.2.5 with respect to any references to Comcast or the Trial.
- 2.5 **Structure**. This Agreement sets forth the general terms governing the relationship of the Parties and the conduct of the Trial. The Statement(s) of Work will set forth in detail each Party's obligations, any applicable performance metrics, technical information regarding the equipment and software being used and other specific information regarding the installation and deployment of the AgileTV System in the Trial Cable System. In the event of a conflict between this Agreement and a Statement of Work duly executed by both Parties, the Statement of Work shall govern; provided, however, that no Statement of Work will revoke, modify or supersede the rights and obligations of the Parties set forth in Section 5.2, 5.4, 5.6, 5.7 and Sections 6 through 12 (inclusive of subparts).
- 2.6 **Limitations**. In the event the Parties agree to conduct a commercial deployment of the AgileTV System, the Parties will enter a separate written agreement that sets forth the terms and conditions applicable to such deployment. This Agreement does not contemplate anything beyond the limited trial discussed herein and does not constitute a promise or commitment to move beyond such trial.

Section 3. Obligations of AgileTV

3.1 Delivery of the AgileTV System. As defined in Exhibit A (Product Description) to Attachment A, (Statement of Work), AgileTV will deliver to Comcast at the Trial Cable System and/or other location as specified by Comcast all hardware, software, documentation and other components of the AgileTV System necessary to provide the AgileTV System to the Trial Customers. Such components will include, without limitation, all necessary Customer Premises Equipment (excluding set top boxes, which will be supplied to Trial Customers by Comcast) and all equipment, software and documentation described in Section 2 of the Product Description. Without limiting AgileTV's obligation to deliver to Comcast Customer Premises Equipment and other components for purposes of the Trial as and when requested by Comcast, to the extent that AgileTV does not have a sufficient number of Customer Premises Equipment and other components to support the trial at the level defined in Section 2.1 as and when requested by Comcast, AgileTV shall so notify Comcast and thereafter shall deliver such requested Customer Premises Equipment and other components to Comcast as and

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when the same become available to AgileTV, in preference to any other customers of AgileTV. AgileTV will bear all costs of shipping and delivery of all such components to Comcast.

- 3.2 **Licenses and Rights to Use**. AgileTV will be responsible for obtaining all software, licenses, consents, waivers and approvals with respect to the AgileTV system that are necessary to install and operate the AgileTV System in the Trial Cable System and to provide the Promptu Service to the Trial Customers.
- 3.3 Integration and Adaptation. AgileTV, at its own cost, will perform all necessary engineering to adapt the AgileTV System to the Comcast Trial Cable System head-end environment as set forth in greater detail in the applicable Statement of Work.
- 3.3.1 AgileTV will define interfaces for head-end integration and provide documentation and diagrams describing the same in detail.
- 3.3.2 AgileTV will provide a list of all hardware and software inventory to be introduced to Comcast or Customers as part of the AgileTV System.
- 3.3.3 AgileTV will provide a document listing the system and equipment requirements that Comcast must meet in order to integrate with the AgileTV system (e.g., return path, network switches).
- 3.3.4 AgileTV will participate in the initial installation and configuration of the AgileTV System in the Trial Cable System. To the extent Comcast deems necessary, AgileTV will be granted accompanied access by Comcast to the Trial Cable System head-end solely for purposes of performing AgileTV's obligations under this agreement. AgileTV will abide by the confidentiality conditions set forth in Section 7.
- 3.3.5 AgileTV will draft a document that incorporates Comcast's requirements with respect to allowing AgileTV to have remote access to the Comcast head-end. Such document will detail the security protections that AgileTV will apply to its method of remote access and will provide a list of those AgileTV employees who will have access to the Comcast system. Comcast will have the right to approve, reject or require modifications to the requirements document.
- 3.4 **System Management**. AgileTV will draft a detailed document setting forth the methods by which system load and traffic requirements will be measured. To the extent requested by Comcast, AgileTV will assist in measuring the impact the AgileTV System has on the Comcast system's load and traffic data in conjunction with other vendors as required and further outlined in section 3.3 of the Product Description. AgileTV will provide weekly detailed server-side reports on the performance of the AgileTV System, as set forth in the applicable Statement of Work.
- 3.5 **Software and Documentation**. AgileTV hereby grants Comcast a limited, royalty free, worldwide, non-exclusive right and license to utilize the AgileTV System, including any and all software and documentation provided therewith, for the purposes of conducting the Trial including, without limitation, enabling the AgileTV services to be provided to Trial Customers.

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- 3.6 **Support**. AgileTV will provide support for Comcast as follows:
- 3.6.1 AgileTV will provide technical support to Comcast as defined in the Statement of Work. AgileTV will provide Comcast with a dedicated telephone support line as set forth in the Statement of Work. As set forth in greater detail in the Statement of Work, the Parties will establish a procedure for escalation of issues by Comcast personnel to AgileTV and expected resolution.
- 3.6.2 AgileTV will provide Comcast with all necessary documentation to enable the support of Customers and installers. This documentation is detailed in the applicable Statements of Work, but will at a minimum contain (a) installation and trouble-shooting instructions for installers; (b) user guides and frequently asked questions ("FAQs") for installers and Customers; (c) materials regarding the operation of the AgileTV System sufficient to enable Comcast to provide troubleshooting and customer support; and (d) minimum system requirements for Customer equipment in order to enable the AgileTV System to operate.
- 3.6.3 AgileTV will replace Customer Premises Equipment as necessary and as requested by Comcast. All such replacement equipment will be delivered to Comcast at AgileTV's expense at the site specified by Comcast for such deliveries.
- 3.6.4 AgileTV will create instructional marketing and recruitment video materials in an appropriate format for purposes of distributing the video to Customers who are current or potential Trial Customers. Appropriate distribution methods may include VOD, one or more "barker" channels on the Trial Cable System, and possibly stand-alone media such as DVD and VHS. Comcast may, but is not obligated to, distribute the recruitment video to potential Trial Customers.
 - 3.6.5 AgileTV will not communicate with Trial Customers.
- 3.6.6 AgileTV will be responsible for conducting any software upgrades in the AgileTV-supplied applications equipment. In the event that security requirements preclude access to the equipment necessary for AgileTV to conduct such upgrades, AgileTV will coordinate with authorized personnel within Comcast to perform the upgrade.
- 3.7 Comcast Contact. AgileTV will direct all communications regarding the progress of or any issues arising out of the Trial to designated contacts within Comcast (the "Comcast Contacts") as defined in Attachment A. All such communications will be considered Confidential Information. Unless otherwise authorized by Comcast, AgileTV will not initiate communications regarding the Trial or the possibility of expanding the scope of the Trial with anyone other than Comcast Contacts.

3.8 Research

Pursuant to the anticipated Joint Research Agreement, AgileTV will provide data, as set out in the SOW, in furtherance of the Market Research, the Technical Research and the Usage Research.

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Section 4. Obligations of Comcast

4.1 **Trial System**. Comcast will provide the physical locations, equipment and personnel necessary to host the AgileTV System and conduct the Trial. Comcast will provide rack space and other facilities as specified in the Statement of Work.

4.2 Conduct of the Trial

- 4.2.1 Comcast will provide personnel and other resources, in its discretion, to assist in the installation of the AgileTV System in the Trial Cable System. Comcast will be responsible for the delivery of all Customer Premises Equipment to the customer premises, and for any installation that is not performed by the Trial Customers themselves.
- 4.2.2 Comcast will use commercially reasonable efforts to provide ongoing head-end infrastructure support to maintain the operation of the AgileTV System at the Trial Cable System during the Trial Period.
- 4.2.3 Comcast will be responsible for (a) conducting head-end reconfiguration; (b) providing support for the AgileTV application; and (c) downloading and upgrading the software provided by AgileTV to the set top boxes of Trial Customers to enable the AgileTV System to operate.
- 4.3 **Support**. Comcast will provide direct customer support for Trial Customers based on scripts and collateral materials produced by Comcast or provided by AgileTV and approved by Comcast. Comcast's direct customer support will be backed up by AgileTV's escalation support, as described in Section 3.6.1 and the Statement of Work.
- 4.4 **Trial Customer Relationship**. Comcast will be responsible for recruiting the Trial Customers. Comcast will have the sole ability to terminate a Trial Customer's participation in the Trial if Comcast determines it is in its interests to do so. Comcast will be responsible for all communications with Customers and Trial Customers, including the distribution of promotional, marketing and informational materials, even if some such materials are created by AgileTV.

4.5 Research

Pursuant to the anticipated Joint Research Agreement, Comcast will provide personnel and reasonable support for the Market Research, the Technical Research and the Usage Research. Details will be defined in the Joint Research Agreement.

Section 5. Term and Termination

5.1 This Agreement will commence on the date of execution and will expire by its terms thirty (30) days after the end of the Trial Period (including any extension thereof). In the event the Parties decide to move to a broader commercial deployment of the AgileTV System, the Parties agree that they will execute a separate agreement.

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- 5.2 Either Party may terminate this Agreement by written notice to the other Party if such other Party is in material breach of this Agreement and has failed to cure such breach within thirty (30) days of receiving written notice from the non-breaching Party specifying the alleged breach.
- 5.3 Comcast may terminate this Agreement for convenience upon thirty (30) days' notice to AgileTV.
- 5.4 Upon any termination of this Agreement, (a) each Party will promptly return to the other Party all Confidential Information of the other Party; and (b) Comcast will cease providing the Promptu Service to Trial Customers, if it has not already been discontinued. Upon termination or expiration of this Agreement AgileTV will have thirty (30) days to uninstall and remove its software from the Head-End Equipment in the Trial Cable System.
- 5.5 Upon termination or expiration of the Agreement, AgileTV will disconnect and discontinue the use of its remote access capabilities to the Trial Cable System and any part of the Comcast network.
- 5.6 Either Party may terminate this Agreement upon written notice to the other Party, if such other Party is subject to proceedings in bankruptcy or insolvency, voluntarily or involuntarily, if a receiver is appointed with or without the other Party's consent, if the other Party assigns its property to its creditors or performs any other act of bankruptcy, if the other Party becomes insolvent and cannot pay its debts when they are due or if the other Party ceases to conduct business.
- 5.7 All rights and licenses granted under or pursuant to this Agreement shall be deemed, for purposes of Article 365(n) of the United States Bankruptcy Code (11 U.S.C. Section 365(n))(the "Code") to be licenses to rights to "intellectual property" as defined in Article 101(35A) of the Code. AgileTV agrees that Comcast, as licensee of such rights under this Agreement, shall retain and may fully exercise all of its rights and elections under the Code.

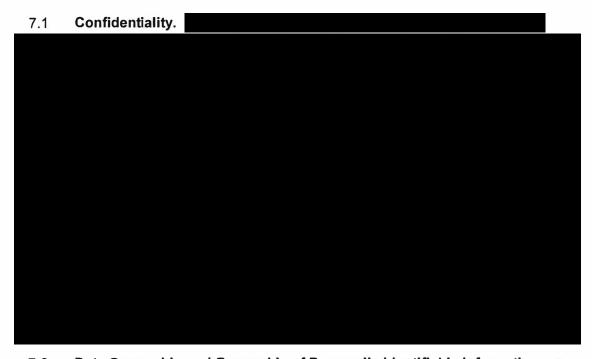
Section 6. Ownership

- 6.1 AgileTV and/or its suppliers will retain all right, title and interest in and to all software and documentation provided to Comcast pursuant to this Agreement. Agile hereby assigns ownership of the Customer Premises Equipment to Comcast. AgileTV acknowledges and agrees that Comcast has no obligation to repossess Customer Premises Equipment from Customers upon the end of the Trial.
- 6.2 Comcast and/or its suppliers will retain all right, title and interest in and to all software, applications, systems, business methods, training materials, processes, specifications and Customer data that it (a) owned or otherwise had any right, title and interest in and to prior to the execution of this Agreement; or (b) has developed or acquired during the term of this Agreement.
- 6.3 Ownership of the Market Research, the Usage Research and the Technical Research will be defined in the Joint Research Agreement. Notwithstanding the

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foregoing, Comcast shall own all right, title and interest in and to all Usage Data and the Technical Research.

Section 7. Confidentiality and Publicity



7.2 Data Ownership and Ownership of Personally Identifiable Information

- 7.2.1 **Subscriber Information**. AgileTV hereby acknowledges that Comcast has a special responsibility under the law to keep personally identifiable Subscriber information ("PII") private and confidential. AgileTV also acknowledges that the PII to which it will have access pursuant to this Agreement constitutes Comcast Confidential Information and that AgileTV in no way possesses or shall gain possession of any ownership or other proprietary rights with respect to such PII. AgileTV acknowledges and understands that PII is subject to the subscriber privacy protections set forth in Section 631 of the Cable Communications Policy Act of 1984, as amended (47 U.S.C. Sec. 551), as well as other applicable federal and state laws. AgileTV agrees that it shall use such information in strict compliance with Section 631 and all other applicable laws governing the use, collection, disclosure and storage of such information. AgileTV further agrees to restrict disclosure of such PII to those AgileTV employees or contractors with a need to know and who are bound by the confidentiality provisions herein and shall not further disclose such information to any third Party without the prior written consent of Comcast.
- 7.2.2 **Usage Data**. Except as permitted in Sections 6 and 7 above, AgileTV shall not collect or maintain such Usage Data in any manner or to any extent that is not in compliance with its obligations under this Agreement and shall maintain such Usage Data in encrypted or otherwise secure form.

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- 7.2.3 **Security**. All PII and Usage Data that is collected and/or stored by AgileTV pursuant to this Agreement and the Statement of Work shall be maintained in a secure environment that meets industry standards. Any PII or Usage Data that is collected or obtained by AgileTV must be stored and transmitted in encrypted or otherwise secure form. In the event of a breach of security of any system, website, database, equipment or storage medium or facility that results in unauthorized access to PII or Usage Data by any third Party (including any employee or contractor of AgileTV that is not authorized to access such information), AgileTV shall notify Comcast immediately and make best efforts to re-secure its systems immediately.
- **Remote Access**. To the extent that AgileTV is authorized to gain remote access to Comcast's networks, equipment and content for purposes of gaining access to network control elements and content libraries and for purposes of providing application data, support, customer service, authentication or to otherwise perform its obligations under this Agreement, AgileTV shall ensure that (a) such access is restricted to authorized employees; (b) it provides Comcast with a list of all such authorized employees; (c) such remote access is used solely for purposes of fulfilling AgileTV's obligations under this Agreement; (d) such remote access is obtained through a secure connection; and (e) AgileTV uses such remote access capability only to access equipment or software that is provided to Comcast by AgileTV or otherwise is directly involved in supporting the AgileTV System and does not access any other Comcast or third Party systems, databases, equipment or software. AgileTV will refrain from any network activities that could impact the performance of systems and customers not involved with the Trial. AgileTV will provide periodic security audits of their access system and methods and will change authentication elements periodically to maintain the integrity and security of AgileTV's access.
- 7.2.5 **Publicity**. Neither Party will use in its publicity or marketing literature or web site either the other Party's name or the name of any of its Affiliates or the fact that it has signed this Agreement without first obtaining the prior written approval of the other Party. Neither Party will issue a press release or make any other formal communication with the news media relating to this Agreement or the Trial without the prior written approval of the other Party. Without limiting the foregoing AgileTV will not make any public statements relating to this Agreement or the Trial without the prior written approval of Comcast. In addition, any reference either direct or inferred to Comcast on the Promptu.com website must not occur without first obtaining approval from Comcast.
- 7.2.6 **Demonstration for Government Officials and Others**. Comcast periodically receives requests from government officials to demonstrate some of the new technologies and services that Comcast is testing for potential deployment to consumers. The purpose of these demonstrations is to help government officials and their staff understand the new services that may be made available to consumers and to learn the potential benefits to consumers these new services may offer. AgileTV agrees to permit Comcast to demonstrate the AgileTV service to regulators, legislators or other government officials and staff for the purposes set forth in this paragraph. Comcast may also demonstrate the AgileTV service to third parties for other purposes consistent with the evaluation of the service in connection with the Trial.

7.2.7 **Technical Trial Transition.** Upon official launch of the Marketing trial, the Technical Trial Agreement previously executed between the Parties is hereby terminated. This Marketing Trial Agreement, the accompanying Statement of Work and any Exhibits will govern the trial relationship to begin at launch, currently scheduled for April 27, 2005. In addition, at Comcast's discretion, the current technical trial participants will be given the option to continue with the product as marketing trial participants.

Section 8. Representations, Warranties and Covenants

- 8.1 **AgileTV Warranties**. AgileTV represents and warrants that:
- 8.1.1 It is duly organized, validly existing and in good standing under the laws of the State of Delaware and has the full power and authority to enter into this Agreement and to supply to Comcast the AgileTV System and all components thereof.
- 8.1.2 If any part of the AgileTV System contains third party software or other intellectual property, AgileTV warrants that it has the full power and authority to sublicense the third party software or other intellectual property as part of the License granted to Comcast herein.
- 8.1.3 It is not bound by any agreements, obligations or restrictions and will not assume any obligation or restriction or enter into any other agreement that would interfere with its obligations under this Agreement.
- 8.1.4 To its knowledge, there are no pending actions or proceedings in law, equity, arbitration or any other tribunal challenging or affecting any right, title or interest granted to Comcast hereunder, and AgileTV warrants that it is not aware of any unasserted claims that might affect Comcast's rights under this Agreement or AgileTV's ability to grant the rights or perform its obligations under this Agreement.
- 8.1.5 To AgileTV's knowledge (without the duty to conduct any patent searches or investigation), as of the Effective Date, neither AgileTV's nor Comcast's exercise of any rights or performance of any obligations under this Agreement, including without limitation, the provision or sale of the Promptu service to Customers, will violate or infringe the Intellectual Property Rights of any other Person. Neither AgileTV nor any of its Affiliates is aware, or has any reasonable expectation, of any claim, allegation, assertion or notification that either Party's exercise of said rights or performance of said obligations will violate or infringe the Intellectual Property Rights of any other Person.
- 8.1.6 The software provided by AgileTV pursuant to this Agreement, as delivered, contains no Malicious Code. For purposes of this Agreement, the term "Malicious Code" means: any computer instructions, circuitry or other technological means whose purpose or effect is to disrupt, damage or interfere with the operation of any hardware or software; code containing viruses, Trojan horses, worms or like destructive code; and back doors or any similar category of code that will impair Comcast's full and unfettered use of the AgileTV System or the licensed software contained therein as contemplated by this Agreement or could enable unauthorized access to any of Comcast's hardware or software systems.

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- 8.1.7 AgileTV and the employees or contractors furnished by AgileTV hereunder possess the knowledge, skill and experience necessary to perform the services required hereunder; and
- 8.1.8 AgileTV and its employees shall comply with all rules established by Comcast regarding the conduct of its own employees, including environmental, health and safety and security rules, while they are on Comcast premises.
- 8.1.9 No Other Warranties. EXCEPT AS SPECIFIED IN THIS SECTION 8, AGILETV MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, AND HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES AND/OR REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, REASONABLE CARE, AND/OR FITNESS FOR A PARTICULAR PURPOSE (WHETHER OR NOT AGILETV KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), IN EACH INSTANCE WITH RESPECT TO THE AGILETV SYSTEM OR SUPPORT SERVICES, OR ANY PART OR ELEMENT THEREOF.
- 8.2 **Comcast Warranties**. Comcast represents and warrants that:
- 8.2.1 It is duly organized, validly existing and in good standing under the laws of the Commonwealth of Delaware and has the full power and authority to enter into this Agreement.
- 8.2.2 It is not bound by any agreements, obligations or restrictions and will not assume any obligation or restriction or enter into any other agreement that would interfere with its obligations under this Agreement.
- 8.2.3 To its knowledge, there are no pending actions or proceedings in law, equity, arbitration or any other tribunal challenging or affecting Comcast's ability to perform its obligations under this Agreement, and Comcast warrants that it is not aware of any unasserted claims that might affect Comcast's ability to perform its obligations under this Agreement.

Section 9. Indemnity and Limitation of Liability



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Section 10. Dispute Resolution



Section 11. Insurance

11.1 Required Insurance Coverage.



AgileTV / Comcast Confidential



11.2 Certificates of Insurance. All required insurance policies must be taken out with financially reputable insurers reasonably acceptable to Comcast and licensed to do business in all jurisdictions where services are provided under this Agreement. AgileTV will provide Comcast, upon request, with a certificate of insurance, satisfactory in form and content to Comcast, evidencing that all the required coverages are in force and have been endorsed to provide that no policy will be canceled or materially altered without first giving Comcast at least 30 days' prior notice.

Section 12. General Provisions

12.1 **Notice**. Unless otherwise provided, notices permitted or required under this Agreement must be in writing and delivered by (i) certified mail, return receipt requested, (ii) hand delivery, or (iii) a reputable overnight carrier. The notice will be deemed given on the day the notice is received. Notices must be delivered to the following addresses or at such other addresses as may be later designated by notice given in the manner set forth above:

Comcast:	AgileTV:
Comcast Cable Communications, Inc.	AgileTV Corporation
1500 Market Street	333 Ravenswood Avenue, Building 202
Philadelphia, PA 19102	Menio Park, CA 94025
With a copy to:	With a copy to:
Comcast Cable Communications, Inc.	DLA Piper Rudnick Gray Cary
1500 Market Street	2000 University Avenue
Philadelphia, PA 19102	Palo Alto, CA 94303
Attn: Cable Law Department	

12.2 **Assignment**. Neither Party may assign or transfer (by sale or by operation of law) any of its rights or obligations under this Agreement or any schedule, except with the prior written consent of the other Party, which will not unreasonably be withheld, with the exception of assignment to a third party acquiring substantially the entire business of the

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assigning Party. No assignment will relieve the Parties of their respective obligations under this Agreement. This Agreement is binding upon and enforceable by each Party's permitted successors and assigns. Any assignment or transfer in violation of this Section 12.2 is null and void.

- 12.3 Relationship of the Parties. AgileTV is an independent contractor of Comcast. This Agreement will not be construed to and does not create a relationship of agency, partnership, employment or joint venture or any other fiduciary relationship between the Parties. AgileTV will not have the authority to bind Comcast without the prior written consent of Comcast. Without limiting the generality of the foregoing, AgileTV, its employees, agents and subcontractors are prohibited from executing any document on behalf of Comcast. Each Party is responsible for the payment of wages, salaries, fringe benefits and other compensation to its own employees, contractors and personnel, including without limitation, contributions to any employee benefit, medical or savings plan and for all payroll taxes, including without limitation withholding obligations.
- 12.4 **AgileTV Dependence**. AgileTV acknowledges and agrees that Comcast is not responsible for knowing AgileTV's dependence on revenues from sales or licenses to Comcast or other benefits of this Agreement in proportion to those received from other customers. AgileTV agrees to hold harmless Comcast from any and all claims and liabilities relating to AgileTV's financial stability that may result from Comcast's termination or non-renewal of this Agreement, or from any decision by Comcast not to deploy the AgileTV System commercially.
- 12.5 **Governing Law**. This Agreement and the rights and obligations of the Parties are governed by the laws of the Commonwealth of Pennsylvania, without regard to any conflict of laws principles.
- 12.6 **Waiver**. The waiver of a breach of any term or condition of this Agreement will not constitute the waiver of any other breach of the same or any other term.
- 12.7 **Severability**. If any provision of this Agreement is held to be unenforceable, the remaining provisions will remain in effect and the Parties will negotiate in good faith a substantively comparable enforceable provision to replace the unenforceable provision.
- 12.8 **Non-Exclusivity**. This Agreement is non-exclusive. Subject to the Confidentiality and Ownership provisions herein, nothing herein will prevent either Party from doing business with any other Third Party. Subject to the provisions of this Agreement, nothing herein will prevent Comcast from testing or purchasing any software or equipment that performs the same or similar functions as the Product from any other vendor or from developing such software or equipment in-house.
- 12.9 **Survival**. In addition to any other provisions that by their content are intended to survive the expiration or termination of this Agreement, Sections 6, 7, 9 and 12 will survive the expiration or termination of this Agreement.
- 12.10 **Remedies**. All rights and remedies of the Parties under this Agreement, in law or at equity, are cumulative and may be exercised concurrently or separately. The

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exercise of any one remedy will not be an election of that remedy to the exclusion of other remedies.

- 12.11 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes and replaces all prior promises or understandings, oral or written. This Agreement may not be modified or amended except by written instrument executed by authorized representatives of the Parties. In the event of any conflict or inconsistency between the terms of the main body of this Agreement and any Statement of Work or other Attachment hereto, the applicable Statement of Work will prevail, subject to the limitations set forth in Section 2.5 above. Any provision contained in any "shrinkwrap" or "clickwrap" agreement will have no force or effect if such provision conflicts with the terms of this Agreement or the Attachments.
- 12.12 **Force Majeure**. No Party to this Agreement shall be liable to the other Party for any failure or delay in fulfilling an obligation hereunder, if said failure or delay is attributable to circumstances beyond its control, including, but not limited to, any fire, labor dispute or government measure ("Force Majeure"). The Parties agree that the deadline for fulfilling the obligation in question will be extended for a period of time equal to that of the continuance of the Force Majeure. Agile TV will use commercially reasonable efforts to minimize the effect of the Force Majeure on its performance under this Agreement.

AGREED TO AND SIGNED in duplicate by the duly authorized representatives of the Parties.

Comcast Cable Communications Management, LLC	AgileTV Corporation
Signature	Signature
Printed Name	Printed Name
Title Business DEVELOPMENT	Title

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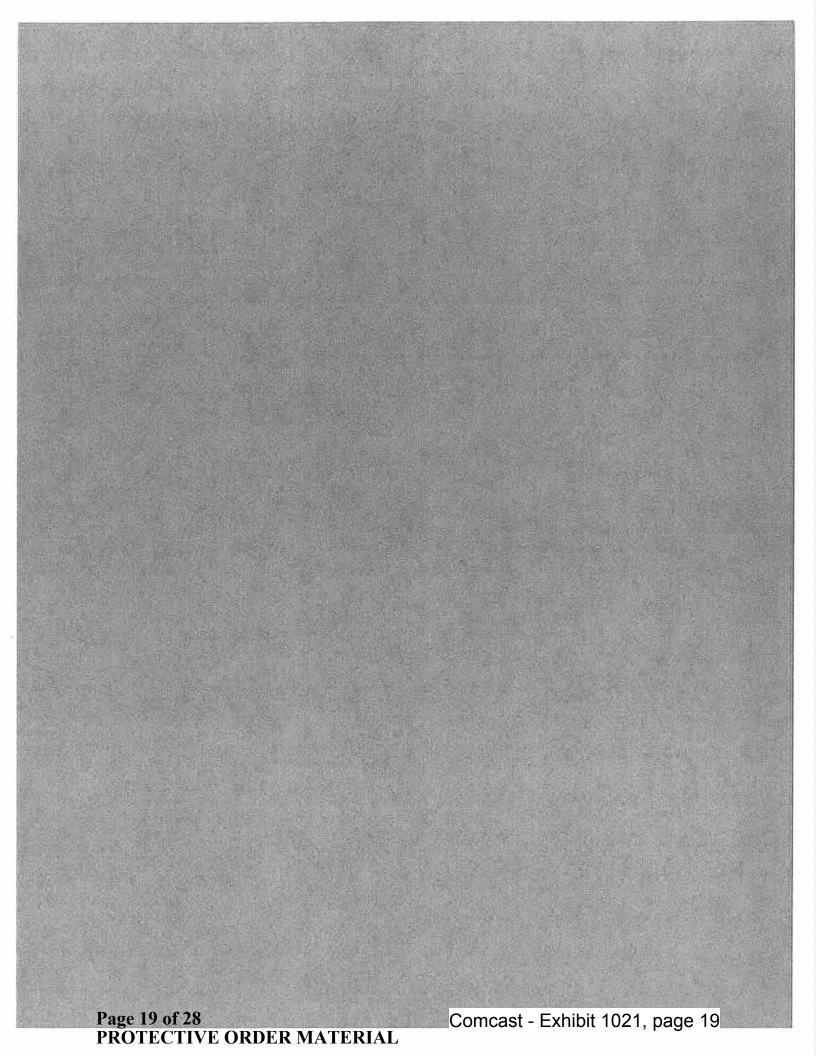
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AGREED TO AND SIGNED in duplicate by the duly authorized representatives of the Parties.

Comcast Cable Communications Management, LLC	AgileTV Corporation
Signature	Stgnature w. d
Printed Name	
	CEO
Title	Title

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Attachment A

Statement of Work

This Statement of Work for the Comcast-AgileTV Marketing Trial sets forth the scope of the trial, the trial objectives that Comcast and AgileTV have set for the Trial and the respective responsibilities of Comcast and AgileTV for conducting the Trial. All capitalized terms, unless otherwise defined, will have the same meaning as those set forth in the body of the Marketing Trial Agreement for Voice Activated Television Control Services.

I. "Product Description"

The Trial will utilize the AgileTV Promptu service, a voice activated control system defined in detail in Exhibit A (the "Product Description"). The Promptu service is implemented as a server-centric headend-based system, and includes the AgileTV User Interface, the VoiceRemote control (a universal remote with microphone and push-to-talk button), and the VoiceLink receiver (an IR Receiver). The version of the Promptu service to be used in the Trial operates with a Motorola DCT2000 set-top box with serial port.

- a. Product Features
 - i. Integrated ON DEMAND and linear search function
 - ii. Voice search capabilities by channel, program name, scan by genre, actor, look-ahead time navigation
 - iii. Parental Controls

II. Scope and Objectives

The Trial will be conducted in the Trial Cable System, located in Willow Grove, PA. Comcast will attempt to recruit approximately 275 customers to participate in this trial and intends to begin the trial on or around May 11, 2005. The trial will last approximately 6 months. This statement of work will address both marketing and technical objectives.

a. Marketing Objectives

Determine customer response to the Promptu service, with a focus on the product's use of voice recognition technology. Responses are measured by utilizing customer research and automated metrics. Objectives include but are not limited to the following:

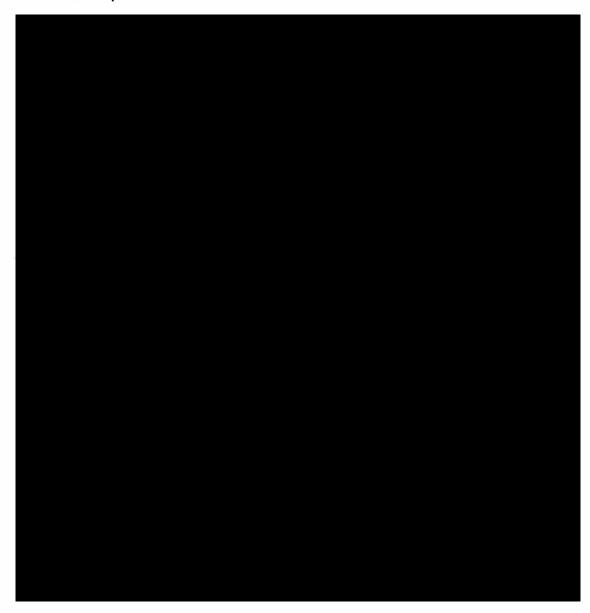
- i. Accuracy of the service
- li. Technical stability of the service
- iii. Customer's use of voice control versus button press
- iv. Overall product satisfaction
- v. Perceived value of the product and impact on customer satisfaction with Digital Cable
- vi. Customer's willingness to pay for service
- vii. Product's impact on migration
- viii. Impact on ON DEMAND Usage
- ix. Impact on churn

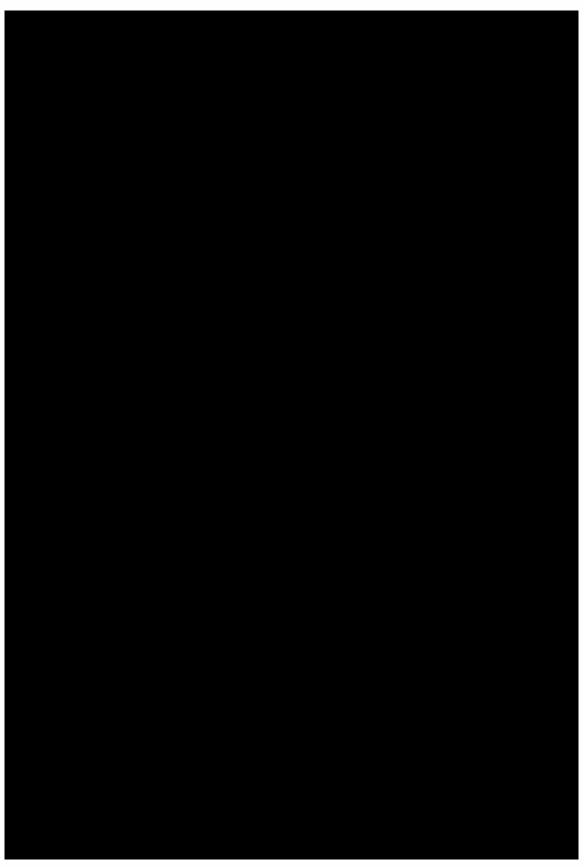
- x. Impact on operations including service calls & call center
- xi. Installation satisfaction (self-install & technician install)
- xii. Effectiveness of marketing tactics
- xiii. Participant-desired product enhancements

b. Technical Objectives

- Evaluate the impact of the AgileTV system on existing operations in the trial location and the ongoing support needed to support the product both internally from Comcast and directly from AgileTV.
- ii. Determine the system-wide consumption of upstream and downstream bandwidth due to use of the AgileTV system;

III. Roles & Responsibilities





Comcast Confidential

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IV. Reporting Requirements

As specified below, each party will have the responsibility to collect and share technical, operational, marketing & usage data to complete the objectives of the trial.

- a. AgileTV 's responsibilities include:
 - i. Weekly Technical/Usage report to include:
 - 1) Total number of active Promptu boxes
 - 2) # of ON DEMAND buys, both button press buys and voice buys, separate and aggregated
 - 3) Average voice recognition accuracy of product
 - 4) Average number of voice commands per active box per day
 - 5) Voice command distribution over time
 - 6) Utterance distribution by category (Scan, find, channel name, channel number, program name, time navigation, mode navigation)
 - 7) Top ten voice command categories (Scan, channel names, channel numbers, find title, find actor, find adult title)
 - ii. The following operational data will also be incorporated in the weekly report:
 - 1) Stability of system including cause, number and duration of any unscheduled outages
 - 2) Bandwidth usage such as downstream per path & upstream per path
 - 3) Other server-side reports on the performance of the system
- b. Comcast's responsibilities include sharing the following data with AgileTV:
 - Total number of orders placed. Breakdown of sales orders from direct mail and sales from payment center kiosk and any other marketing tactic deployed in support of this trial.
 - ii. # of truck rolls performed in support of product

- iii. # of customer calls with questions and/or issues related to product
- iv. # of installs performed by technician, # of self-installs via fulfillment center and # of self-installs via payment center pick-up
- V. ON DEMAND usage data for use in comparing non-AgileTV customers to AgileTV customers and the impact AgileTV has on the ON DEMAND product.

V. Customer Contact and Issue Escalation

All communication with Trial Customers either written or verbal will be conducted by Comcast. At no time will AgileTV communicate directly with Trial Customers without the prior written approval of Comcast.

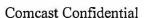
AgileTV will make available to Comcast representatives a direct 24x7 phone number for use in escalation scenarios. This phone number will not be published to Trial Customers, nor should it be distributed by any party to Trial Customers. It is to be used to resolve head-end problems related to the AgileTV service, and customer issues that are not resolved through standard Comcast CSR tools.

Comcast will make available to AgileTV the current vendor escalation process at the Willow Grove location to enable them to address operational problems with other components of the Trial Cable System that impact the operation of the AgileTV system. AgileTV will use this process to report any operational problems in the Trial Cable System detected by AgileTV, whether or not they directly impact the Promptu service. Comcast will employ reasonable diligence in correcting Trial Cable System problems reported by AgileTV.

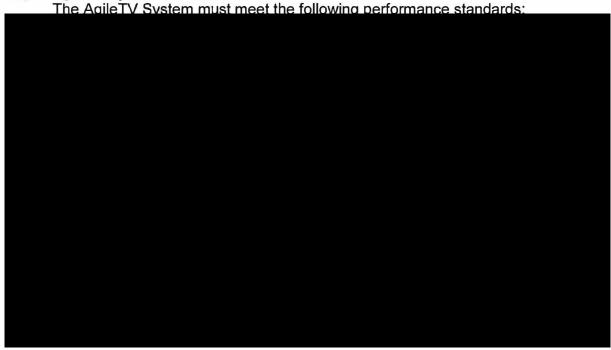
Comcast retains the right to immediately return Trial Customers to the Guideworks User Interface if at any time a technical issue with the AgileTV System results in a customer being unable to operate their set-top in a manner deemed acceptable by Comcast.

VI. Research

Pursuant to the anticipated three-way Joint Research Agreement between AgileTV, Comcast and Time Warner, the following are the research objectives of this Trial and will be covered in greater detail in the Joint Research Agreement:



VII. AgileTV System Performance



VIII. AgileTV System Maintenance and Upgrades

Any maintenance required to the AgileTV System must be conducted with full knowledge and approval of the appropriate Comcast contacts as defined in Section IX of this document.

In addition, any upgrades to the AgileTV System that are agreed to by Comcast must be conducted and scheduled with full knowledge and approval of the appropriate Comcast contacts.

AgileTV should continue to improve the voice recognition capabilities of its system based on ongoing feedback received from either customers or testers.

All AgileTV software releases that are required to be installed during the length of the trial must be fully disclosed, tested, and documented according to Comcast's policies.

IX. Comcast Contacts



Exhibit A to Attachment A: Product Description

1. OVERVIEW

The AgileTV system that implements the Promptu service is based on a combination of equipment located within the cable plant and equipment located in the subscriber's home, working together to provide advanced speech control for digital cable television. The equipment is summarized here and described in more detail in Sections 2 and 3 below. For maximum clarity, this description covers only the configuration of the system that will be used for the AgileTV Trial at Comcast, and omits any discussion of future variants or enhancements.

1.1 Equipment located in the subscriber's home

- VoiceRemoteTM speech-enabled remote control
- VoiceLinkTM infrared speech receiver
- Set-top box (Motorola DCT2000 with 9 pin serial port)
 - o Motorola Firmware 07.85 or higher
- AgileTV software for set-top box version 07.38

1.2 Equipment located within the cable plant

Note: The term "cable plant" refers collectively to the cable system headend, and to associated locations such as OTNs and other MSO facilities. The partitioning of the equipment across these locations may vary from one cable plant to another.



2. AGILETV EQUIPMENT

The following components of the AgileTV system will be produced by AgileTV for use in the Trial.

2.1 VoiceRemote speech-enabled remote control

The AgileTV VoiceRemote control (version 2.2) combines the full feature set of a normal set-top box remote control with the added functionality of speech control. Speech is enabled by adding a microphone, a small processor chip and an extra IR LED to transmit speech data. The microphone is a high-quality noise-canceling element in a specially designed acoustic chamber. The audio signal from the microphone is fed to the processor chip, which preprocesses and compresses the speech for transmission to the set-top box. Transmission is via the extra IR LED, using a proprietary digital IR protocol that combines low cost with high capacity and error resiliency.

2.2 VoiceLink infrared speech receiver

The digital IR signal is received by the VoiceLink receiver (version 2.4), a small add-on IR module that plugs into the serial data port on the back of the DCT2000 set-top box. This unit is designed to be very simple, both to reduce near-term cost and to provide for its long-term elimination via easy integration of its function into future set-top boxes.

2.3 AgileTV software for set-top box

AgileTV provides a self-contained suite of set-top box software (version 07.38), which runs directly on the Motorola firmware and requires no middleware or other third-party software. In addition to the infrastructure for speech control, this software suite includes a full-function speech-enabled Interactive Program Guide, a matching interface for VOD control, and a top-level navigation facility.

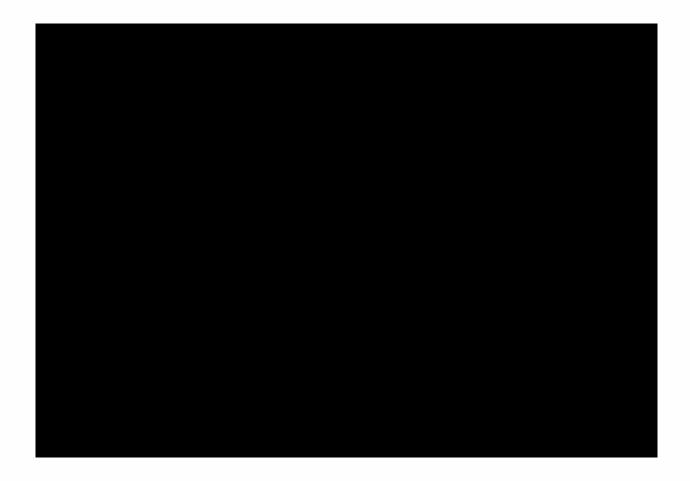
2.4 AgileTV software for AgileEngine

In AgileTV's server-centric architecture, most of the demanding compute tasks are off-loaded from the set-top box to the AgileEngine server (version CMS4i) located in the cable headend. AgileTV provides a complete software package based on an enhanced version of the Linux operating system, and including full support for the IPG, VOD and speech recognition functions of the system.

3. THIRD PARTY EQUIPMENT

The following third-party components will be provided by Comcast to support operation of the AgileTV system in the Trial.





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